

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

May 6, 2014 at 2:00 p.m.

1. [11-48305](#)-C-13 JOHN/DARLENE DOERR CONTINUED MOTION TO CONFIRM
PGM-7 Peter G. Macaluso PLAN
Thru #2 1-27-14 [[183](#)]

CONTINUED to May 20, 2014 (Dkt. 227)

2. [11-48305](#)-C-13 JOHN/DARLENE DOERR CONTINUED MOTION TO DISMISS
TSB-1 Peter G. Macaluso CASE
1-22-14 [[179](#)]

CONTINUED to May 20, 2014 (Dkt. 227)

3. [14-23406](#)-C-13 MARK/ANDREA DRIVER
SJD-1 Susan J. Dodds

MOTION TO VALUE COLLATERAL OF
SIERRA CENTRAL CREDIT UNION
4-3-14 [[8](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 3, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$32,450.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2013 Ford F250. The Debtor seeks to value the property at a replacement value of \$32,450.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$51,262.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$32,450.00. *See 11 U.S.C. § 506(a)*. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Sierra Central Credit Union, secured by a 2013 Ford F250, is determined to be a secured claim in the amount of \$32,450.00, 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 \$32,450 and is encumbered by liens securing claims which exceed the value of the Property.

4. [14-21209](#)-C-13 LAURIE STEFANELLI OBJECTION TO DEBTOR'S CLAIM OF
TSB-1 Joseph R. Manning, Jr. EXEMPTIONS
4-2-14 [[25](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on May 2, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the objection pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Objection, the court removes this Objection from the calendar.

5. [14-22210](#)-C-13 NORMAN WHEAT OBJECTION TO CONFIRMATION OF
TSB-1 Gerald B. Glazer PLAN BY DAVID P. CUSICK
4-10-14 [[15](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on May 2, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the objection pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Objection, the court removes this Objection from the calendar.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2014. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 18, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [14-22021](#)-C-13 LINDA PUTMAN
CAH-1 C. Anthony Hughes
Thru #9

MOTION TO VALUE COLLATERAL OF
ROBERT AND LISA HALL
4-9-14 [[25](#)]

Local Rule 9014-1(f) (2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 9, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to set the Motion to Value for an evidentiary hearing on [date] at [time]. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1792 Hile Avenue, Marysville, California. The Debtor seeks to value the property at a fair market value of \$125,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The court has conflicting evidence on the issue of value. First, Debtor's Schedules A & D provide for a value of \$135,000. Second, Debtor submitted an unverified appraisal listing the value of the property at \$125,000 (Exh. C, Dkt. 28). Third, in a previous Chapter 13 case (11-43667), Judge McManus entered an Order referencing Civil Minutes from a hearing on a similar Motion to Value the secured claim of Richard and Lisa Hall. See Civil Minutes, Dkt. 80. At that hearing, Judge McManus determined the value of the real property (1792 Hile Avenue) to be \$175,000, based on an appraisal submitted by Richard and Lisa Hall. The minutes specifically state that the court was persuaded by the comparable property data and find it persuasive.

Given the valuation history of this case, as it relates to 1792 Hile Avenue, Marysville, California, the court deems it prudent to set an evidentiary hearing and have the matter decided on competent, admissible

evidence.

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

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

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

IT IS ORDERED that the Motion is to be set for an evidentiary hearing on **[date]** at **[time]**.

8. [14-22021](#)-C-13 LINDA PUTMAN
RTD-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY ROBERT HALL AND LISA
HALL
4-10-14 [[30](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 10, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Creditors, Robert and Lisa Hall, object to confirmation on the following grounds:

1. At the time of Debtors' petition filing, Creditors were holders of a note and deed of trust executed by the Debtors and recorded on June 13, 2007. The security for the debt is the real property commonly known as 1792 Hile Avenue, Marysville, California. The deed of trust was a second deed of trust on the property.
2. Creditors do not accept the treatment of their claim in Class 2 of the plan, to be paid zero and contend that they are entitled to payment in full of their debt. Creditors argue that Debtor may not strip the deed of trust because there is a co-obligor on the note and deed of trust, Debtor's son, Andrew Putnam. Andrew was the co-obligor from the time the not was executed until January 8, 2014, when it is believed he transferred his interest in the property to Debtor.
3. Creditors assert that the plan is not feasible. 11 U.S.C. § 1325(a) (6). First, the plan relies on the Motion to Value, which Creditors argue should be denied. Second, Creditors argue that Debtor lacks the income to fund the plan. Specifically, Creditors take issue with some of Debtor's

expenses and argue, based on a 2013 tax return, that Debtor does not have a history of netting \$4,376 per month from her business. According to the 2013 tax return, net business profit per month was \$3,823.

4. Finally, Creditor asserts that the plan was not proposed in good faith. Creditors take issue with the accuracy of the Schedules, statement of business expenses, and lack of disclosure concerning settlement of a personal injury case and the monies received from that case.

The court's decision is to sustain the objection and not confirm the plan. The court is not granting the Motion to Value the secured claim of Richard and Lisa Hall, set for hearing on May 6, 2014. As a result, Debtor does not have a confirmable plan. Further, the court is sustaining the Trustee's concurrently filed Objection to Confirmation (TSB-1).

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

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

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

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

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

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 10, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtors cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a) (6) because Debtors' plan proposes to value the secured claim of Robert and Lisa Hall but has not filed a Motion to Value. Further, Trustee is not certain the second position lien can be stripped as Debtors' Schedules disclose the existence of a co-debtor on the property in question.
2. Debtors cannot make the plan payments required under the plan. 11 U.S.C. § 1325(a) (6). Debtors' Schedule I lists rent income from Debtors' son of \$736.00 per month. Debtor has not filed a Declaration by their son, Andrew Putnam, testifying to his ability and willingness to provide contribution for the duration of the plan.
3. Debtors testified at the First Meeting of Creditors that they received \$3,000 in settlement funds in June 2012 for an automobile accident. The Statement of Financial Affairs does not list the settlement income or loss.

