UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 18, 2017, at 3:00 p.m.

1.	**15-25098-E-13**	**NESTOR ROCES**	**MOTION TO MODIFY PLAN**
	PSB-1	**Paul Bains**	**3-7-17 [109]**

APPEARANCE OF DEAN PROBER AND BONNI MANTOVANI REQUIRED FOR THE APRIL 18, 2017 HEARING (TELEPHONIC APPEARANCE PERMITTED)

APPEARANCE OF PAULDEEP BAINS REQUIRED FOR THE APRIL 18, 2017 HEARING (NO TELEPHONIC APPEARANCE PERMITTED)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 7, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Confirm the Modified Plan is xxxxxxxxxxx.

Nestor Roces ("Debtor") seeks confirmation of the Modified Plan to account for a second deed of trust that he mistakenly believed was extinguished and to provide for a tax liability owed to the Internal Revenue Service. Dckt. 109. The Modified Plan increases plan payments, states that Debtor's new counsel will seek payment according to 11 U.S.C. § 330, and in Section 6.01 - 2.08 lists pre-petition arrears as line item one and post-petition arrears as line item two. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 27, 2017. Dckt. 121.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in eight-five months due to the proposed payments not accounting for the Trustee's fees. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Trustee also objects to Section 6.01 - 2.08 of the proposed plan in that it states that ongoing payment for post-petition mortgage arrears will begin with the March 2017 payment for Old Republic Insurance Company. That creditor was added to Class 1 with the Modified Plan, and the Trustee argues that he is not authorized to pay the creditor in March 2017 under the confirmed plan.

The Trustee argues that the Modified Plan is not feasible because the monthly dividend for Class 1 arrears too low: It is listed as $100.00, but it would need to be $782.97 to pay the arrears fully within the remaining forty-four months of the Plan. Additionally, the dividend for post-petition arrears would need to be $164.83, not $157.67, to pay them during the plan term.

The Trustee objects to Debtor's contention that Debtor has paid and the Trustee has disbursed $18,550.00 as of February 2017. The Trustee states that the amount is actually $19,875.00. *See* Exhibit B, Dckt. 114.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee notes that Debtor has not submitted supplemental Schedules I & J with the Motion. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor added a claim for the Internal Revenue Service in Class 5 for a post-petition tax claim in the amount of $4,327.45, but the Trustee notes that under 11 U.S.C. § 1305, only a creditor may file a claim for post-petition taxes. Nevertheless, the Trustee is not opposed to the addition.

Order for Attorneys to Appear at Hearing

On April 4, 2017, the court issued an order requiring the attendance of Dean R. Prober, Esq. and Bonni S. Mantovani, Esq., attorneys for Creditor Old Republic Insurance Company, and Pauldeep Bains, counsel for Debtor, to appear at this hearing. Dckt. 127.

Debtor and Creditor, represented by the above attorney, filed with the court a stipulation agreeing to various terms for payment of Creditor's claim and then lodged with the court an order purporting to order that such terms were required—effectively having the court confirm terms of a Chapter 13 Plan prior to the noticed hearing on the Debtor's Motion to Confirm the Chapter 13 Plan. In fact, the terms mandated by the Stipulation for which a pre-confirmation order effectively confirming a Plan as to Creditor, included the following:

(1) Allow Creditor's claim;

(2) Set the terms for repayment of the pre-petition arrearage;

(3) Waives the discharge of the Debtor for the unpaid arrearage;

(4) Set the minimum plan payment for the post-petition arrearage;

(5) Establishes the amount of "ongoing payments;"

(6) Create a contractual deadline for Debtor to confirm a Chapter 13 Plan;

(7) Specify default terms under the Stipulation as default terms of the Plan;

(8) Specify default terms for the Chapter 13 Plan;

(9) Provides Plan terms for relief from the automatic stay for Creditor;

(10) Has the Plan require Debtor to execute unspecified documents as Creditor subsequently demands; and

(11) Prohibits any modification or alternation of the agreed terms as between Debtor and Creditor as otherwise permitted by the Bankruptcy Code.

Other than stating that Debtor and Creditor agree to such terms for a Chapter 13 Plan, the Motion to Approve Stipulation (Dckt. 124) does not identify any legal basis for the court to preemptively "confirm" portions of a Chapter 13 Plan outside of a motion to confirm and the requirements of Chapter 13 of the Bankruptcy Code, including 11 U.S.C. Sections 1325 and 1322. No points and authorities is provided by Creditor in support of the Motion to Approve Stipulation.

No other Parties in Interest, except the Chapter 13 Trustee, were given notice of these Plan terms which Creditor and Debtor sought to have ordered/confirmed by the court *ex parte*.

It appears that the Stipulation (Dckt. 125) is not something for which independent relief is sought (such as a motion to approve compromise pursuant to Fed. R. Bankr. P. 9019), but a recitation of the following terms which have been agreed to by Creditor and Debtor to amend the proposed Modified Plan. These terms (as slightly revised by the court concerning the procedure for requesting an order granting relief from the automatic stay) are:

1. The pre-petition arrears of $34,450.80 shall accrue interest at zero percent while the case is pending, with a required minimum $100 per month dividend to be paid under the confirmed modified Chapter 13 Plan. This will not pay the arrearage in full during the 60 months of the Plan

2. The unpaid portion of the pre-petition arrears will remain fully collectible as part of the secured claim after completion of the Chapter 13 plan. The contractual interest allowed by the underlying loan documents for the balance of the unpaid amount of pre-petition arrears owing after the conclusion of the case shall resume upon the closing of the bankruptcy case.

3. The post-petition arrears through the end of February 2017, in the amount of $7,252.80 shall be fully paid within the Plan term, through the Plan, at a minimum monthly installment of $157.67.

4. The regular current monthly post-petition installment payment of $362.64 on Creditor's Claim shall resume being paid with the March 1, 2017 payment and continue months thereafter.

5. In the event of a default of any of the above payments or other post-petition obligations of Debtor under the loan documents and deed of trust upon which Creditor's claim is based, creditor may, after a ten-day notice of default mailed to Debtor via regular first class mail at 8 Woodridge Place, Vallejo, CA 94591, and faxed and mailed to Debtor's counsel, file and serve on Debtor, the Chapter 13 Trustee, and the U.S. Trustee, an *ex parte* motion for an Order Terminating the Automatic Stay, supported by competent evidence of the default and failure to cure. If Debtor or Chapter 13 Trustee dispute the existence of such default or that such default was not timely cured within the ten day notice period, the opposing party shall file and serve the opposition, competent evidence, and a notice of hearing for opposition to motion for relief within ten days of being served with the *ex parte* motion. The opposing party shall set the hearing on the opposition for this court's first available regular Chapter 13 relief from stay law and motion date not less than ten days after filing and serving the opposition. The only issue in opposition will be whether the default existed, it was noticed, or that it was cured within the ten day notice period. If relief from stay is granted, the court shall also waive the 14-day stay of enforcement provided by Bankruptcy Rule 4001(a)(3).

The Stipulation includes other terms which go beyond confirmation of a Chapter 13 Plan.

At the April 18, 2017 Hearing, **xxxxxxxxxxxxxxxxxxxxxxx**.

The Modified Plan ~~**does/does not**~~ comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and ~~**is/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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is ~~xxxxxxxxx~~.

2. **11-22562-E-13 EFA-2** | **JOSEPH/SABRINA MADDOCKS** **Peter Macaluso** | **MOTION TO ENFORCE SETTLEMENT AGREEMENT** **3-16-17 [212]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 16, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Enforce Settlement Agreement is denied.

California Coastal Rural Development Corporation ("Creditor") requests that the court enforce a settlement agreement allegedly entered into by Creditor and Joseph Maddocks and Sabrina Maddocks ("Debtor") on February 10, 2017. Creditor also requests an award of attorneys' fees and costs in the amount of $8,432.39.

Creditor contends that it and Debtor sought to resolve a dispute between them that arose after Debtor filed a Motion for Contempt against Creditor on December 14, 2016. The parties filed a stipulation

to continue the hearing on the Motion for Contempt to February 28, 2017 while they attempted to resolve issues.

Creditor asserts that an agreement to settle was reached on February 10, 2017, through exchanged e-mails. The e-mails, attached as Exhibits C through E, demonstrate that the parties were negotiating settlement terms with each other. Exhibit E in particular appears to show Creditor accepting one of Debtor's counteroffers from February 8, 2017. Dckt. 218.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 4, 2017. Dckt. 221. Debtor argues that there is no settlement to enforce because no contract terms were negotiated, no settlement amount was decided, and no contract was signed by the parties.

Debtor states that Creditor's alleged accepted on February 10, 2017, was not a mirror acceptance, and it required Debtor to review and approve of additional terms. Debtor states that the February 10, 2017, e-mail from Creditor contained additional provisions about making sure the settlement agreement provided for withdrawal of the Motion for Contempt, as well as including a mutual release of all known and unknown claims.

Debtor asserts that Creditor proposed a settlement agreement on February 13, 2017, that went beyond terms that the parties had negotiated, specifically including a mutual release from any claims known and unknown even outside of the specific causes of action that were part of the initial settlement offer. Debtor decided not to accept the offer with its additional terms.

Debtor cites to *Panagotacos v. Bank of America* for the common law proposition that an offer must be accepted unequivocally, and any alteration (qualified acceptance) is treated like a rejection and proposal of a counteroffer. 60 Cal. App. 4th 851, 855–56 (Cal. Ct. App. 1998). Debtor uses *Beverly Way Assocs. v. Barham* to assert that a rejection of an offer, or a proposed alteration, is effective only if communicated to the other party. 226 Cal. App. 3d 49, 55 (Cal. Ct. App. 1990). Based upon Debtor's interpretation of Creditor's February 10, 2017 e-mail being a counteroffer, Debtor argues that there was no meeting of the minds. *See Whitley v. Siemens Indus.*, No. 2:14-cv-00099-MCE-DAD, 2015 U.S. Dist. LEXIS 71369, at *4 (E.D. Cal. June 2, 2015) (citing *Weddington Prods., Inc. v. Flick*, 60 Cal. App. 4th. 793, 810 (1998)).

CREDITOR'S REPLY

Creditor filed a Reply on April 11, 2017. Dckt. 226. Creditor asserts that Debtor's Opposition is baseless because it treats the February 10, 2017 e-mail as a rejection and counteroffer instead of as a discussion of how the settlement would be implemented, not modified.

Creditor argues that there is no credible evidence that its acceptance was qualified or that it added any material terms, and it emphasizes that discussion in the e-mail about drafting the settlement agreement referred to its implementation. Creditor asserts that Debtor never complained about any additional terms

being added and argues that Debtor was merely feeling buyer's remorse—wanting to receive more money in settlement.

Creditor argues that *Pantagotacos* is inapplicable to the present Motion because it involved a contract to purchase a house in Greece, with there being a dispute over a contract term about whether the payment would be made in Greece or Germany, which led a court to find that there was no meeting of the minds. Here, however, Creditor states that there is no essential term that was not agreed to by Creditor on February 10, 2017.

Also, Creditor states that reliance upon *Beverly Way Assocs.* is unwarranted because that case involved purchase of real property in which the buyer's obligation to purchase the property was contingent upon approval of a land survey, which buyer rejected and terminate the contract. Creditor asserts that Debtor has made no factual comparison with this case to *Beverly Way Assocs.*

Creditor interprets *Whitley* in a way that would actually support it, instead of Debtor: Creditor restates that *Whitley* held that "a settlement need only be sufficiently definite to enable a court to give it meaning . . . . [T]he fact that a more formal agreement may be contemplated does not alter the validity of an agreement whose terms meet the requisite definiteness . . . . California law permits parties to bind themselves to a contract even if they anticipate that certain aspects of the deal be reduced to a further writing thereafter." *Whitley*, 2015 U.S. Dist. LEXIS 71369, at *6 (citations omitted). Creditor states that it and Debtor agreed that Creditor would pay $9,000.00 to Debtor and release all of its liens, and in return, Debtor would settle all issues and resolve the Motion for Contempt. That Debtor did not sign the settlement agreement prepared by Creditor should not prevent enforcement of it.

DISCUSSION

Unfortunately, the court has been presented with this Motion to Enforce Settlement rather than a motion for approval of a settlement (Fed. R. Bank. P. 9019). This dispute between Debtor and Creditor has been a bumpy road, with both parties creating the potholes in the road. This battle surfaced in the court with the December 14, 2016 filing of a pleading titled "Order to Show Cause - Motion for Contempt." Dckt. 167. The Motion substantially requested that the court find Creditor in contempt for violation of the discharge injunction arising under 11 U.S.C. § 1328.

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

The court has thoroughly reviewed the Contempt Motion and asserted defenses in the Civil Minutes from the February 28, 2017 hearing on that motion. Dckt. 205. Serious "challenges" exist for both parties. For Debtor, contempt is sought for Creditor asserting rights under a pre-petition judgment lien. But Debtor had not avoided the judgment lien under 11 U.S.C. § 522(f). For Creditor, it did not file a proof of claim for the judgment and judgment lien, but for two promissory notes secured by deeds of trust, the very notes which were the subject of the state court litigation upon which the judgment was obtained. In the

bankruptcy case Creditor allowed Debtor to have the two claims asserted (for the notes which were replaced by the judgment) valued at $0.00 as secured claims pursuant to 11 U.S.C. § 506(a). However, Creditor was mum in the bankruptcy case about any judgment and the judgment lien. Debtor was equally mum about the state court judgment which was obtained approximately one month before the bankruptcy case was filed.

Asserted Settlement

This situation would appear to be one ripe for the parties to bring it to a swift resolution, both having some "challenges" in their positions. Debtor had not avoided the judgment lien. Creditor filed two proofs of claim for notes, the contractual obligation for which was subsumed in the state court judgment it obtained. Further, Creditor did not come forward and file a proof of claim for the judgment it obtained, but merely for the notes.

After several "plain-talk" hearings with the court, it appears that some settlement communications occurred. The court reviews them here, not for purposes of determining the merits of the claims and defenses on the underlying disputes, but to determine whether there is an enforceable settlement agreement hereunder.