The court's decision to deny confirmation. While Debtor's Motion to Value the secured claim of Robert and Lisa Hall was filed (Dkt. 25) and is

set for hearing on May 6, 2014, there remain other issues concerning Debtors' ability to afford the payments and whether the plan is feasible.

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

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

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

10. [14-20731](#)-C-13 ANJU SINGH
CAH-2 C. Anthony Hughes

MOTION TO AVOID LIEN OF PATELCO
CREDIT UNION
3-28-14 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on March 28, 2014. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Avoid a Judicial Lien. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Patelco Credit Union for the sum of \$10,795.73. The abstract of judgment was recorded with Sacramento County on August 10, 2012. That lien attached to the Debtor's residential real property commonly known as 241 Chango Circle, Sacramento, California.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$220,000 as of the date of the petition. The unavoidable consensual liens total \$207,000 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$21,758.16 in Amended Schedule C (Dkt. 19). The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property.

Creditor's Opposition, filed 04/02/14 (Dkt. 26)

Creditor objects to Debtor's Motion on the basis that Debtor's exemption is claimed pursuant to CCP § 703.140(b)(1) & (5). Debtor argues that CCP § 703.140(b)(1) can only be applied to exempt value in real property that debtor or a dependent of the debtor uses as a residence and, here, Debtor does not live in the subject property. Debtor's Schedule C states "Debtor does not live in the [Chango] property and Debtor's spouse resides in this property." Creditor argues this disqualifies Debtor from using CCP § 704.130(b)(1).

Creditor asserts that Debtor is limited to the \$1,280.00 exemption provided by CCP 703.140(b)(5) and cannot; therefore, avoid its lien.

Debtor's Response, filed 04/23/14 (Dkt. 30)

Debtor argues there is no case law to support Creditor's argument that CCP § 703.140(b) (5) cannot be used to exempt equity in Debtor's subject real property.

Creditor's Supplemental Response, filed 04/28/14 (Dkt. 32)

Creditor clarifies that it was objecting to the use of CCP § 703.140(b) (1) to exempt equity in the residence and not CCP § 703.140(b) (5).

Discussion

There is a dispute over the validity to Debtor's exemption taken in the subject property.

Debtor's most recent Amended Schedule C provides for a \$21,758.16 exemption under CCP § 703.140(b) (5).

Section 703.140(b) (5) provides:

The following exemptions may be elected as provided in subdivision (a): (5) the debtor's aggregate interest, not to exceed in value one thousand two hundred eighty dollars (\$1,280) plus any unused amount of the exemption provided under paragraph (1), in any property.

The combination of (b) (1) and (b) (5) permits a Debtor to exempt up to \$25,340.00 in "any property." The statute is clear in providing that the amount in (b) (5) and unused amount (b) (1) can be applied to exempt any property. Any limitations read into (b) (1) should not be read as part of (b) (5).

The exemption is proper and the motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

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

IT IS ORDERED that the judgment lien of Patelco Credit Union, Sacramento County Superior Court Case No. 34-2011-0113989-CL-CL-GDS, recorded on August 10, 2012, with the Sacramento County Recorder, against the real property commonly known 241 Chango Circle, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

11. [14-20649](#)-C-13 SHARON WASHBURN
ALF-2 Ashley R. Amerio
Thru #12

MOTION TO VALUE COLLATERAL OF
HSBC BANK USA, N.A.
4-4-14 [[25](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 4, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 21 Casa Linda Drive, Woodland, California. The Debtor seeks to value the property at a fair market value of \$217,331 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$320,051.00. HSBC Bank USA, National Association second deed of trust secures a loan with a balance of approximately \$57,818. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Bank USA, National Association secured by a second deed of trust recorded against the real property commonly known as 21 Casa Linda Drive, Woodland, 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 \$217,331 and is encumbered by senior liens securing claims which exceed the value of the Property.

12. [14-20649](#)-C-13 SHARON WASHBURN
TSB-1 Ashley R. Amerio

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
3-3-14 [[21](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on March 3, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposed confirmation of the Plan because it Debtor's plan relies on a Motion to Value the secured claim of "Beneficial/HSBC Bank USA, N.A." If the motion is denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a) (6).

Prior Hearing

The hearing on Trustee's Objection was held April 1, 2014. At that hearing, the matter was continued for Debtor to refile the Motion to Value the secured claim of HSBC Bank USA, National Association.

Debtor refiled the Motion to Value and the court plans on granting the Motion at the hearing on May 6, 2014. The granting of the Motion resolves Trustee's Objection and renders it moot.

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

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

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

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

IT IS ORDERED that the Objection is overruled as moot.

13. [14-20455](#)-C-13 GARRETT/CHERYLL GATEWOOD MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso 3-19-14 [[32](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2014. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 19, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order

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

14. [13-35659](#)-C-13 GLENN CARNAHAN MOTION TO VALUE COLLATERAL OF
LBG-4 Lucas B. Garcia BANK OF AMERICA, N.A.
Thru #16 4-3-14 [[57](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 3, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$36,101.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 401 West Tokay Street, Lodi, California. The Debtor seeks to value the property at a fair market value of \$195,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$158,899. Real Time Resolutions' second deed of trust secures a loan with a balance of approximately \$94,025.79. Therefore, the respondent creditor's claim secured by a junior deed of trust is under-collateralized. The creditor's secured claim is determined to be in the amount of \$36,101.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and

11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 401 West Tokay Street, Lodi, California, is determined to be a secured claim in the amount of \$36,101.00, 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 \$195,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2014. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Hearing & Chapter 13 Trustee Objection

On March 25, 2014, the court first heard Debtor's Motion to Confirm. At that hearing, the court continued the matter for Debtor to refile a Motion to Value Collateral that was denied for pleading issues. Debtor did refile the Motion to Value the secured claim of Bank of America, N.A. and the court is prepared to grant that Motion at the hearing on May 6, 2014. The court's tentative decision to deny the Motion to confirm; however, because the following objections from the Chapter 13 Trustee remain unresolved:

1. Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6); Debtor filed an Amended Schedule J on February 7, 2014, which reflects a negative monthly net income of \$308.94, and the Debtor is proposing plan payments of \$1,550.00 for 60 months.
2. The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$1,550.00 for 60 months, with a 0% dividend to unsecured creditors. Debtor filed an Amended Schedule I on February 7, 2014, and deleted the anticipated business income of \$3,194.00 without any explanation.

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

and is not confirmed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on January 23, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection to Confirmation. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The hearing on this matter was continued from February 25, 2014, to this hearing date to provide Debtor time to correct the "software errors" asserted in Debtor's opposition, and for Debtor prepare an adequate Motion to Value the Secured Claim of Bank of America, N.A..

The hearing was against continued from March 25, 2014, to provide Debtor time to prepare an adequate Motion to Value the secured claim of Bank of America, N.A.

The Chapter 13 Trustee initially opposed confirmation of the Plan for the following reasons:

1. Debtor's plan relies on a pending Motion to Value Collateral of Bank of America, which is set for hearing on February 25, 2014. If the motion is not granted, Debtor's plan lacks sufficient funds to pay the claim in full. 11 U.S.C. § 1325(a)(6).
2. The plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$1,550.00 for 60 months, with a 0% dividend to unsecured creditors. Debtor has listed a double deduction of \$1,325.39 on Schedule J for Bank of America's Class 4 mortgage payments; therefore, Debtor cannot increase the plan payment by \$1,325.29 per month.

Debtor's Response

Debtor asserted the following in response to Trustee's Objection:

1. A software error from recently updated forms caused duplications in certain expenses and some income items were incorrectly disclosed.
2. Debtor requests that Trustee's Objection to Confirmation be continued to March 25, 2014 for Debtor's hearing on the Motion to Confirm.

A review of the court docket shows that Debtor has not filed a corrected Schedule J, despite having prepared a revised Motion to Value the Secured Claim of Bank of America, N.A. Additionally, the court is denying Debtor's Motion to Confirm Plan, LGB-2 on this hearing date, after having determined that the amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The instant 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 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 is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on April 7, 2014. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Sell has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee, having filed a response, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Sell. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seek an order approving the sale of commercial real property commonly known as 10144 Coloma Road, Rancho Cordova, California. The property was the located of Debtor's business, Happy Laundry. The prospective buyer made an offer to purchase the property at \$40,000.00. The Business Purchase Agreement is attached as Exhibit A, Docket 57.

Debtor's Original Schedule B (Dkt. 12) values "Happy Laundry" at \$65,000 and states that the business has been listed for sale at \$84,900. The assets of the business are valued at \$15,000. The real property is not listed on Schedule A, which suggests the sale Motion is just for the Business and its assets, not the underlying land. Debtor filed an Amended Schedule B on March 28, 2014 (Dkt. 51). It values Happy Laundry as "other liquidated debts owed to debtor" at \$0.00.

Chapter 13 Trustee Response, filed 04/15/14 (Dkt. 62)

Chapter 13 Trustee believes the sale is in the best interest of the estate; however, Debtor does not list inventory or specify the equipment being sole in the Business Purchase Agreement.

The evidence before the court concerning the value of the business is conflicting and renders the court unable to determine whether the sale is in the best interest of the estate.

Debtor's Response, filed 04/29/14 (Dkt. 65)

In response to the Chapter 13 Trustee, Debtor provides an attached list of inventory for the business (Exh. 1, Dkt. 66):

Asset	Value
8 Wascomat Junior W76	\$2,900.00
3 Wascomat Senior W124	\$2,100.00
35 Top Loader Maytag	\$3,500.00
2 Wascomat Giant W184	\$1,800.00
5 Stack Dryer Speed Queens	\$1,600.00
18 (?) Single Dryer Cissell	\$1,800.00
1 Soda and Snack Vending Machine	Non Operating
1 Water Vending Machine	\$300.00
1 Soap Vending Machine	Non Operating
1 Coin Changing Standard	\$600.00
1 Surveillance Camera System	\$100.00

The Bankruptcy Code permits the trustee to sell property of the estate after a noticed hearing. 11 U.S.C. § 363(b). Pursuant to 11 U.S.C. § 1303, a Chapter 13 debtor has the rights and powers of a trustee under § 363(b). Therefore, pursuant to § 363(b), Debtors can properly bring this motion to sell and the court grants the motion.

The court is satisfied, based on the supplemental pleadings and evidence provided by Debtor, that this sale is in the best interest of the estate and will grant the Motion to Sell.

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

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

The Motion to Sell 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 Sell is granted and Debtor is authorized to sell the Business located 10144 Coloma Road, Rancho Cordova, California to buyer for \$40,000.00.

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 10, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor may not be able to make payments under the plan. 11 U.S.C. § 1325(a) (6). Debtor's Schedule I indicates that Debtor is employed as a driver at Road Dog Drivers, LLC. The Schedule lists gross income of \$4,289.09 per month from wages; however, the pay advices provided to the Trustee indicate the Debtor's average gross income is \$2,987.12 per month. A review of Debtor's 2013 federal tax return indicates total income for 2013 of \$33,834, or \$2,819.50 per month.
2. Debtor's plan may not be the Debtor's best effort under 11 U.S.C. § 1325(b). A review of Debtor's 2013 federal tax and state tax returns show that Debtor received a federal refund of \$7,481, and a state refund of \$944.00. Both returns are dated March 21, 2014. Debtor has not proposed to pay the refunds into the plan.
3. Debtor's Statement of Financial Affairs indicates that Debtor has earned \$0.00 in 2014. The form omits the total income for 2013.