While both parties are long in argument and citing the court to cases, neither have cited the court to applicable California statutory law concerning the enforceability of settlements. The court begins with California Code of Civil Procedure § 664.6 (emphasis added), which states:

> § 664.6. Judgment pursuant to terms of settlement
>
> If parties to pending litigation stipulate, **in a writing signed by the parties** outside the presence of the court **or orally before the court**, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

Starting with the plain language of this California Statute, there must either be a writing signed by the parties or a settlement stated orally on the record for there to be an enforceable settlement. As stated by the Ninth Circuit Court of Appeals, state law governs the creation and enforceability of settlements in federal court. *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). The creation and enforceability of settlements is grounded in applicable state contract law. *Id.*

The documents and conduct which Creditor asserts lead to the conclusion that this Contested Matter has been settled are:

A. **February 8, 2017 Letter From Debtor Counsel to Creditor Counsel**; Exhibit C, Dckt. 218.

In this letter, Debtor's counsel states:

1. I agree that once my office has received:

   a. Endorsed copies of the three lien releases,
   b. $1,500.00 Cal. Civ. Code § 2941 statutory damages (for three liens, called a "civil fine" in the letter), and
   c. $2,400 in attorneys' fees;

   we will be able to discuss the damages that have been incurred by Debtor.

2. As of the time of the February 8, 2017 letter, Debtor is seeking $5,000.00 in damages for violation of the discharge injunction, clouding of title, improper credit reporting, and the cost incurred daily until the Contested Matter is resolved.

3. The prior offer had expired.

4. Debtor has authorized Counsel to settle for a total of $9,000.

B. February 10, 2017 Email From Creditor Counsel to Debtor Counsel; Exhibit D, *Id.*

In the email, Creditor's counsel states:

1. Creditor communicated the following to Creditor's Counsel, who is forwarding it to Debtor's Counsel:

   > "After careful consideration of [Debtor Counsel's] settlement offer contained in his February 8, 2017, letter, [Creditor] has elected to accept the offer. Kindly communicate our acceptance of his offer today and then draft a Settlement Agreement for signature by [Debtor] and [Debtor Counsel] Please make sure the agreement provides for withdrawal of the motion and includes a mutual release of all known and unknown claims."

2. Creditor's counsel states that she will prepare the required settlement agreement.

C. February 13, 2017 Email From Creditor Counsel to Debtor Counsel, Exhibit E, *Id.*

This email merely states that attached is the Settlement Agreement as specified in the earlier correspondence from Creditor to Creditor Counsel.

Attached to the email is the Settlement Agreement and General Release. Significant terms in the Settlement Agreement include the following:

1. "1.1 In order to resolve the Motion for Contempt, **and all other claims that the Debtors, or the Debtors' legal Counsel, may claim to have against [Creditor]**, . . . [Creditor] agrees to pay the Debtors and the Debtors' Legal Counsel the sum of $9,000.00 (the "Settlement Sum"), within five (5) days of the date of execution of this Agreement by the Debtors and their legal counsel." Settlement Agreement, ¶ 1.1; *Id.*

2. "3.1 With the exception of the rights and Obligations created by this Agreement (the "Surviving Obligations"), [Creditor], the Debtors, and the Debtors' Counsel, . . . , **do hereby release and forever discharge** each other, and each others' respective predecessors, heirs, successors, assigns, beneficiaries, attorneys, agents, employees, and representatives (collectively "Releasees"), **from any and all claims**, demands, liabilities, damages, debts, obligations. actions and causes of action which arose prior to the effective date of this Agreement, whether **known or unknown**, suspected or unsuspected, at law or in equity, including, without limitation, all claims, complaints and notices made or which could be made to any federal, state or municipal agency or court **for the violation or enforcement** of **any statute**, code, rule, regulation, ordinance **or other law**, **pertaining to, arising out of or connected with the Bankruptcy Case**, the Motion for Contempt, **[Creditor's] liens on the Debtors' Home**, or the Credit Reporting (the "Released Matters"), that each [Debtor or Debtor's Counsel] has or claims to have, now or hereafter, against [Creditor]. Settlement Agreement, ¶ 3.1; *Id.*

3. "6.1 **This Agreement is the entire agreement** among Cal Coastal, the Debtors and the Debtors' Counsel with respect to its subject matter and **supersedes all prior and contemporaneous oral and written agreements and discussions**, including, without limitation, any prior agreement made between the parties by virtue of prior settlement correspondence between the attorneys for the parties." Settlement Agreement, ¶ 6.1; *Id.*

D. March 10, 2017 Letter from Creditor's Counsel to Debtor Counsel; Exhibit H, *Id.*

In this letter, Creditor Counsel communicates the following:

1. Creditor asserts that the February 10, 2017 communication from Creditor Counsel to Debtor Counsel constitutes an acceptance of the February 8, 2017 settlement offer.

2. If Debtor does not perform in accordance with the asserted settlement terms, Creditor will seek to have the bankruptcy court enforce the settlement.

3. Creditor then proposes, as an inducement to comply with the asserted settlement, to pay an additional $2,400.00 in legal fees, in addition to the $9,000.00 previously stated, to cover Debtor Counsel's time for two

additional status conferences. The total settlement payment amount proposed in this letter is $11,400.00.

E. Attached as Exhibit I is a text message which is identified as having been sent by Debtor Counsel. Dckt. 218.

Creditor Counsel testifies in her Declaration (¶ 23, Dckt. 217) that this is the text message she received on March 10, 2017 from Debtor Counsel in response her March 10, 2017 Letter above. The text message communicates the following:

1. "it appears [Creditor] has rejected our offer . . ."

2. "the offer stands till 5 . . ."

3. "expect to file suit for fraud seeking punitive damages . . ."

4. "this is reasonable . . ."

5. "you lied to the court . . . ."

In her Declaration, Creditor Counsel recounts several communications with Debtor Counsel, the transmission of documents, and a statement that no response to her March 10, 2017 letter was received, other than a series of "harassing and threatening text messages" similar to the one above.

Specifics of Opposition

Debtor Counsel has filed an Opposition to this Motion. Dckt. 221. He argues that "while preliminary settlement discussions were being negotiated, no contract was formed as no contract terms were negotiated, no settlement amount was solidified, and no contract was signed by both parties." Opposition, p. 1:23–26; Dckt. 221.

With respect to the February 10, 2017 correspondence from Creditor Counsel and the February 13, 2017 letter and draft settlement agreement, it is asserted by Debtor that "On 2/13/17, creditor's counsel sent a proposed settlement document based on several terms and paragraphs which were not negotiated. The proposed settlement included the mutual release of claims known and unknown, which went beyond the specific causes of action listed in the initial settlement offer." *Id.*, p. 3:6–11.

Debtor asserts that the settlement as drafted by Creditor was not accepted and was not executed. Debtor has and intends to pursue additional claims, beyond contempt, against Creditor.

RULING

It is unfortunate that the parties have not been able to resolve this situation. What started as a "simple" motion to address the perceived wrong of Creditor in making demand for payment for a judgment

lien which had not been avoided by Debtor, now appears to have moved into a dysfunctional series of allegations and the inability to resolve the matter on its merits.

From the court's view, it appears that while Creditor may have been doing what it perceived as "normal" in accepting a settlement offer, it in fact has not accepted the settlement offer that was proposed by Debtor. As pointed out by Debtor, Creditor added a very significant term—Mutual General Releases of All Claims, Known and Unknown. Even read most charitably from Creditor's perspective, there were specific claims at issue which Debtor was proposing to settle: (1) releases of the two deeds of trust and the abstract of judgment, (2) payment of $500.00 in statutory damages, (3) payment of $2,400.00 for Debtor's legal fees, and (4) payment of $5,000.00 for damages arising from the claims for "violation of the discharge, the clouding of title, the improper credit reporting." February 8, 2017 Letter from Debtor Counsel to Creditor Counsel; Exhibit C, Dckt. 218.

Creditor's response was to pay those dollar amounts, but required that any settlement include mutual releases, of all known and unknown claims. February 10, 2017 email from Creditor Counsel to Debtor Counsel; Exhibit D, *Id.* It is made clear in the draft settlement agreement (Exhibit E, *Id.*) that the releases are not limited to the claims stated in the February 9, 2017 letter from Debtor Counsel but were a general release, of all claims, of whatever nature, for any obligations, that could relate to the bankruptcy case, the motion for contempt, Creditor's liens, or credit reporting. This is more than what Debtor "offered" Creditor in the February 8, 2017 letter.

As determined by the California Supreme Court in *Levy v. Superior Court*, 10 Cal. 4th 578, 586 (1995), when litigation is pending (as with this Contested Matter), a stipulation must either be put on the record orally before the court or in a writing that is signed by the parties, which the Supreme Court determined to be the actual party, not "merely" the attorney for the party for there to be an enforceable settlement under California Code of Civil Procedure § 664.6. See *J.B.B. Investment Partners v. Fair*, 232 Cal. App. 4th 974, 985 (2014) applying to a purported settlement, concluding that a typed name on an email is not a "signature" and that compliance with California Code of Civil Procedure § 664.6 is a prerequisite to invoking the power of the court to enforce a settlement of existing litigation. *Id.*, p. 992, 984.

To the extent that Creditor asserts that California Code of Civil Procedure § 664.6 does not apply and there was an oral agreement, with the terms stated in the letters and emails, the letters and emails do not document a meeting of the minds. While Creditor did the prudent and non-unreasonable thing, including the additional provision of a general release of all possible claims, known and unknown, that may somehow relate to the bankruptcy case and its liens (not merely the claims at issue in the Contempt Motion), Credit counter-proposed additional terms. Further, Creditor required the stipulation to be in writing, with Creditor Counsel to prepare it. The settlement agreement also makes it clear that it is Creditor's intention that the settlement agreement is the actual agreement of the parties, not some prior discussion or oral agreement that Debtor might assert.

While the Points and Authorities refer the court to cases stating that settlements are in the nature of contract and contract law applies, and under contract law there can be oral contracts, Creditor has not provided the court with any reported decisions that an oral settlement agreement that does not comply with California Code of Civil Procedure § 664.6 as being enforceable to terminate the litigation. If only Debtor and Creditor had not been in litigation, and Debtor and Creditor had a meeting of the minds on the terms

to which they agreed, and the documentation showed that the Debtor and Creditor had a meeting of the minds, Creditor may have had a contractual point to argue.

If there was a meeting of the minds, Creditor might argue that California Code of Civil Procedure § 664.6 is an optional, but not exclusive method of enforcing a settlement agreement. *Nicholson v. Barab*, 233 Cal.App.3d 1671, 1681 (1991). As discussed in Witkin § 126, other methods of enforcing a contractual agreement could be by summary judgment motion or subsequent proceeding. Here, Creditor is seeking to take advantage of the California Code of Civil Procedure § 664.6 expeditious quick motion to enforce route rather than the normal judicial process to assert or enforce contractual rights.

Therefore, the court determines that there is no enforceable settlement in connection with the Contempt Motion. First, there was no agreement reached on the terms. Second, the Parties have not complied with the requirements of California Code of Civil Procedure § 664.6 for the settlement of a person's right in pending litigation.

Additional Issues Presented to the Court

As noted above, the requirement of the additional terms for general releases of all claims, known and unknown, that in any way relate to the bankruptcy case, Creditor's liens, and credit reporting was not an unusual or unreasonable way to ensure that there were no litigation wolves lurking in the shadows. Such a provision is commonly required to flush out any such wolves.

In the Contempt Motion Contested Matter it appears that such a wolf exists, Debtor Counsel stating that in addition to the Contempt Motion issues, Debtor intends to assert a claim for (unspecified) fraud.

In reviewing Amended Schedule B, no "fraud claims" against Creditor are listed. Dckt. 64 at 2–7. In making the settlement proposal in connection with the Contempt Motion, Debtor stated that for the alleged violation of the discharge injunction, credit reporting, and clouding title, Debtor demanded payment of:

A.	Statutory Damages (called fines).....	$1,500.00
B.	Attorneys' Fees.....	$2,400.00
C.	Compensatory Damages.....	$5,000.00
D.	Costs.....	$ 100.00
	Total.....	$9,000.00

Additionally, there is release of the three liens (two deeds of trust and abstract of judgment).

After several hearings, it appears that Debtor Counsel was sufficiently persuasive, and Creditor Counsel sufficiently appreciating the scope of the issues responded that Creditor would pay the $9,000.00 and have the liens released. It has been represented to the court previously and is stated in the declaration of Creditor Counsel (Dckt. 217) that the satisfaction of judgment, release of judgment lien, and reconveyances of the deeds of trust have been recorded. To the extent that the abstract of judgment (which was not avoided pursuant to 11 U.S.C. § 522(f) by Debtor) and the deeds of trust violated the discharge

injunction or the contractual obligation to reconvey the deeds of trust when there was no longer an obligation secured, Creditor has remedied those issues even without the parties agreeing that they had settled the matter. While correcting the wrong does not automatically absolve Creditor of prior wrongs, it does demonstrate appropriate conduct going forward and minimizes the compounding of prior violations.

In the March 10, 2017 letter, when the settlement process appears to have broken down, Creditor continued to commit to not only paying the $9,000.00, but added an additional $2,400.00 for additional Debtor Counsel time.

Pending Adversary Proceeding

Debtor Counsel advises the court in his Declaration (Dckt. 222) that Debtor has now commenced an adversary proceeding against Creditor (17-2038). In the Adversary Proceeding Debtor lists eight causes of action. The first is for "declaratory relief." The "declaratory relief" appears to be one in which Debtor seeks a judgment that the third and fourth deeds of trust and the abstract of judgment have been "satisfied," are "unsecured," and "of no force and effect."

As this court has now addressed on too many occasions, declaratory relief is prospective in nature, not "just tell me I am right." In substance, it appears Debtor would be trying to state a "quiet title" cause of action but has not.

The second cause of action is for statutory damages under California Civil Code § 2941(d) for the failure of Creditor to release the two deeds of trust and the abstract of judgment. On its face, § 2941(d) creates a $500.00 statutory damage right for the failure of a creditor to release a mortgage or reconvey a deed of trust.

The third cause of action is stated as for breach of contract, based on the failure to reconvey the two deeds of trust and release the abstract of judgment. This cause of action does not reference any specific contract or contractual provision.

The fourth cause of action is for fraud, with the fraud asserted to be Creditor filing its two proofs of claim based on the promissory notes, upon which Creditor had sued and obtained a judgment. It was from this judgment that the judgment lien was recorded. It appears that Debtor argues that it was the court that was "defrauded" by the two proofs of claim.

The fifth cause of action asserts a violation of the federal Fair Credit Reporting Act by failing to report that its claims in the bankruptcy case had been "satisfied." In making this allegation, Debtor also alleges that the obligation owed to Creditor was discharged in the Chapter 13 case, not "satisfied."