The court's decision to deny confirmation. The Chapter 13 Trustee

points out concerns with Debtor's ability to make payments under the plan, disclosure of financial information, and whether Debtor's plan reflects best efforts. The court is particularly concerned with Debtor's gross monthly income misrepresentation on Schedule I. Bankruptcy petitions are prepared and signed under penalty of perjury and intentional misrepresentations cause the court grave concern regarding Debtor's integrity and ability to propose a feasible Chapter 13 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 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

19. [13-22572](#)-C-13 LAFAYETTE HAYES MOTION TO MODIFY PLAN
DEF-1 David Foyil 3-10-14 [[22](#)]

CONTINUED to July 29, 2014 (Dkt. 31)

20. [13-34974](#)-C-13 VINCENT/LISA ABILA MOTION TO CONFIRM PLAN
MMN-2 Michael M. Noble 3-11-14 [[49](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2014. 42 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Plan as moot. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Chapter 13 Trustee opposes confirmation of Debtor's plan based on the following:

1. Debtors are \$120.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$680.00 is due on April 25, 2014. Debtors have paid \$1,921.00 into the plan to date.
2. Debtors' current plan is not the best effort of Debtors. 11 U.S.C. § 1325(b). Debtors originally projected total monthly expenses of \$6,302.85 including the lease payment of \$617. Debtors have removed the previously listed lease with Toyota Motor Credit for a 2013 Toyota Highlander, which was a \$617.00 expense; however, Debtor has not increased expenses to exceed the original expenses.
3. Debtors are above median income, proposing a 60 month plan paying \$1.00 for 1 month, \$680.00 for 4 months, \$780.00 for 25 months, and \$1,653.00 for 24 months with a guaranteed dividend of no less than 77%. As proposed, Trustee calculates the second amended plan pays approximately 93% to general

unsecured claims. Trustee proposes that changes can be made to Debtors' expenses that would increase their plan payment by \$282.75 and pay 100% of unsecured claims.

4. Debtors have not shown how they can increase the payments as called for under the plan. 11 U.S.C. § 1325(a)(6).

Debtors' Response, filed 04/29/14 (Dkt. 70)

Debtors states that they filed a new plan on April 29, 2014. Debtors' assert that the new plan addresses some confusion as to certain items which are now clarified. Debtors also states that evidence is provided for job prospects.

As the Debtors' have proposed a Third Amended Plan, the court will deny their Motion to Confirm as moot. However, the court strongly urges Debtors to closely read the Trustee's Objection and remedy the concerns raised.

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

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

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

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

21. [14-21979](#)-C-13 MICHAEL/TERESA BURK
KK-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR HSBC MORTGAGE
CORPORATION
4-10-14 [[20](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 10, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, HSBC Mortgage Corporation, objects to confirmation of Debtors' plan because it does not provide for the curing of the pre-petition arrearage owed to HSBC and does not satisfy 11 U.S.C. § 1322(b) or 11 U.S.C. § 1325(a) (5).

HSBC Mortgage Corporation is the servicer for Household Financial Corporation of California. Household Financial Corporation of California is the holder of a claim secured only by a security interest in real property commonly known as 2640 Swallowview Drive, Lincoln, California. The total amount due any owing under the Note is \$331,106 and the pre-petition arrearage amount owed is approximately \$71,992.19.

Modified Plan

Debtors filed a Modified Plan on April 25, 2014 (Dkt. 26). The plan incorporates HSBC's Objection and proposes to pay the arrearages in the amount of \$71,992.19.

The court's decision to deny overrule the objection as moot in light of Debtors' subsequent filing of an amended plan which addresses HSBC's concerns.

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

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

22. [12-41786](#)-C-13 JAMES LANINI
SDH-5 Scott D. Hughes

OBJECTION TO CLAIM OF GREEN
TREE SERVICING, LLC, CLAIM
NUMBER 8
3-14-14 [[77](#)]

Local Rule 3007-1(c)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 14, 2014. 44 days' notice is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The Creditor having filed an opposition, the court will address the merits of the motion. 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 Objection to Proof of Claim number 8-3 of Green Tree Servicing, LLC is overruled and the claim is allowed in its entirety. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor objects to Claims No. 8-1 through 8-3 filed by Green Tree Servicing, LLC. The most recent amendment, Claim 8-3, asserts a claim in the amount of \$128,871.45 with pre-petition arrearage of \$11,317.33.

Debtor asserts that the claims incorrectly alleges that Debtor owes \$128,871. Debtor further asserts that the claim incorrectly calculates the interest on the unpaid balance of the loan and incorrectly includes an escrow shortage in the pre-petition claim while trying to increase the mortgage payments from \$739.43 to \$1,228.58 per month. Debtor objects to having the escrow shortage included in the pre-petition mortgage claim and in an increased mortgage payment.

Debtor argues the interest is incorrectly calculated from May 15, 2008 through December 21, 2013, the date of the filing. Debtor asserts he was behind only nine payments when the case was filed. The payments made before the delinquency included principal and interest. Debtor argues that the lender is not entitled to pre-petition interest for five-years when that interest was already paid in full, except for the nine missing payments.

Debtor argues the loan was not funded until July 1, 2008 and; therefore, the interest was incorrectly calculated starting on May 15, 2008.

Claimant's Response

Claimant, Green Tree Servicing, LLC, responds to Debtor's objection.

Claimant states that the date of May 15, 2008 listed on Attachment A to the B10 Form is the date the Note was executed. Interest is only being collected from March 1, 2012 to December 21, 2012. As of March 1, 2012, the

interest accrued at approximately \$19 per diem. Claimant used this rate to calculate the interest rate that accrued for 295 days, not four years. Thus, the interest in the amount of \$5,607.67 stated in the proof of claim is correct.

Claimant maintains that there has been no "double dipping" with the escrow shortage. The escrow shortage is being collected via the proof of claim only, which the current escrow payment is the base amount. The base amount is exactly 1/12th of the total of the estimated taxes and insurance for the coming year. Thus, Debtor's current escrow payment has not been improperly increased.

Claimant filed its claim with attached copies of the Deed of Trust and Promissory Note. Under FRBP 3001(c)(1), the Proof of Claim complies as a copy of the writing secured the claim was filed with the claim and is entitled to prima facie validity. Here, Debtor objects to the interest and escrow shortage, but requests the entire claim be disallowed. Debtor's object does not set forth any legal or factual arguments as to why Claimant's claim is not enforceable.

Discussion

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The subject claim is entitled to prima facie validity as it was filed in accordance with FRBP(c)(1) and (c)(2). See FRBP 3001(f). As such, it is the objector's burden to present sufficient evidence to overcome the validity of the claim. Debtor merely proposes arguments that the interest was calculated incorrectly and that Claimant was improperly calculating the escrow shortage. Debtor provides no evidence that the interest due and escrow shortage due are in fact improper. Further, Claimant's response to the objection clarifies the calculations made and supports the court's conclusion that the claim should be allowed.

Based on the evidence before the court, the creditor's claim is allowed in its entirety. The Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Green Tree Servicing, LLC filed in this case having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 8-3 of Green Tree Servicing, LLC is overruled.

23. [14-20995](#)-C-13 RODNEY/CHANDRA LAMBERT CONTINUED OBJECTION TO
KO-1 Richard L. Jare CONFIRMATION OF PLAN BY VALLEY
Thru #24 BANK
3-13-14 [[78](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Valley Bank ("Creditor"), opposes confirmation of the Plan on the following grounds:

1. Debtors propose to increase plan payments by \$500 per month to \$2,300 beginning at Month 15. Item #17 in Debtors' Amended Schedule I states that the increase in payments is based on Debtor Rodney Lambert restoring dealer licensing and increasing income, and that rent collected will increase by \$50 increments each year.
2. Creditor argues that Debtor's income is uncertain; Rodney Lambert is self-employed as a used auto sales broker, and his business is located in Florida and he does not have a current auto dealer license. Transcript, page 16. At the 341 Meeting, Debtor Rodney Lambert further testified that he has lived in California one year, and has been looking for employment but has not yet found such employment with an auto dealership in California. Rodney Lambert testified that he intends to work to make

income before reactivating his license and start a similar business in California. It is unclear whether Rodney Lambert will be able to earn enough income to allow him to obtain a dealer license, start his own auto dealer business, and increase monthly income in time to make the stepped up monthly plan payment.

3. Rodney Lambert also testified that, with respect to the increase in rent of \$50 per month each year, Rodney Lambert testified that the current tenants have agreed to keep renting the rental property in Florida and will agree to annual rent increases, and that the tenants told him they only want to sign a one year contract at first and then will sign a new one. The Chapter 13 Plan has a term of 60 months, and Debtors' rental tenants have only signed contract for one-year periods at the price of \$1,300 per month, as stated in Debtors' Amended Schedule I.
4. Creditor states that Debtors' income may not be sufficient if the Chapter 13 Plan Payments are Increased after Debtors' Motion to Value the Secured Claim of Creditor is denied. The court notes that this Motion has been continued to this hearing date. Dckt. No. 87.

Based on these concerns, Creditor argues that the Chapter 13 Plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6). Creditor additionally states that its mortgage on Debtor Rodney Lambert's rental property includes a lien on the rents and profits from that property. The Bank has not consented to the use of its cash collateral, but is willing to do so on in the context of its use in the Chapter 13 Plan, which must described how the net monthly proceeds in collected rent will be used to either repair, maintain, or protect the court's collaterata

April 8, 2014 Hearing

At the first hearing on this Motion, the court continued the matter for supplemental briefing.

Debtors' Response

Debtors propose to increase the plan payment by \$200.00 per month and increase the monthly dividend to Valley Bank from \$1,220.00 to \$1,370.00.

Debtors filed Amended Schedules I & J on April 8, 2014, which "fine tunes" the budget and permits Debtor to start paying the Trustee \$200 more per month than the amount stated in the plan.

Debtors argue that the plan is feasible. Debtor has a job interview and is anticipating that he can earn a gross income of \$3,200 per month as stated in the Amended Schedules I & J.

Debtors plan on stepping up payments to the Trustee by \$500.00 in month 15 of the plan. They argues the step-up is feasible because of good job prospects with Lexus of Sacramento for Mr. Lambert. He has a competitive bonding quotation to enable him to reinstate his dealer's license. The bond will cost in \$1,5000 and he expects to work for Lexus of Sacramento "for a while" and then either be promoted or start his own automobile dealership.

The tenant in Florida continues to make \$1,300.00 per month rental payment. Debtors argue that Amended Schedules I & J address the concerns regarding utilities and repairs in the rental property. Tenant agreed to pay

for all utilities and "most repairs." Debtors' brother has agreed, free of charge, to complete repairs the tenant refuses to complete.

Debtors assert there is no error in the amended schedules. The pay stub of Mrs. Lambert contains a \$1,828 health insurance line, which a "cafeteria item" situation. The State of California, her employer, gives her an allowance which she uses to pay for health insurance.

Creditor's Reply, filed 04/29/14 (Dkt. 109)

Creditor does not object to the proposed increased payment to lender.

Creditor is concerned that Debtor Mr. Lambert's employment status remains uncertain. If he can secure the proposed position, some of Creditor's doubts about the feasibility of the plan will be resolved.

Debtors did not address all of the expenses associated with Debtor reestablishing his license to be a dealer. Debtors assert that the cost of the bond to reestablish the license is \$1,500. Creditor assumes this is a one-time payment, but is unsure. Creditor also notes that the regular expenses from operation of business or profession, Item 16 on Amended Schedule J, have been reduced to zero from \$930.10, without explanation. If these expenses were a result of Debtors' auto-brokering business, then there is a chance that the expenses will "resume" when Debtor reestablishes his dealership license and business.