The sixth cause of action is for alleged violations of the "False Claims Act," cited as 31 U.S.C. § 3719. It is asserted that the two proofs of claims filed is a violation of 31 U.S.C. § 3729.

The seventh cause of action is for the alleged violation of the discharge injunction for making demand for payment to release the abstract of judgment which had not been avoided pursuant to 11 U.S.C. § 522(f).

The eighth cause of action states a statutory and contractual right to attorney's fees.

The court offers no "advisory opinion" as to the merits of such causes of action, but it would behoove the parties to review prior rulings of this court on various issues. Further, the parties and their counsel should carefully re-read this ruling and evaluate their conduct, separating the vitriol that the attorneys have for each other from what is in their clients' respective best interests.

Denial of Motion

The court denies Creditor's Motion to Enforce the purported settlement agreement in connection with the Contempt Motion. Creditor has not satisfied the requirements of California Code of Civil Procedure § 664.6, there being no writing signed by the parties. *See Levy v. Superior Court*, 10 Cal. 4th 578 (1995). The court also denies the Motion, for which Creditor asserts that there need be no written agreement signed by all parties, because there was not an oral agreement, there being no agreement on the terms as added by Creditor in the February 10, 2017 letter and draft settlement agreement.

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 Enforce Settlement Agreement filed by California Coastal Rural Development Corporation 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. **16-22100-E-7** **DAVID/DEANNA TIBBETT** **MOTION TO MODIFY PLAN**
MJD-1 **Matthew DeCaminada** **3-8-17 [90]**
CONVERTED TO CHAPTER 7 ON 03/20/2017

Final Ruling: No appearance at the April 18, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2017. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is denied without prejudice as moot.

Debtor seeks to modify the confirmed plan. Debtor filed a Notice of Conversion on March 20, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 98. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on March 20, 2017. *McFadden*, 37 B.R. at 521.

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

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

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

IT IS ORDERED that the Motion to Confirm the Modified Plan is denied without prejudice as moot.

4.	**16-24701-E-13 TJW-1**	**KHAMMAY/KHAMMAI PHOMMAVONGSA Timothy Walsh**	**CONTINUED MOTION TO CONFIRM PLAN 2-8-17 [43]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 8, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.

Khammay Phommavongsa and Khammai Phommavongsa ("Debtor") seek confirmation of the Amended Plan because it reflects recent financial information about income and expenses for Debtor. Dckt. 43. The Amended Plan is identical to one filed on July 19, 2016, but it is now supported by amended Schedules I and J, showing contribution from Debtor's mother, who Debtor cars for, expenses for caring for Debtor's mother, and updated utility bills. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 20, 2017. Dckt. 57. The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

On August 31, 2016, Debtor filed an Amended Schedule J that removed a $450.00 expense for life insurance based on testimony at the meeting of creditors that Debtor no longer had the expense. *See* Dckt. 18. Later, though, Debtor filed another Amended Schedule J that once again included the life insurance expense. The Trustee argues that Debtor should be paying $605.75 each month ($450.00 life insurance expense + $155.75 current net income).

The Trustee also argues that Debtor has not provided all disposable income because there are excess funds from tax refunds. Debtor received a combined $5,364.00 from federal and state tax refunds in 2015, but Debtor proposes to pay only $100.00 per month for thirty-six months. Thus, the court may not approve the Plan.

DEBTOR'S RESPONSE

Debtor filed a late Response on March 31, 2017, admitting that the Trustee is correct that disposable income is $605.75. Dckt. 60. Debtor contends that there have been medical expenses of $4,086.60 that may be paid monthly to NorthBay Healthcare in the amount of $113.50, and there is a bill of $468.34 from Solano Gateway Medical Gr.

Debtor agrees to turn over future tax refunds.

Debtor raises an issue of $700.00 listed on Schedule I and used to supplement Debtor's mother's health expenses. Debtor states that the amount listed is an average that fluctuates monthly.

APRIL 4, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on April 18, 2017. Dckt. 62.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on April 11, 2017. Dckt. 64. The Trustee states that Debtor has addressed only part of his opposition. The Trustee calculates that payments to the post-petition debt of $4,086.60 would average $70.00 over sixty months, and Debtor's rent will increase by $128.00 in May 2017.

The Trustee suggests that if Debtor has additional unreported expenses, then they should file another plan with supporting evidence about income and expenses.

Review of First Amended Plan

The proposed First Amended Plan requires only a $100.00 a month payment for 36 months, which totals $3,600.00 in plan payments. After deducting the Chapter 13 Trustee's fees (estimated at 7%), there would be $3,348 to disburse through the Plan ($3,600 - $252 in fees). Under the Plan the following payments are to be made:

A. Debtor's Counsel.....$2,200.00
B. Class 1..... None
C. Class 2..... None
D. Class 3..... None
E. Class 4..... None
F. Class 5..... None
G. Class 6..... None
H. Class 7, $264,972..... 0.0% Dividend

Amended Plan, Dckt. 42.

Even if there is $1,148 left over after Trustee fees and Counsel's administrative expense, there would only be a 0.4% dividend on general unsecured claims. For a creditor holding a $5,000 claim, the dividend would be $20.00. However, substantially less than $264,972 in claims have been filed. Approximately $35,000.00 in unsecured claims have been filed, which would result in a 3.2% dividend. For several of the claims that are approximately $500.00, that would be a $16.00 dividend, costing more to process than the value received by the creditor.

In reviewing amended Schedule I, Debtor lists gross income of $4,966 a month. Dckt. 41 at 4. After deductions for taxes and insurance, Debtor's income (excluding $700.00 from Debtor's mother) is $3,544.08. *Id.* at 5.

Debtor lists one minor child and a 21 year old child as a "dependent" on Schedule J. Debtor also lists an 80 year old mother as a dependent on Schedule J. *Id.* at 6.

A review of Amended Schedules A/B discloses the following information about Debtor's assets.

A. Schedule A Real Property

1. None

B. Schedule B Personal Property

1. Vehicles.....None
2. Household Goods.....$ 2,200

3. Clothing.....$ 300
4. Jewelry.....$ 400
5. Bank Account.....$ 73
6. Retirement 401k.....$14,000

Dckt. 18 at 5–9. All of these assets are claimed as exempt on Schedule C. *Id.* at 10.

A review of Original Schedule A/B discloses a prior listed asset—$19,338.59 interest in "Asian Market." Dckt. 1 at 16. This interest disappears on Amended Schedule A/B. Seeing this reference on Original Schedule A/B jogs the court's memory with respect to this Debtor having been in prior bankruptcy cases in which there had been a series of transfers within the preference and fraudulent conveyance periods which were not addressed by Debtor as the fiduciary of the bankruptcy estate.

In denying confirmation of the Original Plan in this case, the court's findings and conclusions included the following:

> "As addressed below, confirmation of the Chapter 13 Plan is denied. Debtor has not provided credible testimony as to the misstatements under penalty of perjury being in error. Rather, it appears that the best case made by Debtor and Debtor's counsel is that nobody cared about the accuracy of the statements and just signed the Schedules and Statement of Financial Affairs to get the bankruptcy done.
>
> Debtor is not prosecuting this bankruptcy case in good faith, and the court concludes did not file this bankruptcy case in good faith. Debtor has been living non-productively since December 2010 in bankruptcy cases. It appears that the hiatus between the May 2013 dismissal of the prior case and the July 2016 filing of the current case was to allow the Debtor to liquidate assets and divert the proceeds.
>
> Debtor's financial information continues to contain inconsistences, including paying vehicle insurance when Debtor owns (at least as stated under penalty of perjury on Schedule B) no vehicles. Debtor continues to list a twenty-three-year-old and twenty-seven-year-old child as dependents, giving no reason why these two adults are dependents. Debtor also admits to diverting proceeds from the liquidation of assets (sale of the business) to pay expenses to assist their adult "college children." As discussed below, while it is good for a parent to support the higher education of children, it loses its luster when the parent fails to perform a plan in bankruptcy, does not pay creditors, and then diverts proceeds from liquidating assets to transfer monies to their children."

Civil Minutes, p. 4; Dckt. 34.

The court continues in that Ruling, reviewing in detail the improper conduct of Debtor. Some of the court's specific findings include:

> "**Lack of Disclosure of the Landlord Who Was Paid $20,000.00**

> The court clearly expressed its concerns that in January 2015 Debtor diverted $20,000.00 from the proceeds from the sale of the business to an unidentified landlord. That landlord still has not been identified. As the court reviewed the cryptic supplemental declarations and "explanations," the court's concern as to the truthfulness of the testimony has grown. The court now wonders if the landlord is not related, possibly an insider guaranteed the lease and the $20,000.00 was paid for the benefit of the insider guarantor."

Id., p. 2–3.

> "A review of these two statements [of expenses] submitted under penalty of perjury raises serious questions concerning the truthfulness and good faith of Debtor. It is unreasonable that Debtor can have no Home Maintenance and Upkeep Expenses. Even in a rental, there are normal use, wear, and tear expenses incurred by the tenant (such as light bulbs, air filters, cleaning the house, and the like).
>
> Debtor then lists only $200.00 per month for transportation expenses (bus fare, gas, repairs, maintenance) for four persons. On Schedule B, Debtor twice states under penalty of perjury that Debtor does not own any vehicles, but twice states under penalty of perjury that Debtor has a ($333.00) per month vehicle insurance expense."

Id., p. 7–8

It appears that Debtor is continuing to perpetuate the myth that Debtor has a minor child. The court addressed this in the prior Ruling, but no amendment to the Schedules has been made by Debtor.

> "Assuming in December 2010 when the first bankruptcy case was filed the Debtor's two children were seventeen and twenty-one years of age, in 2016 they are now twenty-three and twenty-seven years old. However, Debtor continues to claim them as "dependents" on Amended Schedule J. While these adult "dependents" are listed for purposes of justifying expenses, no income is stated for these two adults.
>
> Additionally, the court cannot tell what vehicles are being insured for $333.33 a month—which totals $4,000.00 annually. Clearly, Debtor's twenty-three-year-old adult child and twenty-seven-year-old adult child can pay their own vehicle expenses. (No evidence has been provided that either adult child has special needs or is unable to care for him or herself.)"

Id., p. 8.

The inadequacy of Debtor's responses to the gross defects in their statements under penalty of perjury included the court's observation about how they were taking assets from their business during prior cases.

> As address earlier, these two debtors assert that their food expense should be increased now over what was stated before because they apparently had been taking food from the business to feed the then family of four. No "food under the table" was disclosed as income from the business in the prior cases. Additionally, Debtor's family now consists of two persons, not four. Debtor's twenty-three-year-old and twenty-seven-year-old children are adults, not "wards of the creditors" as Debtor seeks to make them."

Id.

In denying confirmation of the Original Plan and in concluding that Debtor had not filed and was not prosecuting the bankruptcy case in good faith, the court found:

> "**Diversion of Asset Sale Proceeds**
>
> In the Supplemental Declaration, Debtor admits to having diverted monies from the liquidation of assets (sale of the business) to their adult children—"This money [sale of business proceeds] was used to pay some home bills, help our college children, used for living expenses, etc." Dbt. Dec., Second ¶ 1, p. 3:2–3.
>
> As this court has said before, parents supporting their children's higher education is laudable. However, when the parent chooses to be magnanimous at the expense of creditors who are going unpaid, it just becomes a vehicle to improperly transfer money from Debtor to the children. While the parents, and their children, may feel good having diverted monies away from creditors to the Debtor's adult children, such diversion is not indicative of good faith in connection with a bankruptcy case."

Id., p. 8–9.

In the Civil Minutes the court reviews Debtor's series of prior bankruptcy cases, including Debtor having obtained a Chapter 7 discharge in 2011. This also discloses Debtor's failure to disclose assets and leases in the prior cases.

Review of Motion and Supporting Pleadings

The Motion to Confirm the Amended Plan (Dckt. 43) states the basic grounds upon which confirmation is requested. Fed. R. Bank. P. 9013. That is normally sufficient. However, in a case where Debtor's credibility and good faith have been severely, if not critically, damaged, merely doing what is "sufficient" may not be adequate.

The "Declaration" provided by Debtor appears to suffer from the same deficiency as the prior declarations—lacking on information and truth, and signing merely what the attorney puts in front of the Debtor. Dckt. 45. In reviewing the Declaration, Debtor provides little actual factual, personal knowledge testimony. Rather, Debtor appears to be merely parroting legal conclusions or phrases from the Bankruptcy Code.

The Declaration purports to have debtor Khammay Phommavongsa and debtor Khammai Phommavongsa, and each of them, provide the personal knowledge (Fed. R. Evid. 601, 602) factual testimony under penalty of perjury:

A. The declaration begins with the statement, "we are informed and believe, and allege that:. . . ." Declaration, ¶ A; Dckt. 45.

At this point, Debtor, and each of them, admit that they have no actual knowledge, but are only informed by someone, and only believe (but do not know to be true), and then allege (without regard to any personal knowledge) what is in the declaration. This manifests a continuing position of "I'll sign anything, I'll say anything, I'll do anything, regardless of my having any knowledge of it being true — **SO LONG AS YOU MY ATTORNEY TELL ME I WILL WIN!**"

B. Based on information provided to them by their attorney, and apparently waiving any attorney-client privilege in connection with the motion, and possibly the entire bankruptcy case, Debtor states under penalty of perjury:

1. The Chapter 13 Plan complies with applicable bankruptcy and non-bankruptcy law. *Id.*, p. 2:12–13.

There is no showing how Debtor, and each of them, have any knowledge of bankruptcy and non-bankruptcy law, and what the Chapter 13 may comply with in that regard, or their ability to provide "expert witness testimony."

2. Debtor supplants the court and provide's Debtor's own factual findings and legal conclusion that the plan meets the Chapter 7 liquidation test. *Id.*, p. 2:20–23.

Debtor provides no testimony as to any economic analysis, but merely parrots this legal requirement.

3. For secured Claims Debtor, and each of them, state under penalty of perjury that:

a. There are secured claims for which the creditor has accepted the Chapter 13 Plan. *Id.*, p. 2:26.

b. There are secured claims for which the creditor will retain its lien until the earlier of the payment on the underlying claim or discharged under 11 U.S.C. § 1328. *Id.*, p. 2:27–28, 3:1–3.

c. Further, for the payments required under the Chapter 13 Plan on secured claims, the amount paid shall not be less the amount of such claim. *Id.*, p. 3:4–12.

This is clearly a false statement under penalty of perjury. There are no secured claims to be paid through the Chapter 13 Plan or paid as part of the Chapter 13 Plan.