Discussion

The court's decision is to sustain the objection and deny confirmation at this time. The court notes that it is sustaining the simultaneous objection of the Chapter 13 Trustee. While Debtors have remedied concerns regarding payments due to Valley Bank and overall plan payments, the court remains concerned about the contingent nature of the income derived from Mr. Lambert's employment, which remains pending as of the date of these pleadings. The court is not convinced that the plan complies with 11 U.S.C. § 1325(a)(6) and will not confirm the plan at this time.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on March 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because the Plan relies on the pending Motion to Value the Secured Claim of Valley Bank, RG-2, which has not yet been resolved.
2. The Plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors' Amended Schedule I indicates gross monthly income on line 1 for Chandra Lambert of \$5,724.56, and payroll deductions of \$570.23 for taxes, \$261.45 for insurance, and \$408.92 for retirement, leaving a net income of \$3,383.96. Debtors' most recent paystubs provided to the Trustee indicates gross income of \$6,192.00 per month, deductions of \$669.38 for taxes, \$345.77 for insurance, \$454.32 for retirement, and \$8.00 for charity, leaving a net income of \$4,705.53. Debtor has approximately \$321.00 of additional net income which may be paid into the plan for the benefit of creditors.
3. Debtors may not be able to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because their amended Schedule I indicates gross business income of \$4,422.43 per month. Debtor Rodney Lambert testified at the First Meeting of Creditors that he is in the

process of closing his Florida business and will be seeking employment. Trustee is not certain Debtor actually has the income listed on the Schedule at this time.

4. Debtors have not provided the required business documents to Trustee to date, such as the Business Questionnaire, six months of bank statements, and six months of profit and loss statements.
5. Debtors have not used the new Official Form B 61 and Official B 6 J (Schedules I and J) forms, which became standard on December 1, 2013.

April 8, 2014 Hearing

At the first hearing on this Motion, the court continued the matter for supplemental briefing.

Trustee's Response, filed 04/14/14 (Dkt. 96)

The Motion to Value the secured claim of Valley Bank resulted in an Amended Stipulation (Dkt. 90) to value the secured claim at \$72,000. This is \$7,000 higher than what the plan provided for. This resolves Trustee's specific objection but may result in more than \$116.67 needed per month for the creditor if the original plan did not allow for an increased payment.

Trustee objected to confirmation based on the most recent pay stubs (Dkt. 76); however, Debtors amended their Schedules to match the most recent pay stubs, except that the amount reflected for health insurance is apparently \$354.00. The most recent paystub shows \$1,828.77, it appears that the plan is the Debtors' best efforts, but Debtors may not be able to afford the payments.

Trustee questions whether the likelihood of employment at the rate suggested, \$3,200 per month, is sufficient to confirm a plan.

Debtors provided Trustee with sufficient business information and has filed new firms (Dkt. 76).

Where Debtors are proposing to pay \$7,000 more to Valley Bank, for a total of \$72,000 plus 4% interest, the plan will not pay claims as proposed as Valley Bank would receive only \$72,570. The Trustee calculates that approximately \$1,326 per month would be needed to pay it in 60 months.

Debtor's Response, filed 04/22/14 (Dkt. 103)

Debtors propose to increase the plan payment by \$200.00 per month and increase the monthly dividend to Valley Bank from \$1,220.00 to \$1,370.00.

Debtors filed Amended Schedules I & J on April 8, 2014, which "fine tunes" the budget and permits Debtor to start paying the Trustee \$200 more per month than the amount stated in the plan.

Debtors argue that the plan is feasible. Debtor has a job interview and is anticipating that he can earn a gross income of \$3,200 per month as stated in the Amended Schedules I & J.

Debtors plan on stepping up payments to the Trustee by \$500.00 in month 15 of the plan. They argues the step-up is feasible because of good job prospects with Lexus of Sacramento for Mr. Lambert. He has a competitive

bonding quotation to enable him to reinstate his dealer's license. The bond will cost in \$1,5000 and he expects to work for Lexus of Sacramento "for a while" and then either be promoted or start his own automobile dealership.

The tenant in Florida continues to make \$1,300.00 per month rental payment. Debtors argue that Amended Schedules I & J address the concerns regarding utilities and repairs in the rental property. Tenant agreed to pay for all utilities and "most repairs." Debtors' brother has agreed, free of charge, to complete repairs the tenant refuses to complete.

Debtors assert there is no error in the amended schedules. The pay stub of Mrs. Lambert contains a \$1,828 health insurance line, which a "cafeteria item" situation. The State of California, her employer, gives her an allowance which she uses to pay for health insurance.

Trustee's Response

Trustee does not oppose the inclusion of the changed plan payments and plan payment schedule to be incorporated into the Order Confirming the Plan.

As it stands, Debtors have resolved many of the Trustee's concerns regarding plan confirmation. What remains uncertain is Debtor Mr. Lambert's employment at a rate of \$3,200.00 per month. The court needs to be convinced of a debtor's ability to make plan payments before confirming a Chapter 13 plan. 11 U.S.C. § 1325(a)(6). Right now, Mr. Lambert's monthly income is contingent on being hired at a certain rate and contingent on increases over the course of the plan. Without secured employment, the court cannot be convinced that Debtors can afford the plan payments are the rate proposed based on contingent income. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not approved. The court notes that Creditor Valley Bank has also filed an Objection to Confirmation of the Chapter 13 Plan, KO-1, which the court is also sustaining on this hearing date. This instant 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 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on February 21, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the Motion to Dismiss to [date] at [time]. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

March 19, 2014 Hearing

Debtors counsel appears and explained to the court that the Motion to Confirm the Chapter 13 Plan was filed the morning of March 19, 2014. It was also explained that Debtors had not yet engaged the services of a real estate agent to liquidate the property as proposed in the Chapter 13 plan, because that was only for the Trustee to do.

The court and parties addressed the duties and obligations of Chapter 13 debtors and the proper, and necessary, exercise of powers designated to a chapter 11 and 7 Trustee. See 11 U.S.C. § 1303, sale of property and obligation of debtors to so exercise such powers.

The matter was continued to be heard concurrently with the Motion to confirm.

Review of Motion

Debtors are \$17,707.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$6,108.00 is due February 25, 2014. The case was filed on March 18, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13.

Debtor has paid \$43,850.00 into the Plan to date. Debtor must be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, this case was filed on March 18, 2013, and Debtor has yet to confirm a Plan. Debtors' Motion to Confirm Amended Plan, ULC-4, was heard and denied on November 19, 2013, and Debtors have filed to amend the Plan and set a confirmation hearing to date. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

A review of the docket, shows that an Amended Plan was filed on March 14, 2014, along with a supplemental Schedule J. Dckt. Nos. 87 and 88. Debtors have not yet filed a Motion to Confirm the Plan. Debtors have also not filed a response to Trustee's Motion to Dismiss, and have not addressed and resolved Trustee's objection regarding Debtors' delinquency in plan payments.

Discussion

Debtors set for hearing the Motion to Confirm the 6th Amended Plan and it is being heard concurrently with this Motion to Dismiss. Debtors' case is becoming extremely long in the tooth, as the petition was filed in March 2013. However, with the recent approval of employment of a real estate broker to market and sell Debtors' residence, the court is hopeful that Debtors' will soon present the court with a confirmable Chapter 13 plan.

Debtors' have set for hearing a concurrent Motion to Confirm the Sixth Amended Chapter 13 Plan. The court is continuing the hearing on that Motion until [**date**] at [**time**] to permit Debtors time to submit further evidence of feasibility to the court and to address the concerns of the Chapter 13 Trustee. The court will continue Trustee's Motion to Dismiss, also, and will entertain granting it at the next hearing if Debtors' are not prepared to confirm a plan.

The motion is continued to [**date**] at [**time**].

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to [**date**] at [**time**].

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2014. 42 days' notice is required. That requirement was met.

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

The court's tentative decision is to continue the Motion to Confirm the Plan to [date] at [time]. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtors' Sixth Amended Plan based on the following:

1. **Case History.** This is Debtors' 6th Amended Plan (Dkt. 87), as supplemented (Dkt. 98). The court notes that Debtors recently filed a Second Supplemental 6th Amended Plan on April 8, 2014 (Dkt. 106). Trustee has a pending Motion to Dismiss that was continued to the same time and date as this present motion (Dkt. 96). The case was filed 03/18/13, and has had 12 months of payments come due, with the 13th due before the hearing.
2. Debtor has not made a payment to Trustee since December 5, 2013. On December 5, 2013, Debtor paid Trustee \$5000; however, the plan payment due that month was \$6,108.00.

Debtors' prior plan, filed October 7, 2013 (Dkt. 62), called for plan payments of \$5,950 for 3 months, \$6,425 for 3 months, and \$6,108 for 53 months. Debtor is in the 12th month of the Plan through March 25, 2014 and has paid a total of \$43,850 into the plan to date. Debtors are \$29,923 delinquent under the terms of the prior plan, which was filed on October 7, 2013. Debtors have not indicated why they fell delinquent and what happened to the money that was not paid into the plan for the last five months.

Debtors are current under the pending plan filed March 14, 2014. Since Debtors decreased the payments for the first 12 months of the plan, they do not have to make another payment until Mar 25, 2014.

3. Debtors' plan does not pass the liquidation analysis under 11 U.S.C. § 1325(a)(4). The plan proposes to sell Debtors' real property at 4350 Winding Hill Lane, Fair Oaks, California. According to the Residential Listing Agreement attached to Debtors' Motion as Exhibit B, Debtors are selling the property for \$749,000. According to Schedule D, the secured debts against the mortgage total \$458,229, leaving \$290,771 non-exempt and Debtor is proposing to pay priority unsecured debt in the amount of \$123,754, leaving the total non-exempt amount at \$167,017. Debtors are proposing a 0% dividend to unsecured creditors.
4. The plan is not Debtors' best effort under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$3,370 for 12 months, \$3,100 for 9 months, then \$2,250 for 39 months with a 0% dividend to unsecured creditors.

(A.) Debtors amended Form B22C on April 30, 2014, Line 59 reflects a negative \$19.67; however, based on changes made by Trustee, it should be \$560.33 for 60 months, totaling \$33,619.80.

Debtor revises the following lines on amended Form B22C:

Line 44:L \$50.00 for additional food and clothing without evidence that this expense is reasonable and necessary.

Line 48: \$530.45 for other payments on secured claim; however, Debtor is not proposing a monthly dividend to Class 1 arrears.

(B.) Debtors' Declaration states that they are anticipating needing to save \$3,000 per month in the event the residence sells in the next few months and; therefore, they are proposing a reduction in plan payments to \$3,100 for months 13 through 22. Debtors filed a supplemental Schedule J on March 14, 2014 and added a \$3,000 per month expense for Savings for first, last, and security deposit and moving expenses. Debtors deduct this expense for 10 months of the Plan, totaling \$30,000. Debtor does not provide any evidence of the anticipated expenses, which do not appear reasonably necessary for the maintenance and support of Debtors and their dependents.

Debtors' Declaration also states that once the residence is sold, they anticipate additional expenses in their budget. They state their proposed plan payments due to these additional expenses shall be \$2,250 for months 23 through 60. Debtor does not explain the nature of these additional expenses.