4. Debtor supplants the court a second time, and dictates to the court Debtor's personal findings and legal conclusions that the performance of this Plan is feasible. *Id.*, p. 3:14–15.

5. Debtor supplants the court a third time, and dictates to the court Debtor's personal findings and legal conclusions that the plan has been proposed in good faith. *Id.*, p. 3:25–28.

Though having obtained a Chapter 7 discharge effective as of their December 10, 2010 filing of their Chapter 7 case (10-52307), Debtor has somehow (according to the Amended Chapter 13 Plan) amassed $264,000.00 of general unsecured claims. A review of Schedules E/F (Dckt. 1 at 20–36) discloses that some of the more significant general unsecured claims include the following:

A. ATC Produce Andy.....($11,000)
B. Bangkok Market.....($16,000)
C. Bank of America (Credit Card).....($16,245)
D. Card Member Service.....($19,312)
E. Freedom Payment System.....($58,000)
[Debtor does not specify how this debt was incurred]
F. Shasta Produce.....($22,000)
G. Shell Card Center.....($ 5,953)
H. Viking Funding GP.....($23,215)
I. Wells Fargo Bank.....($10,378)

In reviewing Debtor's Schedule F from the Chapter 7 case listing various creditors and debts that ended up being discharged in that case, the court notes the following "similar" debts:

A. Bank of America.....($16,245)
B. Card Member Service.....($19,312)
C. Shell Card Center.....($ 5,953)
D. Wells Fargo Bank.....($10,378)

10-52307; Schedule F, Dckt. 1 at 21, 24.

The court cannot fathom how there were these creditors in 2010 when Debtor filed the Chapter 7 case who are again creditors in 2016 with exactly the same dollar amount claim. (The court has not reviewed claim by claim for the lower balance listed claims, so there may well be more "similar" claims being stated under penalty of perjury.)

On the Statement of Financial Affairs filed in the current bankruptcy case, Debtor, and each of them, state under penalty of perjury that:

A. Debtor had no income from wages or any business during—

1. January 1–July 19, 2016
2. In 2015
3. In 2014.

Statement of Financial Affairs, Part 2, Question 4; Dckt. 1 at 45.

B. Debtor had no income from any other source during—
1. January 1–July 19, 2016
2. In 2015
3. In 2014.

Statement of Financial Affairs, Part 2, Question 5; Dckt. 1 at 46.

Debtor has not amended the Statement of Financial Affairs.

B. But then on the Statement of Financial Affairs Debtor states the existence of a business from 1992 to January 2015—the "Asian Market." Statement of Financial Affairs, Part 11, Question 27; Dckt. 1 at 50.

While stating there was a business, Debtor states under penalty of perjury no business income, no wage income, and no other income for the two and one-half years preceding the filing of the bankruptcy case.

Debtor filed an Amended Statement of Financial Affairs, disclosing income of:

A. January 1–July 19, 2016 Wage Income.....$59,951

B. 2015
1. Wage Income.....$47,086
2. Gross Business Income.....$12,865

C. 2014
1. Wage Income.....$ 38,570
2. Gross Business Income.....$410,597

Amended Statement of Financial Affairs, Part 2, Question 4; Dckt. 18 at 14–15.

Debtor's prior explanation that "we just didn't read the schedules and statement of financial affairs carefully before we signed them under penalty of perjury," which stated Debtor had no income does not ring true or credible. Rather, it rings long and long consistent with Debtor's latest declaration in which they state without regard to actual personal knowledge, whatever their attorney has told them, whatever provisions of the Bankruptcy Code their attorney writes in the declaration, and whatever they are "informed and believe," **SO LONG AS IT MEANS THEY WIN!**

Debtor and their attorney have not filed this bankruptcy case in good faith. Debtor and their attorney have not proposed this Amended Chapter 13 Plan in good faith. Debtor and their attorney have not prosecuted this Chapter 13 case in good faith. Debtor and their attorney have not prosecuted the Motion to Confirm the Chapter 13 Plan in good faith.

The Chapter 13 Plan is not feasible. To eke out a $100.00 a month payment into the plan, which will only go to pay Debtor's attorneys' fees, Debtor has fabricated an unreasonable budget on Amended Schedule J. Dckt. 41 at 6–7. The court does not believe Debtor, even though Amended Schedule J is stated under penalty of perjury, that for 36 months Debtor (for 2 people) have:

A. Home maintenance expense of.....$0.00 a month
B. Clothing expense of .....$0.00 a month
C. Personal care product/services expense of.....$0.00 a month
D. Dental and medical expense of.....$0.00 a month
E. Transportation (gas, bus, registration, repairs).....$200 a month
F. Entertainment expense of .....$0.00 a month
G. Vehicle Insurance.....$333.33 a month

For this insurance expense, Debtor does not own a vehicle. Debtor's declaration offers no explanation of this expense. Debtor's Amended Schedule J offers no explanation of this expense.

The Plan is not feasible, even with only a $100.00 a month payment for a plan that only provides for paying Debtor's attorney. The feigned $0.00 expenses will surely exhaust the $155 a month "surplus" shown on Amended Schedule J. Debtor's finances are so bad that Debtor cannot perform the $100.00 a month plan.

Debtor and Debtor's counsel have exhausted their credibility in this bankruptcy case, rendering this plan, and now any plan, unconfirmable. They have not filed or prosecuted this case in good faith.

It appears what is driving this case is a $12,000 judgment that a creditor obtained against Debtor. Fortunately, Debtor's finances look so bad that they should be able to avoid enforcement of the judgment, availing themselves of the generous judgment debtor exemptions provided under California law. That presumes that Debtor is not sitting on some significant asset, possibly an anticipated inheritance or an interest in a trust for which the only condition precedent is the death of an elderly relative.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

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

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

5. 17-20001-E-13 SHELBY MOODY
DB-2 Lauren Rode

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-31-17 [37]

GIGLI FAMILY TRUST VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 6, 2017. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Shelby Moody ("Debtor") commenced this bankruptcy case on January 1, 2017. Gigli Family Trust ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 145 Hot Springs Road, Markleeville, California ("Property"). Movant has provided the Declaration of Ruggero Gigli to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Gigli Declaration states that there is one pre-petition payments in default, with a pre-petition arrearage of $280,523.30. The Declaration also states that Debtor has failed to pay real property taxes (estimated at $7,400.00) and water bills.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 3, 2017. Dckt. 43. The Trustee asserts that Debtor has made no payments to the Trustee and has no pending plan since the last plan was denied confirmation on March 13, 2017. Debtor's last plan provided a monthly plan payment of $1,898.90. Debtor is currently $3,797.80 delinquent under the proposed Plan. Debtor's plan also classifies Movant as a Class 1 secured claim, provides monthly ongoing mortgage payments of $1,600.00, and pre-petition mortgage arrears in the amount of $0.00.

No payments have been made to Movant by the Trustee. Additionally, Movant has not filed a proof of claim. The Trustee expects to file a Motion to Dismiss on the next available Court calendar .

REVIEW OF COURT'S FILE

This Chapter 13 case was filed on January 1, 2017. The court's file does not disclose any prior bankruptcy case filings by Debtor.

On April 14, 2017, Debtor filed an Amended Chapter 13 Plan. Under the Amended Plan, Debtor will make monthly plan payments of $1,898.90 for twelve months and then payments of $6,170.27 per month for forty-eight months. Amended Plan, Dckt. 50. The Plan provides to pay Creditor's claim of $280,523.30, with interest of $0.00%, over sixty months with monthly payments of $4,754.63. Doing the math, $4,754.63 x 60 months = $285,277.80.

However, the Trustee cannot make a month payment of $4,754.63 to Creditor during the first twelve months of the Plan, Debtor funding it with only $1,898.90 a month.

The Plan is to be funded from Debtor's employment income. Plan, ¶ 1.02; Dckt. 50. No motion to confirm or declaration in support thereof has been filed. On Schedule I Debtor states that she has gross income of $2,400.00 a month and her non-debtor spouse has gross income of $8,998 a month. Schedule I, Dckt. 1 at 26.

Though having gross income of $8,998 a month, the tax, Medicare, and Social Security withholding for the non-debtor spouse is listed at only $433.53 a month. On her $2,400 gross income, Debtor has $400.00 a month withheld for taxes, Medicare, and Social Security. *Id.* at 27.

For additional income, Debtor lists receiving $1,600.00 a month in interest and dividends. *Id.*

With the very, very small withholdings for taxes, Medicare, and Social Security, Debtor states she has $9,612 in month take-home income.

On Schedule J, Debtor lists having monthly expenses of ($6,638.00) a month, which include two mortgage payments. *Id.* at 28–29. Nothing is provided for any additional income tax payments or for the $19,200 of annual interest or dividend income Debtor states she receives.

After payment of the necessary expenses, Debtor has only $2,974 of net monthly income using the financial information stated under penalty of perjury on Schedule J. *Id.* at 29.

On her Statement of Financial Affairs, Part 2 Question 4, Debtor states that she had $12,000.00 in wage or business income in 2016, and does not list any income for 2015. *Id.* at 31. (This case being filed on January 1, 2017, the two prior years are 2016 and 2015.)

Review of Schedules A/B

On Schedule A Debtor lists having an interest in only one piece of real property identified as 145 Hot Springs Road in Markleeville, California. *Id.* at 10. She states that she is the only owner of this property, with the property having a value of $275,000.

On the bankruptcy Petition Debtor lists her residence as being in South Lake Tahoe, California, not the Markleeville address. *Id.* at 2.

On Schedule B, the court cannot identify any business, investment, trust, or other source of $1,600.00 a month in interest or dividend income. *Id.* at 11–14. Other than a Jeep vehicle, $550 in household goods and furnishings, $500 in wearing apparel, $500 wedding ring, and $2,001 in bank accounts; Debtor states under penalty of perjury she has no other assets.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $280,523.30 (including $280,523.30 secured by Movant's first deed of trust), as stated in the Gigli Declaration and Schedule D. The value of the Property is determined to be $275,000.00, as stated in Schedules A and D.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The

court determines that cause exists for terminating the automatic stay, including defaults in pre-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the Property for either the Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Gigli Family Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Gigli Family Trust, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the Property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the real property commonly known as 145 Hot Springs Road, Markleeville, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

6.	**14-29505-E-13 DJC-5**	**JOHN/CAROLIN FUNDERBURG Diana Cavanaugh**	**MOTION TO APPROVE LOAN MODIFICATION 4-4-17 [91]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by John Funderburg and Carolin Funderburg ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage, LLC, servicer for U.S. Bank National Association, as Trustee for Structured Asset Securities Corporation Mortgage Loan Trust Mortgage Pass-Through Certificates Series 2006-BC5 ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $$3,303.57 per month to $2,432.01 per month. The modification will capitalize the pre-petition

arrears and provide for a 3.00% interest rate over the next forty years. Additionally, $7,538.09 of the new principal balance shall be deferred, with no interest or monthly payments for it.

The Motion is supported by the Declaration of John Funderburg. Dckt. 93. The Declaration is incomplete, however. Paragraph 2 state that this case was filed on September 23, 2014, and then the Declaration jumps to what appears to be part of Paragraph 7 setting forth the terms of the loan modification. The Declaration does not affirm Debtor's desire to obtain the post-petition financing and does not provide evidence of Debtor's ability to pay this claim on the modified terms. The Declaration does state, however, that the 59% dividend to unsecured claims will not be affected.

Though it appears that a clerical error occurred in the filing of the Declaration, that can be remedied post-hearing. The Motion itself demonstrates Debtor's desire to obtain the refinancing. The Motion and Modification Agreement, when compared to the Chapter 13 Plan filed in this case show that the monthly payment will be lowered, as well as providing for "un-defaulting" the arrearage. The reasonable inference to be drawn is that the Debtor will be able to make a lower monthly payment on this debt.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with 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 Loan Modification filed by John Funderburg and Carolin Funderburg 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 John Funderburg and Carolin Funderburg ("Debtor") to amend the terms of the loan with Nationstar Mortgage, LLC, servicer for U.S. Bank National Association, as Trustee for Structured Asset Securities Corporation Mortgage Loan Trust Mortgage Pass-Through Certificates Series 2006-BC5 ("Creditor"), which is secured by the real property commonly known as 9468 White Horse Way, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit B in support of the Motion (Dckt. 94).

7. **17-20706-E-13** **STEFAN HOWARD** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Richard Kwun** **PLAN BY DAVID P. CUSICK**
3-15-17 [14]

Final Ruling: No appearance at the April 18, 2017 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

The Chapter 13 Trustee having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on April 14, 2017, Dckt. 20; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte Motion is granted, the Trustee's Objection is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 20, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Trustee's Objection to Confirmation is dismissed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

8. **16-27411-E-13** **TERRY ARNOLD** **MOTION TO RECONSIDER DISMISSAL**
SS-1 **Scott Shumaker** **OF CASE**
4-4-17 [33]

CASE DISMISSED: 03/30/2017

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Vacate is denied.

Terry Arnold ("Debtor") filed the instant case on November 8, 2016. Dckt. 1. A plan was confirmed on January 16, 2017, and an order confirming the plan was entered on the same day. Dckt. 19.

On March 1, 2017, the Chapter 13 Trustee filed a Motion to Dismiss the Case due to Debtor not having made any plan payments and being $14,151.00 delinquent. Dckt. 24. On March 29, 2017, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 28. The ruling was final because Debtor did not file any opposition.

On April 4, 2017, Debtor filed this instant Motion to Vacate, claiming excusable neglect. Dckt. 33. Debtor argues that since he began chemotherapy in January 2017 for chronic lymphoma leukemia, he has had difficulty functioning at a normal activity level. Additionally, Debtor alleges that the Franchise Tax Board levied $12,300 .00 from a joint checking account in January 2017 for an ex-wife's debt, but

approximately $8,100.00 of the levied amount belonged to Debtor. Debtor states that he has now paid $4,717.00 to the Trustee.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on April 7, 2017. Dckt. 38. The Trustee states that there is no question that the case was dismissed solely because of delinquency. The Trustee argues that Debtor does not explain why he was not able to pay $6,051.00 toward the Plan—the remainder after considering the $8,100.00 levied and $4,717.00 pending from a wage order. Additionally, the Trustee notes that Debtor filed four previous bankruptcy cases. Those case numbers are: 16-25349, 16-20587, 14-32045, and 13-29372. All of those prior cases were dismissed.

While the Trustee acknowledges that Debtor has a life-threatening health concern, he clarifies that Debtor has had the same health problem since 2007. Additionally, the Trustee notes that Debtor said he was away from his office for twelve days in February 2017, but the Trustee does not know if Debtor's pay was reduced for the time away when he otherwise would have earned $10,879.00 that month.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857

(3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

Debtor argues that his behavior while undergoing chemotherapy constitutes excusable neglect. Debtor states that there is no prejudice to creditors and the U.S. Trustee because he anticipates filing a plan that provides a 100% dividend to unsecured claims. Debtor states that the delay in this case is inconsequential, but he does not provide any reason why, other than stating that he is able and determined.

Debtor argues that the delay has been beyond his control because he has been undergoing "debilitating treatments" and because the Franchise Tax Board levied some of his funds. Finally, Debtor asserts that he has acted in good faith because he proposes to pay all of his debts fully.

Debtor's arguments are not credible. This being Debtor's fifth case, and Debtor having suffered from his medical condition since 2007, he knows about the bankruptcy process and the importance of participating actively to avoid dismissal of his case. Additionally, he either knew or should have known that chemotherapy might affect him negatively, but he has been represented by counsel in this case and should have communicated with him in advance to avoid any setbacks or dismissal.

Debtor was represented by the same counsel in his prior case, 16-25349, that was dismissed as in this case. He was represented a different attorney in his third case, 16-20587, that was dismissed. He was represented by a third attorney in his first two bankruptcy cases, 14-32045 and 14-29372, both of which were dismissed. Debtor is not a pro se debtor who has labored but has not been able to understand the process. Rather, he has engaged in non-productive Chapter 13 bankruptcy cases since 2013, getting each dismissed.

It is not "new" that motions must be opposed. For the past seven years that basic requirement of the federal judicial process has been enforced in this court. Debtor's counsel is well aware of that requirement.

Little has transpired in this Chapter 13 case. It was filed on November 18, 2016. A plan was confirmed on January 16, 2017. Though the Plan was confirmed, Debtor had been in default from the first month of the Plan, failing to make any payment to the Trustee. Trustee's Motion to Dismiss and Declaration; Dckts. 24, 26. (It appears that this Plan "slipped by" the Trustee due to the non-payment, or in light of Debtor putting in place a wage order, Dckt. 18, the Trustee may have assumed that payment was in process and did not file an objection to confirmation.)

The Chapter 13 Plan seeks to cure a $60,000.00 arrearage on the claim secured by Debtor's residence. Debtor's Plan provides for a 100% dividend to creditors holding secured claims. But such a dividend is dependent on Debtor funding the Chapter 13 Plan.

A review of Debtor's prior cases disclose:

A. Case 16-25349

1. Dismissed October 19, 2016

2. The Chapter 13 Plan listed the arrearage on Debtor's residence to be $55,000. 16-25349; Chapter 13 Plan, Dckt. 16.

B. Case 16-20587

1. Dismissed August 4, 2016

2. Chapter 13 Trustee Motion to Dismiss, $8,700 default in plan payments. 16-25349; Motion, Dckt. 48.

3. Case dismissed on Debtor's voluntary election to Dismiss Chapter 13 Case. *Id.*; Election and Order, Dckts. 53 and 60, respectively.

C. Case 14-32045

1. Dismissed June 11, 2015

2. Case dismissed on Trustee's Motion, Debtor default of $6,817.97. 14-32045; Motion and Order, Dckts. 19 and 22.

D. 13-29372

1. Dismissed October 8, 2014

2. Case dismissed on Trustee's Motion, Debtor default of $17,101.78. 13-29372; Motion and Order, Dckts. 66 and 69.

Debtor's failure to make payments has been a constant since he began filing bankruptcy cases in 2013.

Looking at the Plan proposed in the 2013 case, Debtor listed an arrearage of $23,215.00 on the claim secured by his residence. 13-29372; First Modified Plan, Dckt. 59. As show in this case, notwithstanding having four years now of bankruptcy protection and benefits, the arrearage has almost tripled to $60,000.00.

Rather than being an unusual, extraordinary event that was caused by a "mistake," it appears that the inability to make the payments and the resulting dismissal is the "usual course" for Debtor.

Lack of Opposition by Counsel

Conspicuously absent from the Motion are any grounds relating to the efforts by counsel (who also represented Debtor in the prior case) to address the default when he received the notice, attempts to communicate with the Debtor, or coming to court to present what he may have thought was an unusual lack of response from Debtor.

Lack of Showing of Likelihood of Prevailing on the Merits

In this context, has the Debtor provided in connection with the present motion a sufficient showing that it is likely that he can successfully prosecute this case, this plan, and pay creditors (including the now $60,000 mortgage arrearage). Debtor's Chapter 13 Plan requirement monthly payments of $4,717.00 commencing with the December 25, 2016 payment (the case having been filed in November 2016).

As of the March 1, 2017 Motion to Dismiss Debtor was in default $14,151.00 in required plan payments—$4,717 for December 2016, $4,717 for January 2017, and $4,717 for February 2017. Now, as of April 18, 2017, there is also the required payment of $4,717 for March 2017 that would have come due. These required payments total $18,868.00.

In his Declaration filed on April 4, 2017, Debtor states that "I hand-delivered my first payment o[f] $4,717 to Mr. Cusick's office." Declaration, p. 2:4–6; Dckt. 35. However, Debtor ignores that there is another $14,151 in default and that would have to be paid for Debtor to be prosecuting this case and the Chapter 13 Plan.

Debtor provides no testimony about getting back his $8,100.00 from the Franchise Tax Board that he asserts was improperly levied upon by the FTB. Even if that is "in process," Debtor should have another $6,000.00 of defaulted payments that is rattling around in his account which was not the subject of the alleged improper levy—the other portion of the defaulted payments beyond the $8,100.00.

Looking at Debtor's Schedules shows something very strange. On Schedule A/B Debtor lists the 113 Royal Court Property, stating it has a value of $410,000.00. Dckt. 15 at 3. On Schedule D Debtor lists there being only a $195,000 (of which is the arrearage that has grown to $60,000) claim secured by the Royal Court property, indicating an equity of $200,000.00. *Id.* at 11. While the delay during the bankruptcy cases may have allowed Debtor to gain from appreciation in the value of this property, he is paying dearly in increasing arrearages and legal fees.

Given Debtor's repeated defaults and dismissals, something is grossly amiss. If Debtor's financial information from Schedules I and J are accurate, he and his various attorneys should have been able to set up automatic monthly payments from his $10,000+ a month income to make the timely plan payments. *Id.* at 24–27. But Debtor and his attorneys have consistently confirmed plans on which the Debtor defaults.

Debtor's Motion and Declaration offer the court nothing on this point, not the slimmest reed for the court to infer that Debtor could and will have a meritorious plan he will perform in this case.

With the dismissal of this case, the court is cognizant that Debtor will have had pending and dismissed three cases in the year preceding this hearing. Even for the current case filed on November 8, 2016, Debtor had two prior cases pending and dismissed in the prior year—16-20587, dismissed August 4, 2017, and 16-25349, dismissed October 19, 2016—bringing 11 U.S.C. § 362(c)(4) into play. The court does not see a motion to impose the automatic stay (11 U.S.C. § 362(c)(4)(B)) being requested in this case.

There appears to be little, if any, prejudice to Debtor in not vacating the dismissal. Debtor has a $14,151 default in plan payments that he has not shown an ability to cure. He has allowed the period to request the automatic stay being imposed to lapse without requesting the stay. Though the quickly confirmed plan may have worked to block any foreclosure, that confirmed plan is $14,151 in default and no explanation is provided by Debtor how he can or will cure that default.

In a new case, Debtor can start fresh with plan payments and have no arrearage to cure while having to also make the current monthly payment. Debtor and counsel can seek an order imposing the automatic stay, and with that explain to the court the safeguards put in place to ensure that the monthly plan payment would be made (including the now even larger arrearage on the secured claim) to protect Debtor from any effects of his illness. Debtor and his attorney can also explain how Debtor is recovering the $8,100.00 improperly levied on by the FTB (which levy could well be in violation of the automatic stay).

The time is past for Debtor and his counsel to be passive participants in the bankruptcy cases. Debtor and his counsel must put together a plan that can be performed, will be performed, and that will protect what appears to be $200,000.00 of equity in Debtor's residence. However that did not and cannot occur in this bankruptcy case.

Therefore, in light of the foregoing, 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 Vacate 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.

9. 13-22012-E-13 PGM-3 — KENNETH/KRISTINE THOMPSON — Peter Macaluso — CONTINUED MOTION TO MODIFY PLAN — 1-17-17 [149]

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

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

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

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

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

TRUSTEE'S OPPOSITION

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

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

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

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

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

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

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

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

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

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

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

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

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

DEBTOR'S REPLY

Debtor filed a Reply on February 21, 2017. Dckt. 161. Debtor indicates that the deficiencies will be cured before the February 28, 2017 hearing.

FEBRUARY 28, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on March 7, 2017, because the deficiencies appeared to be curable, and taking due consideration of the Debtor's request for an extension in light of circumstances. Dckt. 163.

MARCH 7, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on April 18, 2017, to allow Debtor to complete its business transfer. Dckt. 166.

TRUSTEE'S SUPPLEMENTAL OPPOSITION

The Trustee filed a Supplemental Opposition on March 15, 2017. Dckt. 167. The Trustee notes that the plan calls for the secured claim of EDD to be paid directly, not the unsecured priority claim. The Trustee does not oppose a correction in the order confirming.

The Trustee maintains his good faith objection. The Trustee does not recommend confirmation of the plan without more specific evidence as to the total of Debtor's business accounts receivable that have been collected by Debtor and Debtor's son because Debtor valued the accounts receivable with a face value of $200,000.00 as worth $25,000.00.

The Trustee notes that Schedule I lists Debtor as working for Thompson Sales, but no business income is shown, and although Schedule B lists office equipment, furnishings, and supplies of $6,000.00, it does not list any inventory. The Statement of Financial Affairs lists $767,587.00 gross income in 2010, $0.00 in 2011–12, did not show any property being held for another person, and claimed that Thompson Sales was an ongoing business. Nevertheless, Debtor admitted in a telephonic interview on March 10, 2017, that Thompson Sales was transferred to Debtor's son one month before filing this bankruptcy case.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor and Kevin Thompson filed a joint Supplemental Declaration on April 11, 2017. Dckt. 169. Debtor states that they moved in 2012 to minimize their cost of living and need for income from Thompson Sales, which meant that they were not involved in the daily operations of the company. Debtor states that Kevin Thompson operated the business, while Debtor served as an advisor (in addition to reporting quarterly sales tax to the State Board of Equalization and preparing annual profit and loss statements).

Kevin Thompson states that he paid $464.71 to the Employment Development Department on April 7, 2017, with Kristine Thompson's name on the receipt because her name is on the account.

DISCUSSION

While Debtor has presented some explanation of how the family business is run, Debtor has not presented any evidence that the deficiencies have been cured.

The court does not see evidence of these problems being addressed. The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

10. **17-21123-E-13 GTB-1** | **VICTOR NAVARRO JR AND KRISTINA ZAPATA** | **CONTINUED MOTION TO EXTEND AUTOMATIC STAY**
George Burke | **3-7-17 [9]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 18, 2017 hearing is required.

The Debtor having filed a Withdrawal of Motion, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Extend the Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

11. **17-20725-E-13 DPC-1** | **DAVID BOUNSAVANG** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
Mikalah Liviakis | **3-15-17 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor's Plan will not complete within sixty months.

B. Debtor did not file all necessary tax returns.

The Trustee's objections are well-taken.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in 110 months because the Internal Revenue Service and the Franchise Tax Board filed claims for amounts greater than Debtor listed. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Those filed claims also indicate that the federal income tax returns for 2013 through 2016 tax years have not been filed still. Filing of the returns is required. 11 U.S.C. § 1308.

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

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

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

12. 16-22942-E-13 TRACI HAMILTON — MOTION TO CONFIRM PLAN
RJ-5 Richard Jare — 3-2-17 [103]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 6, 2017. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.

Traci Hamilton ("Debtor") seeks confirmation of the Amended Plan because it addresses opposition to the First Amended Plan. Dckt. 105. The Amended Plan proposes to pay not less than seven percent to the unsecured creditors. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 24, 2017. Dckt. 108.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's ability to pay an increase in plan payments from $2,000.00 to $2,800.00 in month thirteen is based on tax refunds, some of which have not been filed. Debtor received an $8,880.00 tax refund from her 2015 tax year that has not been accounted for in the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Franchise Tax Board filed Claim 9 indicating that no tax return for 2015 has been filed. Filing of the return is required. 11 U.S.C. § 1308.

The Trustee does not oppose additional provisions §§ 6.01 and 6.02. The Trustee argues that Debtor should realize that stating that a provision is not intended to be "contradictory" to an earlier provision does not stop it from being contradictory. The Trustee asserts that additional provisions need to be consistent with the Bankruptcy Code.

Debtor provides $1,572.00 per month for the ongoing mortgage. Based on the proof of claim filed, the Trustee believes the monthly payment should be$1,562.66. The Plan proposes to cure not only a default and maintain payments, but to pay ahead.

DEBTOR'S REPLY

Debtor filed a Reply on April 11, 2017. Dckt. 111. Debtor states that all tax returns from 2015 and prior were filed in 2016. Debtor asserts that confirmation of filing the tax returns was given at the October 20, 2016 meeting of creditors. Debtor expects the Franchise Tax Board to amend its claim to reflect that the tax return for 2015 was filed.

Debtor's counsel states that he communicated with Debtor about the alleged $8,800.00 tax refund and asked if she had submitted 75% of it to the Trustee. Debtor's counsel hope that she will tender the amount to the Trustee at the hearing.

Debtor states that an acceleration of $9 per month for mortgage conduit payments is a de minimis discrepancy, and Debtor does not oppose the Trustee disbursing $1,526.66, instead of $1,572.66.

RULING

A review of the claims filed in this case shows that the Franchise Tax Board amended its claim on October 28, 2016, and reduced its claim to $0.00.

As of the court's review of the pleadings, there was no evidence that Debtor had provided all disposable income to the Trustee. Therefore, the Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

13. 17-20245-E-13 MARK BRADY
EAT-1 Michael Benavides

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
2-10-17 [20]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 10, 2017. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that Debtor's Plan understates the amount of pre-petition arrears and ongoing monthly mortgage payments.

MARCH 21, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on April 18, 2017, at the request of the parties to allow them to address the asserted arrearage. Dckt. 29. FN.1.

FN.1. The court notes that the minutes for the March 21, 2017 hearing state inadvertently that the hearing is continued to April 18, 2016, instead of 2017.

DISCUSSION

No further pleadings have been filed since the March 21, 2017 hearing.

The Creditor's objection is well-taken. The objecting Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $13,122.58 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

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

14. 17-20248-E-13 TOG-1 | **ALFREDO BOLANOS AND SOFIA MONTANO- GOMES** **Thomas Gillis** | **MOTION TO CONFIRM PLAN 3-3-17 [20]**

Final Ruling: No appearance at the April 18, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 3, 2017. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee filed a Non-Opposition on March 22, 2017. Dckt. 28. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Amended Chapter 13 Plan filed on March 3, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the

Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. 16-22850-E-13 JENNIFER SABINE MOTION TO MODIFY PLAN
TLA-2 Thomas Amberg 3-9-17 [31]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 9, 2017. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

Jennifer Sabine ("Debtor") seeks confirmation of the Modified Plan because she had a number of unanticipated medical and dental expenses that caused her to fall behind on plan payments. She also adjusted her tax withholdings to ensure that she does not receive a significant tax refund moving forward. Dckt. 33. The Modified Plan proposes Plan payments of $3,124.00 from June 2016 through February 2017, followed by payments of $575.00 per month for the remainder of the Plan. Debtor also proposes to pay $840.00 to the Trustee in March 2017. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 27, 2017. Dckt. 39.

The Trustee asserts that Debtor is $1,521.00 delinquent in plan payments, which represents multiple months of the $575.00 plan payment. Debtor also may be up to $4,285.00 delinquent in 2016 tax refunds. The total delinquency would amount to $5,806.00. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Trustee states that Debtor does not define "significant" when using the term to say, "In attempting to modify my plan, I have also adjusted my tax withholdings to make sure that I do not receive a significant tax return." Debtor also did not indicate when she adjusted her holdings, and how or why she adjusted it.

Debtor received a $7,090.00 federal tax return and a $2,357.00 state tax return for 2015. Yet, anything in excess of $2,000.00 has not been handed over to the Trustee. The Trustee has received a copy of the dental treatment plan that would cost the Debtor $3,444.80.

The Trustee opposes the modified plan unless for the duration of the Plan for future tax years 2017, 2018, 2019, and 2020, any amount over $2,000.00 in tax refunds should be turned over to the Trustee. Debtor's current budget has a tax deduction of $1,644.00, the original Schedule I had $1,658.00.

DEBTOR'S RESPONSE

Debtor filed a Response on March 28, 2017. Dckt. 42. Debtor is in agreement with the Trustee that all future tax refunds during the Plan's duration in excess of $2,000.00 should be turned over to the Trustee.

Debtor has not provided any evidence that the delinquency has been cured. The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

16. 15-24851-E-13 WALTER ALLEN — MOTION TO MODIFY PLAN
TJW-2 Timothy Walsh — 3-6-17 [37]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 7, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

Walter Allen, Jr. ("Debtor") seeks confirmation of the Modified Plan because of additional filed claims. Dckt. 39. The Modified Plan changes the plan payment, effective March 2017, to $500.00 per month for the balance of the Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 4, 2017. Dckt. 42.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in sixty-six months due to approximately $21,158.76 owed to unsecured claims, paid at $466.95 per month. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

There is no current statement of income and statement of expenses on file. Debtor is proposing to increase plan payments from $370.00 to $500.00 without showing how he will support this increase. Debtor's monthly net income is $493.04. Debtor also has a $1,878.00 in mortgage payments and is applying for a loan modification to reduce the amount to $1,536.92.

Debtor also fails to explain the reason for the modified plan. Debtor's supporting motion and declaration does not prove an explanation to modify the Chapter 13 plan.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

17. **17-20551-E-13** **TERRI CARTER** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Matthew DeCaminada** **3-7-17 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 7, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing **----------.**

The Objection to Confirmation of Plan is ~~sustained / overruled~~.

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

A. Debtor is delinquent $353.00.

B. The Plan exceeds sixty months.

C. Debtor has not reported a tax refund of $3,869.00.

DEBTOR'S REPLY

Debtor filed a Reply on March 21, 2017. Dckt. 22. Debtor states that the delinquency was cured on March 16, 2017, according to the Trustee's website. Debtor states that a portion of the additional

provisions regarding treatment of education loans was omitted. Debtor proposes adding the following additional provision language through the Order Confirming:

> When the student loan debt is included, the general unsecured claims total $204,579.33. With $75,257.40 to fund the Class 7 claims, the Class 7 dividend would be 36.78%. The plan provides for Class 7 dividend of not less than 100%. With at least $16,254.94 to fund the Class 7 claims and general unsecured claims of $16,254.94, the dividend computes to 100%. By paying the educational debt outside the plan, the other creditors holding general unsecured claim are not prejudiced.

Regarding the tax refund, Debtor proposes adding an additional provision to the Plan that would provide for turnover of all state and federal income tax refunds received, if any, within one week of receipt of those funds as well as a copy of Debtor's state and federal income tax returns by no later than the sixteenth of the year beginning tax year 2017.

APRIL 4, 2017 HEARING

At the hearing, the Trustee reported that the delinquency has been cured. Additionally, the Trustee reported that Debtor's proposals are acceptable, and both parties agreed to continue the hearing to 3:00 p.m. on April 18, 2017, to allow Debtor to address the Trustee's concerns. Dckt. 28.

No further pleadings have been filed since the April 4, 2017 hearing.

The Plan, as amended, ~~does / does not~~ comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is ~~sustained / overruled~~.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is ~~sustained / overruled~~.

18.	**16-27855-E-13** **DPC-1**	**FARENZO HANNON AND DIAMOND JOHNSON-HANNON** **Justin Kuney**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-19-17 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 19, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing **----------.**

The Objection to Confirmation of Plan is sustained.

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

A. Debtor has failed to file a Motion to Value Secured Claim; and

B. Debtor cannot make payments or comply with the plan, or the plan may no longer be the Debtor's best effort.

FEBRUARY 14, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on March 21, 2017. Dckt. 25.

MARCH 21, 2017 HEARING

At the hearing, the parties requested a continuance of the hearing for Debtor to file a motion and stipulation for an order valuing the secured claim and provide for such claim in the Plan. The court continued the hearing on the matter to 3:00 p.m. on April 18, 2017. Dckt. 32.

DISCUSSION

No further pleadings have been filed since the March 21, 2017 hearing.

The Trustee's objections are well-taken. A review of the Debtor's Plan shows that it relies on the court valuing the secured claim of Wells Fargo Dealer Services. Debtor has failed to file a Motion to Value the Secured Claim of Wells Fargo Dealer Services, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor testified at the First Meeting of Creditors held on January 12, 2017, that Co-Debtor Farenzo Hannon is now employed, and Debtor has additional expenses listed on Schedule J. The Plan calls for increasing payments: $500.00 for seventeen months, then $635.00 for three months, and then $815.00 for sixteen months. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

19. 16-26768-E-13 GREG/LISA DICKERSON MOTION TO MODIFY PLAN
SJD-1 Susan Dodds 3-6-17 [54]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2017. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Confirm the Modified Plan is granted.

Greg Dickerson and Lisa Dickerson ("Debtor") seeks confirmation of the Modified Plan because Debtor's Ford Focus was involved in a car accident and determined a total loss, unrepairable, and not drivable. Dckt. 56. The Modified Plan will surrender the Ford Focus. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 4, 2017. Dckt. 64. The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a zero percent dividend to unsecured claims, which total $45,820.00, although Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $4,759.48. Debtor proposes to reduce the plan payment to $590.00 per month, but they claim in their declaration that their income and expenses have not changed since the filing of their confirmed plan. Dckt. 56. Thus, the court may not approve the Plan.

The Trustee states that Debtor is proposing to reclassify creditor Capital One, N.A. from Class 2 secured purchase money security interest to Class 3 Surrender. The Trustee has disbursed $467.21 for principal, $130.14 for interest, and $0.00 for the unsecured portion on this claim. Debtor's proposed modified plan does not authorize those payments.

The Plan states "Property Damage Settlement from Nationwide in the amount of $9,702.33 shall be distributed to Capital One, N.A. for payment fo the 2013 Ford Focus." The Trustee states that creditor Capital One Auto Finance filed an amended split claim on December 14, 2016, for a secured portion of $6,942.00 and an unsecured portion of $4,713.96. The Trustee is uncertain if insurance proceeds are to satisfy both the secured and unsecured portion of the claim because there is a missing difference of $2,760.33 base don the current insurance proceeds. The Trustee is unclear if Debtor is expecting the creditor to file a further amended claim to correct this error.

DEBTOR'S RESPONSE

Debtor filed a Response on April 10, 2017. Dckt. 67.

Debtor addresses the Trustee's first argument by saying Debtor intended to keep the plan payment as constructed previously, and only wants to surrender the vehicle. The reduction in plan payments while Debtor's income and expenses remain unchanged was an error. Debtor plans to add the following language in the order confirming: "As of March 25, 2017 the Debtors shall have paid into the plan $2,950.00. Beginning April 25, 2017 and for the remainder of the plan, the Debtors plan payment [s]hall be $602.94."

To address the Trustee's second concern, Debtor proposes to add the following language: "Payments made to the claim of Capital One, N.A. secured against the Debtors' 2013 Ford Focus in the amount of $467.21 against the principal and $130.14 against the interest are hereby authorized."

To correct the third issue, Debtor proposes to add the following language: "Property Damage Settlement from Nationwide in the amount of $9,702.33 shall be distributed to Capital One, N.A. for payment for the 2013 Ford Focus. Any amount of the settlement that exceeds the remaining balance of the secured claim of Capital One, N.A. shall be distributed to the Debtors Class 7 unsecured claims."

TRUSTEE'S REPLY

The Trustee filed a Reply on April 11, 2017. Dckt. 69.

The Trustee is satisfied with the resolution to the first issue of Debtor's reduced plan payments with unchanged budget.

The Trustee is satisfied with the resolution to the second issue for the disbursed payments that were not authorized.

For the third issue, the Trustee received a check from Nationwide Insurance with a letter explaining that the Plan did not call for the funds and that the Trustee was unable to accept it. The Trustee's concern regarding this matter is how the remaining balance of the settlement money will be distributed to Debtor's Class 7 unsecured creditors without the check being returned to the Trustee.

DEBTOR'S RESPONSE

Debtor filed a Response on April 12, 2017. Debtor states that they do not believe that they can force Nationwide Insurance to issue a check again, but they believe that Nationwide will issue one anyway. Debtor believes that a court order addressing how proceeds should be treated in the even the check is issued again is the best option.

Debtor proposes the following language to the order confirming: "The Debtors are agreeable to the court issuing an order stating that any insurance proceeds arising from the incident occurring on December 14, 2016, Nationwide claim number 3184677-GE, involving the 2013 Ford Focus shall be distributed by the Chapter 13 Trustee first to pay the secured claim of Capital One, NA for payment for the 2013 Ford Focus. Any remaining balance shall be distributed equally to class 7 unsecured claims."

RULING

The pleadings for this Motion indicate that Debtor has cured the Trustee's grounds for opposing confirmation. The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Modified Chapter 13 Plan filed on March 6, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that the Order Confirming the Modified Plan shall include the following amendments:

A. As of March 25, 2017 the Debtors shall have paid into the plan $2,950.00. Beginning April 25, 2017 and for the remainder of the plan, the Debtors plan payment [s]hall be $602.94.

B. Payments made to the claim of Capital One, N.A. secured against the Debtors' 2013 Ford Focus in the amount of $467.21 against the principal and $130.14 against the interest are hereby authorized.

C. Property Damage Settlement from Nationwide in the amount of $9,702.33 shall be distributed to Capital One, N.A. for payment for the 2013 Ford Focus. Any amount of the settlement that exceeds the remaining balance of the secured claim of Capital One, N.A. shall be distributed to the Debtors Class 7 unsecured claims.

D. A Supplemental Order to enforce the plan shall be entered ordering that any insurance proceeds arising from the incident occurring on December 14, 2016, Nationwide claim number 3184677-GE, involving the 2013 Ford Focus shall be distributed by the Chapter 13 Trustee, which the Trustee will first disburse to pay the secured claim of Capital One, NA for payment for the 2013 Ford Focus. Any remaining balance shall be distributed equally to class 7 unsecured claims.

20. 17-20174-E-13 DPC-1 | **DAVID BERMAN** **Michael Hays** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-15-17 [53]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. The Plan does not provide for all priority debt.

B. The Plan is not feasible.

C. Debtor has not provided all disposable income into the Plan.

The Trustee's objections are well-taken. The Trustee asserts that the State Board of Equalization has a claim for $982.47 in priority unsecured debt. Proof of Claim 2. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan requires 75 months due to pay the State Board

of Equalization claim and 100% of unsecured claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

The Plan proposes to pay a zero percent dividend to unsecured claims, although Debtor may have more projected disposable income under 11 U.S.C. § 1325(b)(2). Schedule J includes a $50.00 expense for payment of a traffic ticket within the next six months, but the Plan does not account for the $50.00 after that time. Also, Debtor's submitted federal and state tax returns indicate that Debtor received refunds of $4,295.00 for 2015, but those funds have not been paid into the Plan. The Trustee requests that Debtor provide a copy of tax returns for each year and pay any refunds in excess of $2,000.00 for the life of the Plan. Thus, the court may not approve the Plan.

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

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

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

21. **17-20174-E-13** **DAVID BERMAN** **OBJECTION TO CONFIRMATION OF**
JHW-1 **Michael Hays** **PLAN BY AMERICREDIT FINANCIAL SERVICES, INC.**
3-6-17 [35]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 6, 2017. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing **----------.**

The Objection to Confirmation of Plan is overruled.

Americredit Financial Services, Inc. dba GM Financial, Creditor with a secured claim, opposes confirmation of the Plan on the basis that Debtor is not eligible for a discharge and should be required to pay the underlying debt of Creditor's secured claim before Creditor releases a lien against Debtor's vehicle—despite completion of the Plan.

DEBTOR'S RESPONSE

Debtor filed a Response on April 4, 2017. Dckt. 62. Debtor argues that Ninth Circuit caselaw prevents Creditor's request. Debtor cites *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)* for a proposition that Title 11 of the U.S. Code does not render Chapter 20 debtors ineligible to void liens permanently upon the completion of their Chapter 13 plans. 803 F.3d 477 (9th Cir. 2015). Additionally, Debtor relies on *Frazier v. Real Time Resolutions, Inc.* for a holding that liens may be permanently avoided in a Chapter 20 case. 469 B.R. 889 (E.D. Cal. 2012).

Debtor requests that the court overrule the Objection and hold that Debtor is not required to include language in the Plan providing that Creditor retains its lien until payment of the underlying debt as determined by non-bankruptcy law, despite completion of the Plan.

DISCUSSION

The proposed Chapter 13 Plan provides for Creditor's secured claim to be paid in the amount of $11,850.00 with 5% interest over the life of the plan. Plan, ¶ 2.09; Dckt. 8. The amount of the total claim stated for Creditor is $16,471.89, which Debtor seeks to reduce to $11,850.00 as the current value of the collateral.

The court has valued Creditor's secured claim at $11,850.00 pursuant to 11 U.S.C. § 506(a). Order, Dckt. 34.

Creditor argues that not only should Debtor pay the full $16,471.89 face amount of the claim, but also pay the 16.40% contractual interest. Objection, p. 2:26–27; Dckt. 35. Creditor argues that such result is mandated because Debtor cannot receive a discharge in this Chapter 13 case, having recently obtained a discharge in a Chapter 7 case.

Creditor distinguishes the Ninth Circuit Court of Appeals decision in *HSBC Bank USA v. Blendheim (In re Blendheim)*, 803 F.3d 477 (9th Cir. 2015), by first stating that in that case the creditor's allowed secured claim was valued at $0.00. Reply, Dckt. 65. In the Reply, Creditor states that the creditor's secured claim in *Blendheim* was "disallowed in its entirety."

Beginning with 11 U.S.C. § 506(a), Congress has provided that a creditor's allowed claim is: (1) a secured claim to the extent of the creditor's interest in the estate's interest in the collateral, and (2) an unsecured claim to the extent that the allowed claim exceeds the value of the creditor's interest in the collateral. The word "disallowed" is not used in 11 U.S.C. § 506(a), and a determination thereunder does not "disallow a claim."

In *Blendheim*, after the debtor completed the "Chapter 20 plan" (the Chapter 13 plan after the Chapter 7 discharge), that debtor filed an action to void the creditor's deed of trust that secured the secured claim which had been valued at $0.00 pursuant to 11 U.S.C. § 506(a), that court having determined that there was no value in the collateral for the secured portion of that creditor's claim secured by a junior deed of trust. The ground for avoiding the lien was 11 U.S.C. § 506(d).

11 U.S.C. § 506(d) states that "to the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void . . . .[stating exceptions not applicable here]." Relief under 11 U.S.C. § 506(d) is not premised on the "disallowance" of the claim. In clearly stating that a discharge is not a condition to the avoidance of a lien through a Chapter 13 Plan, the Ninth Circuit stated:

> HSBC argues that a discharge is necessary to obtain the benefits of lien voidance because, apart from conversion or dismissal, discharge is the only mechanism available to bring a Chapter 13 case to close in a manner that makes lien voidance "permanent. . ."

. . .

> **Fundamentally, a discharge is neither effective nor necessary to void a lien or otherwise impair a creditor's statelaw right of foreclosure.** As defined under the Bankruptcy Code, a "discharge" operates as an injunction against a creditor's ability to proceed against a debtor personally. See 11 U.S.C. § 524(a)(2) (a discharge "operates as an injunction against . . . an action . . . to collect, recover or offset any such debt as a personal liability of the debtor" (emphasis added)). Discharges leave unimpaired a creditor's right to proceed in rem against the debtor's property. See *Johnson*, 501 U.S. at 84 ("[A] bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor in personam—while leaving intact another—namely, an action against the debtor *in rem*."); 4 Collier on Bankruptcy ¶ 524.02 ("[T]he provisions [of § 524] apply only to the personal liability of the debtor, so they do not affect an otherwise valid prepetition lien on property."). **It follows logically that there is no reason to make the Bankruptcy Code's *in rem* modification or voidance provisions contingent upon a debtor's eligibility for a discharge, when discharges do not affect in *rem rights*.** See *Fisette*, 455 B.R. at 186-87 & n.9 (explaining that the strip off of a lien "is not the equivalent of receiving a discharge" because "a discharge releases a debtor's in personam liability, but it does not affect the lien"); *Hill*, 440 B.R. at 182 ("Since the . . . debt was already discharged, or changed to non-recourse status in the Chapter 7 case, a second discharge for the Debtors in this Chapter 13 case would be redundant.").

Id., p. 493–94.

To the extent that Creditor believes that the absence of a discharge should make a difference as to liens being avoided, the Ninth Circuit drove a nail into that coffin stating:

> In sum, we do not interpret BAPCPA to limit a debtor's access to Chapter 13 lien-modification provisions by virtue of § 1328(f)'s limitation on successive discharges, and we conclude that a debtor's ineligibility for a discharge has no bearing on his ability to permanently void a lien. We join the Fourth and Eleventh Circuits in concluding that Chapter 20 debtors may permanently void liens upon the successful completion of their confirmed Chapter 13 plan irrespective of their eligibility to obtain a discharge. *Scantling*, 754 F.3d at 1329-30; Davis, 716 F.3d at 338. Therefore, we hold that the Blendheims' ineligibility for a discharge does not prohibit them from permanently voiding HSBC's lien.

Id. 497. In reality, the "voiding" of the lien under the Bankruptcy Code is of little moment in California, with state law providing that the lien becomes void when no obligation remains to be secured.

California law is consistent, providing that as a matter of state law, once no obligation remains to be secured, the lien becomes void by operation of state law. In California Civil Code § 2909 it is stated that a lien is deemed accessory to the obligation it secures. It has no independent existence of its own. When no obligation remains to be secured, the lien is extinguished. *Frost v. Witter*, 132 Cal. 421, (1901).

The confirmed Chapter 13 plan, irrespective of whether a discharge is to be obtained, becomes the modified contract between the parties. *Hillis Motors v. Hawaii Automobile Dealers' Ass'n (In re Hillis Motors)*, 997 F.2d 581, 588 (9th Cir. 1993) (a confirmed reorganization plan resembles a consent decree and should be construed basically as a contract); *Max Recovery v. Than (In re Than)*, 215 B.R. 430, 435 (9th Cir. B.A.P. 1997). ("Another way of looking at the binding effect of confirmation is that the plan is a contract between the debtor and the debtor's creditors.") The order confirming a Chapter 13 plan, upon becoming final, represents a binding determination of the rights and liabilities of the parties as specified by the plan. 8 COLLIER ON BANKRUPTCY ¶ 1327.02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.); *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995) (confirmed plan is binding on all parties and entitled to res judicata effect).

Upon completion of the Chapter 13 Plan, Debtor will have paid Creditor in full, the $11,850.00 with 5% interest, for the allowed secured claim in this case. Upon completion of the Plan, the contract (the plan) between the parties will be completed, Creditor paid in full for its secured claim, and nothing more owed to Creditor.

When the Plan is completed, there is no "allowed secured claim" remaining, the $11,850.00, plus interest, having been paid in full.

Creditor's reliance on 11 U.S.C. § 1325(a)(5)(B)(i)(I) is misplaced. That only requires the "allowed secured claim" to be paid, not the unsecured claim that is not part of the allowed secured claim as determined under 11 U.S.C. § 506(a). The court is not persuaded to the pre-*Blendheim* decision stated for the proposition that for a debtor to obtain a secured claim valuation and termination/voidance of a lien when the § 506(a) allowed secured claim amount to be paid to be persuasive.

Debtor having provided Ninth Circuit precedence that completion of a Chapter 13 Plan in a case following discharge from a Chapter 7 case does not prevent lien avoidance, the Objection is overruled. Debtor's Plan is not confirmable yet, though, because the court also considers the Chapter 13 Trustee's Objection to Confirmation, set for hearing on April 18, 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 Objection to the Chapter 13 Plan filed by a Creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled.

22. **17-20875-E-13** **EVA LUNA** **OBJECTION TO CONFIRMATION OF**
AP-1 **Richard Jare** **PLAN BY BANK OF AMERICA, N.A.**
3-23-17 [16]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 23, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. The Plan was not proposed in good faith.

B. The Plan improperly seeks to modify the rights of a holder of a secured claim secured by Debtor's principal residence.

C. The Plan is not feasible.

D. The Plan does not provide for the full value of Creditor's claim.

E. The Plan does not cure Creditor's pre-petition arrears.

F. The Plan does not provide for ongoing post-petition payments.

The Creditor's objections are well-taken.

Creditor asserts that the Plan was not proposed in good faith because it relies upon Debtor receiving a loan modification upon a loan to which she is not a party. Hilario Hernandez ("Borrower") executed a promissory note for Debtor's residence on October 23, 2007. On October 29, 2007, Borrower executed an unauthorized grant deed purporting to transfer an undivided interest to Debtor as joint tenants. Borrower entered into a loan modification on June 7, 2010, with Creditor without any reference to Debtor being a party to the loan. On February 25, 2013, Borrower entered into a second loan modification with Creditor, again without any reference to Debtor being a party to the loan. Creditor argues that there is no privity of contract between Debtor and Creditor for Debtor to propose Ensminger Provisions and seek a loan modification. Creditor has demonstrated that Debtor was not a party to the promissory note or either of the prior loan modifications and would not now have any right to seek a loan modification. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Creditor argues that Debtor's Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $369,721.43, secured by a first deed of trust against the property commonly known as 2300 Morell Court, Sacramento, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that Debtor's income is dependent upon contributions from her daughter. Creditor objects to confirmation because the contributions are speculative while Debtor has not provided any evidence of her daughter assenting to pay Debtor. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Creditor has filed a timely proof of claim in which it asserts $53,068.02 in pre-petition arrearages. The Plan does not propose to cure those arrearages because it seeks a loan modification that Creditor has established Debtor is not entitled to seek. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages and because it does not provide for ongoing note installments.

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

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

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

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

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

23. 17-20678-E-13 ASW-1 | **BRIAN KINDSVATER** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A. 3-23-17 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on March 23, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing **----------.**

The Objection to Confirmation of Plan is overruled.

U.S. Bank, N.A., successor trustee to LaSalle Bank National Association, on behalf of the holders of Bear Stearns Asset Backed Securities I Trust 2007-HE7, Asset-Backed Certificates Series 2007-HE7, Creditor with a secured claim, opposes confirmation of the Plan on the basis that it does not cure the arrearage on Creditor's claim, and it is not feasible.

Non-Compliance with Federal Rules of Evidence

Creditor has not provided any declaration from a witness who is knowledgeable and competent to testify as to supporting facts for Creditor's Objection pursuant to Federal Rules of Evidence 601 & 602. Also, Creditor has not followed any procedure for admitting evidence to the record. The filed exhibits have not been authenticated, and they are not admissible when filed by themselves. *See* Dckt 22; *see also* Federal Rules of Evidence 901 & 902.

Without any evidence to support Creditor's position, the Objection is overruled. The court notes, however, that the Chapter 13 Trustee's objection to confirmation has been sustained, and the Plan in this case has not been confirmed. Denial of this Objection will be of little practical moment for Creditor.

Improper Request for Barring Debtor from Refiling for Bankruptcy

Creditor makes an additional request in the prayer that this bankruptcy case be dismissed and that Debtor be barred from filing another bankruptcy case for a period of 180 days pursuant to 11 U.S.C. § 109(g). Creditor has not provided the court with any grounds or supporting law and argument to support its request for dismissing Debtor's case and barring Debtor from refiling. No Memorandum of Points and Authorities has been filed to support a legal basis for such a request, and no evidence has been filed to support such a request in this case.

The court does not consider a moving party's requests lightly. Federal Rule of Bankruptcy Procedure 9011(b) states the following:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleadings, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> > (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> >
> > (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> >
> > (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> >
> > (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

When a party violates his representations to the court, Federal Rule of Bankruptcy Procedure 9011(c)(1)(B) provides for the court to issue sanctions on its own initiative. Such an unsupported request to bar Debtor from refiling a bankruptcy case causes the court to question Creditor's and Creditor's counsel's representations under the Federal Rules of Bankruptcy Procedure.

If Creditor or Creditor's counsel persist in requesting such relief, or other relief, for which no proper grounds exist or in a manner that is not procedurally proper, then the court will likely issue an Order to Show Cause for Creditor's counsel to explain how such a request is consistent the certifications made under Federal Rule of Bankruptcy Procedure 9011, with no telephonic appearances permitted. The possible corrective sanctions could include suspending telephonic appearance permission for a period of one year, the court concluding that it is necessary for such counsel to appear in person in court to properly comply with the law and rules.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a Creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled.

24. **17-20678-E-13** **BRIAN KINDSVATER** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
3-23-17 [24]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on March 23, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor cannot afford plan payments.

B. Debtor did not list all of his disposable income in the Plan.

C. Debtor failed to provide tax returns.

D. Debtor failed to provide business documents.

E. Debtor fails the liquidation analysis.

The Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income listed on Schedule J reflects $1,621.00, however Debtor is proposing plan payments of $5,967.23. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

Debtor is over the median income and proposes plan payments of $5,967.23 for sixty months with a zero percent dividend to unsecured claims. Debtor provides for Santander Consumer USA, Inc. and 5 Star Loan, Inc. in Class 2 to be paid through the Plan, but Debtor also lists the payments for those creditors on Schedule J as $415.00 and $400.00, respectively. The Trustee pays the $2,105.00 on-going mortgage payment to Service Portfolio Servicing, Inc., but Debtor listed this in Schedule J. Debtor also listed a $500.00 educational expense for a twenty-one year old child on Schedule J that does not live with him. Thus, the court may not approve the Plan.

Debtor failed to provide the federal income tax return for the 2015 tax year has not been filed still. Filing of the return is required. 11 U.S.C. § 1308.

Debtor has failed to timely provide the Trustee with business documents including:

A. Questionnaire,
B. Six months of profit and loss statements, and
C. Six months of bank account statements.

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

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

Debtor failed to list a bank account and Pay Pal account on Schedule B and exempt them on Schedule C. Debtor is proposing a zero percent dividend to unsecured claims. California Code of Civil Procedure § 703.140(a)(2) requires Debtor to file a Spousal Waiver, signed by Debtor and Debtor's spouse for use of claimed exemptions. However, Debtor's spouse has not joined in the petition. Debtor has not

explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a zero percent dividend when there may be non-exempt assets.

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

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

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

25. 17-20685-E-13 JEREL/BARBARA MOORE OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Edward Smith 3-15-17 [15]

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

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

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

Sufficient 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. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor did not timely provide business documents and tax returns.

B. The Plan relies on an unfiled motion to value secured claim.

C. The Plan does not provide for all priority debts.

D. The Plan will not complete within sixty months.

E. Debtor has not filed a statement of gross business income and expenses.

The Trustee's objections are well-taken. Debtor has failed to provide the Trustee with business documents and tax returns in time for the Trustee to review them before the Meeting of Creditors. The

Trustee states that Debtor has not been examined. Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Secured Funding Corp. and Riverwalk Holdings, Ltd. Debtor has failed to file those Motions to Value Secured Claims, however. Without the court valuing the claims, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Trustee asserts that the Franchise Tax Board has a claim for $277.84 in priority unsecured debt and $289.19 in general unsecured debt. Proof of Claim 2, filed on February 28, 2017. Also, the Trustee asserts that the Internal Revenue Service has a claim for $34,257.63 in secured debt, $54,658.77 in priority unsecured debt, and $7,000.54 in general unsecured debt. Proof of Claim 3, filed on March 1, 2017. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will require 153 months to pay secured and priority claims fully. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor has not provided the required attachment.

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

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

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

26. **17-21385-E-13** **JOANN NORRIS** **MOTION TO VALUE COLLATERAL OF**
NBC-1 **Eamonn Foster** **WELLS FARGO DEALER SERVICES**
3-27-17 [14]

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on March 27, 2017. By the court's calculation, 22 days' notice was provided. 14 days' notice is required. The Motion and supporting pleadings were not properly served on creditor Wells Fargo Bank, N.A., a federally insured financial institution.

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

The Motion to Value Secured Claim of Wells Fargo Dealer Services ("Creditor") is denied without prejudice.

The Motion filed by JoAnn Norris ("Debtor") to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Dodge Dart ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,900.00 as of the petition filing date.

The Proof of Service for this Motion states that it was served by **First Class Mail** as follows:

Wells Fargo Dealer Services
ATTN: Bankruptcy
PO Box 19657
Irvine CA 92623-9657

Dckt. 17.

Relief Sought Against Non-Existent Entity

Debtor requests that an order be issued valuing the secured claim of Wells Fargo Dealer Services. Motion, Dckt. 14. No proof of claim has been filed by "Wells Fargo Dealer Services." However, Proof of Claim No. 2 has been filed by Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services. The California Secretary of State reports that there is no entity "Wells Fargo Dealer Services" authorized to do business in California. FN.1.

FN.1.
https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=CORP&SearchCriteria=wells+fargo+dealer+services&SearchSubType=Keyword

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The Court will not issue an order purporting to value claims of apparent non-existent entities or for a "placeholder name." The actual creditor has now filed (after the present motion was filed) a Proof of Claim in this case identifying the creditor.

Service by Certified Mail Required

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

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

The correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. Service was not made to that address and is not addressed to an officer by name or "Attn: Officer for Service of Process." Service was not made by certified mail. Service has not been adequately made on Wells Fargo Bank, N.A., if that is the creditor Debtor purports to have served.

Additionally, for seven years this court has made it clear that parties, be they debtors or creditors, must comply with the requirements under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy

Procedure, Federal Rules of Evidence, the Bankruptcy Code, and other applicable laws. As part of this, the court has provided parties and counsel with the following quote:

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

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

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on March 29, 2017. Dckt. 18. The Trustee states that Debtor has included Creditor on Schedule D and in Class B of the proposed Plan. The Trustee also mentions that Creditor has not filed a proof of claim as of the date of this Response. A review of the filed claims in this case shows that Creditor submitted a proof of claim on April 6, 2017.

DENIAL OF MOTION WITHOUT PREJUDICE

The court denied the Motion without prejudice. Debtor can serve Creditor properly and resubmit this Motion to the court for consideration of its merits.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by JoAnn Norris ("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 without prejudice.

27. **17-21593-E-13 MS-1** | **ALEKSANDR SAPRYKIN** **Mark Shmorgan** | **MOTION TO VALUE COLLATERAL OF THE GOLDEN 1 CREDIT UNION 3-13-17 [8]**

Final Ruling: No appearance at the April 18, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 13, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 The Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,500.00.

The Motion filed by Aleksandr Saprykin ("Debtor") to value the secured claim of The Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Ford Taurus SE Sedan 4D ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee filed a Response on March 27, 2017. Dckt. 17. The Trustee states that Creditor is included in Class 2B of Debtor's proposed plan as $12,451.61 claimed by Creditor with a value of $6,500.00. Creditor has filed a proof of claim for $12,526.49 as secured.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on September 10, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $12,451.61. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $6,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Aleksandr Saprykin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of The Golden 1 Credit Union ("Creditor") secured by an asset described as 2010 Ford Taurus SE Sedan 4D ("Vehicle") is determined to be a secured claim in the amount of $6,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $6,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

28. **16-24396-E-13** **ROBERT MACBRIDE** **MOTION TO CONFIRM PLAN**
RSM-6 **Pro Se** **2-21-17 [93]**

CASE DISMISSED: 04/04/2017

Final Ruling: No appearance at the April 18, 2017 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

29. **15-24997-E-13** **DAVID/AMY POST** **MOTION TO APPROVE LOAN MODIFICATION**
MET-4 **Mary Ellen Terranella** **3-29-17 [69]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 29, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted, and Debtor is authorized to make monthly payments of $1,493.88 to Creditor for a period of five months, and to reduce the monthly plan payment to the Trustee by said amount during the five months.

The Motion to Approve a Trial Loan Modification filed by David Post and Amy Post ("Debtor") seek court approval for Debtor to incur post-petition credit. Caliber Home Loans ("Creditor"), whose claim the confirmed Plan provides for in Class 1, has agreed to a trial loan modification that will increase Debtor's mortgage payment from the current $1,091.16 per month to $1,493.88 per month.

This is only a trial modification and does not state what the final terms will be regarding new principal balance, interest rate, and loan term.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 10, 2017. Dckt. 82. The Trustee notes that his records show three monthly contract installments of $2,417.22 each owing to Creditor. The Trustee states that he was unaware of a loan modification until this Motion was filed, and he notes that Debtor's proposed modified plan moves Creditor to Class 4. The Trustee also notes that there is no evidence that the March and April trial payments have been made.

Nevertheless, the Trustee believes that the modification will help Debtor, even though the terms of the permanent loan modification are unknown.

DISCUSSION

The Motion is supported by the joint Declaration of David Post and Amy Post. Dckt. 71. The Declaration affirms Debtor's desire to obtain the post-petition financing because they otherwise would not be able to afford an increase from a notice mortgage payment change that would increase payments by more than $1,000.00 per month.

Under the terms of the Trial Loan Modification Agreement (Exhibit 1, Dckt. 72), the first trial loan modification payment is/was due March 1, 2017, and then continues for three months thereafter. The hearing on this Motion is being conducted on April 18, 2017, a date after which two of the trial loan modifications were do. Presumably Debtor, without court authorization, has made such direct payments to Creditor, and Creditor, without court authorization has received such payments from this Chapter 13 Debtor outside of the confirmed Chapter 13 Plan.

The court notes that the Trial Loan Modification was approved by Creditor in January 2017, but Debtor has waited until April 2017 to file this Motion. While the court will not deny the Motion based on Debtor's failure to disclose the trial loan modification and willful payment of monies to a creditor outside of the confirmed plan in this case, such conduct does question the credibility not only of the Debtor, but Debtor's counsel (who otherwise has a very highly regarded reputation in the District). Presumably this was an inadvertent violation of the Bankruptcy Code.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with 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 Trial Loan Modification is granted, and the Debtor is authorized to:

A. Make the payment of $1,493.88 directly to U.S. Bank Trust, N.A., as Trustee, through its loan servicer, for the months of March, April, May, June, and July 2017.

B. Reduce the monthly plan payment to the Chapter 13 Trustee to $440.00 a month for the months of March, April May, June, and July 2017.

Further, the Chapter 13 Trustee is authorized to make no disbursements to the Class 1 Secured Claim of U.S. Bank Trust, N.A., as Trustee, for the months of March, April May, June, and July 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 Approve Trial Loan Modification filed by David Post and Amy Post 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 David Post and Amy Post ("Debtor") to amend the terms of the loan with Caliber Home Loans ("Creditor"), which is secured by the real property commonly known as 836 Flint Way, Vacaville, California, on such terms as stated in the Trial Loan Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 72).
>
> **IT IS FURTHER ORDERED** that Debtor is authorized to:
>
> A. Make the payment of $1,493.88 directly to U.S. Bank Trust, N.A., as Trustee, through its loan servicer, for the months of March, April, May, June, and July 2017.
>
> B. Reduce the monthly plan payment to the Chapter 13 Trustee to $440.00 a month for the months of March, April May, June, and July 2017.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to make no disbursements to the Class 1 Secured Claim of U.S. Bank Trust, N.A., as Trustee, for the months of March, April May, June, and July 2017.

30. 15-24997-E-13 MET-5 | **DAVID/AMY POST** **Mary Ellen Terranella** | **MOTION TO VALUE COLLATERAL OF UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA**
3-29-17 [74]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 29, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Secured Claim of United Guaranty Residential Insurance Company of North Carolina ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by David Post and Amy Post ("Debtor") to value the secured claim of United Guaranty Residential Insurance Company of North Carolina ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 836 Flint Way, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $220,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. The Proof of Claim was filed on September 29, 2015. The amount of the claim stated as secured is $115,849.70.

NO OPPOSITION

Creditor has not opposed the Motion.

DISCUSSION

The U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, first deed of trust secures a claim with a balance of approximately $356,760.00. Creditor's second deed of trust secures a claim with a balance of approximately $75,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Secured Claim filed by David Post and Amy Post ("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 United Guaranty Residential Insurance Company of North Carolina secured by a second in priority deed of trust recorded against the real property commonly known as 836 Flint Way, Vacaville, 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 $220,500.00 and is encumbered by a senior lien securing a claim in the amount of $356,760.00, which exceeds the value of the Property that is subject to Creditor's lien.

31. 15-24997-E-13 MET-3 | **DAVID/AMY POST** | **Mary Ellen Terranella** | **MOTION TO MODIFY PLAN** | **3-13-17 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2017. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on July 11, 2017.

David Post and Amy Post ("Debtor") seek confirmation of the Modified Plan to account for a trial loan modification. Dckt. 57. The Modified Plan calls for plan payments of $1,510.00 for twenty months, followed by $440.00 for forty months. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 27, 2017. Dckt. 66. The Trustee argues that Nationstar Mortgage should remain in Class 1 until the final terms of a loan modification are approved by the court.

The Trustee notes that the court granted a motion to value the secured claim of Citimortgage secured by a second deed of trust against Debtor's property at $0.00 on August 11, 2015. At that time, no claim had been filed. On September 29, 2015, United Guaranty Residential Ins. Co. of NC filed Claim No. 4 as secured by a second deed of trust, but the proposed plan does not identify the correct claimholder.

Finally, the Trustee notes that Debtor increased the Class 5 claims for post-petition taxes owed to the Internal Revenue Service and to the Franchise Tax Board by $1,546.00 and $2,464.00, respectfully. Neither creditor filed a claim, and only the creditor may do so under 11 U.S.C. § 1305. Nevertheless, the Trustee does not oppose the increased claims.

DEBTOR'S REPLY

Debtor filed a Reply on April 10, 2017. Dckt. 85. Debtor notes that the terms for a final loan modification will not be provided until the trial period is completed in May 2017. Debtor notes that if the lender refuses to provide a permanent loan modification, then Debtor will modify the Plan to provide for lender's claim in Class 1 again.

Regarding the holder of the second deed of trust, Debtor replies that a motion to value the claimholder's secured claim has been filed and is set for hearing on April 18, 2017.

Finally, Debtor notes that the Internal Revenue Service amended its proof of claim on April 10, 2017, to include 2015 tax liability, which Debtor provided for in the Modified Plan. Debtor also reports that the Franchise Tax Board has indicated that it will amend its proof of claim as long as an order granting this Motion includes specific language regarding 11 U.S.C. § 1305 claims, which Debtor will include if the Modified Plan is confirmed.

DISCUSSION

Debtor has shown that the Trustee's concerns regarding the second deed of trust and the Internal Revenue Service's claim have been addressed by filing a new motion to value a secured claim and by the Internal Revenue Service modifying its claim for additional post-petition taxes. Additionally, Debtor has stated to the court that language in an order confirming can cure any concern regarding the Franchise Tax Board as well.

The problem with granting the Motion at this time is that Debtor's request for confirmation requires the court to rely upon a trial loan modification that will end in May 2017, essentially two weeks after the hearing on this Motion. Neither Debtor nor the mortgage lender have provided any information about what terms would be in a final, permanent loan modification. In fact, Debtor has told the court that such information will not be available until the lender decides to grant Debtor a permanent modification. Dckt. 71. The lack of information about what the modification terms could be has raised concerns from the Trustee as well. *See* Dckt. 82.

Modifying the Plan at this time is inappropriate because Debtor has demonstrated that the Class Claim under the existing plan cannot qualify to be a Class 4 Claim under the proposed Modified Plan: There is a post-petition arrearage on that claim. The Trial Loan Modification allows for the payments to be reduced for three months, but does not cure the pre-petition arrearage. That will occur only with a final loan modification, if any.

Rather than denying the present Motion, the court continues it to 3:00 p.m. on July 11, 2017. By separate order the court has authorized Debtor to enter into the Trial Loan Modification and make the monthly payments for the secured claim at the trial modified amount for the months of March through July 2017. By the July continued hearing date Debtor should have on file a motion to approve a final loan modification and the court can evaluate the proposed Modified Plan in light of such terms. FN.1.

FN.1. The court notes that in seeking authorization to enter into the trial loan modification Debtor was actually requesting retroactive authorization, having entered into the loan modification in February and then making payments to Creditor without court authorization in March and April 2017. Though the court has granted such retroactive relief (though it was not requested by Debtor and no proper grounds shown), Debtor and Debtor's counsel should not be lulled into a false sense of invulnerability with respect to further violations of the Bankruptcy Code. Debtor must properly request authorization prospectively, not merely after Debtor has been caught violating the Bankruptcy Code by the Trustee. If it were to happen again, the court may well conclude that Debtor is not prosecuting this case and any bankruptcy plan in good faith, which may preclude approving a loan modification, dismissal of the bankruptcy case, and possible dismissal with prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on July 11, 2017.