In the Amended Schedule J, Debtors make the following changes:

- Adds anticipated rent \$2,700 for a family of fourth; however, the IRS standard for a family of four in Sacramento

County is \$2,045.

- Adds renters insurance at \$150.00 per month.
- Increases the food expense from \$825 to \$950 per month.
- Increases the clothing expense from \$100 to \$175 per month.
- Adds personal care for \$150 per month
- Increases transportation from \$680 to \$825 per month
- Increases entertainment from \$130 to \$200 per month
- Increases personal income taxes from \$625 to \$1,050 per month
- Adds \$225 for contribution to son's college expenses per month

Where Debtors previously did not claim these expense amounts, the Amended Schedule J, absent specific evidence such as a specific explanation of the expense in a declaration, bills, or bank statements, should not convince the court the expenses exist in the amounts claimed.

5. Debtors are not proposing any monthly dividends to secured creditors until sale of the residence occurs. The plan is not proposing a dividend to on Class 1 mortgage arrears and to the IRS in Class 2, until the sale of the real property occurs, anticipated by December 31, 2014.
6. Debtors filed a supplemental 6th Amended Plan on March 31, 2014. The only change to the plan is that Debtors added Section 6.02, which appears to address the approval by the Court of an order allowing Debtors' to employ a real estate broker to market and sell their personal residence.

Debtors' Response, filed 04/11/14 (Dkt. 109)

Debtors offer the following in response to the Trustee's opposition:

The 6th Amended Plan requires that the secured IRS obligations and the priority debts be paid no later than December 31, 2014. The exact amount available for unsecured creditors will not be known until the residence sells.

Debtors will file a Motion to Dismiss their Chapter 13 plan if they cannot sell their house within the time constraints of the plan.

Debtors state they had no incentive to make further payments into their case because they believed their case was going to be dismissed.

Debtors considered conversion to Chapter 11 upon the suggestion of Judge Sargis, but came to the conclusion that they could not afford the costs involved in a Chapter 11 case.

Debtors sought tax assistance to work out a plan for repayment with the IRS; however, these efforts were unsuccessful.

Debtors argue that the proposed plan does not fail liquidation. Debtors believe the property will sell for closer to \$700,000. Debtors anticipate the listing price being much lower than \$749,000 due to recent sales in the surrounding area.

Whether the property sells for \$749,00 or \$699,000, after costs of the sale, the secured liens and priority lien will be paid in full and any remaining balance will be paid to unsecured creditors. The proposed plan does not say that unsecured creditors will receive a 0% dividend, it states that they will receive no less than 0%.

Debtors assert that expenses were previously cut to "bare bones" levels in order to make the earlier proposed plans work. They argue that adding \$50.00 per month to the budget for food and clothing for a household of four is "nothing."

Arrearage on the Class 1 debtor will be paid along with the principal on those debts, when escrow closes on the sale of Debtors' home.

Debtor argues that the \$3,000 monthly savings expense is necessary and reasonable as the cost of relocating and affording first and last months rent in a rental home will run about \$18,000 to \$20,000. This includes cost of hiring a moving company and costs of hauling away things they no longer need.

Debtors base the monthly rental estimate on what Zillow.com states is a "low-average" rent in Fair Oaks, Sacramento. Debtors need to find a rental that will accommodate four adults, as their two grown sons still reside with Debtors. This means they need parking for four vehicles.

Debtors state that any excess saved will be turned over to the Trustee for distribution to unsecured creditors.

The Amended Schedule J reflects reasonable expenses Debtors anticipate facing in 2015 and beyond. Debtors will no longer have homeowners' insurance and taking out renter's insurance is reasonable. The additions to the food expense will bring Debtors' household more in line with what an average family of four adults spends on food in a month.

Debtor argues the increase in clothing costs is reasonable because Mr. Sargetis is in need of new work clothes.

Debtors added \$150 in personal care for the family members to afford haircuts and the occasional manicure.

Transportation costs increased with the costs of gasoline, engine oils, smog inspections, tune-ups, vehicle registration, and other routine care maintenance.

Debtors argue the increase in entertainment expenses is to permit the family to "have some kind of social life."

The increase in personal income taxes are based on Debtors selling their home and no longer having the tax deduction that comes with homeownership.

Debtors assert it is not unreasonable for them to assist with their son's college education costs. He is attending a local school with low tuition costs.

The 6th Amended Plan provides for continued monthly payments for the holder of the mortgage until the house is sold and escrow is closed, after

which there will be no expense for the house.

The Second Supplemental 6th Amended Plan adds the following in the Section 6.06: "Section 2.15. Class 7 General Unsecured Creditors shall receive a pro-rata share of any net proceeds remaining, if any, but no less than a 0% dividend, that the Trustee receives after all other Class creditors have been paid in full." (Dkt. 106).

Discussion

The court perceives two broad issues with Debtors' plan. The first issue concerns increases in expenses and moving savings without valid justification. The second issue is the contingent nature of the residence sale and distribution to unsecured creditors.

Debtors' response does explain the increase in expenses; however, Debtors did not submit a Declaration testifying to the justifications provided in the Response. The court lacks admissible, competent evidence it can use to make findings of fact as to reasonableness and necessity.

Debtors have the same issue with their moving expense projections. The court understands that Debtors need to plan in advance; however, Debtors do not provide the court with specific financial projections concerning moving costs. Debtors want to save \$3,000 per month for "first and last months' rent and security deposit for a rental property, in addition to the costs of moving." This is a significant monthly savings and more than general reference to "costs of moving" will be required before the court will conclude that the expense is reasonable and necessary. Again, Debtors attempted to address this in their Response; however, no Declaration testifying to the specific types of costs was filed on the court's docket.

The court is willing to consider confirmation of Debtors' plan based on a contingent sale of its residence; however, because the plan's funding is contingent the court will require very convincing evidence concerning feasibility, ability to make plan payments, and proposed expenses.

Section 11 U.S.C. § 1325(a)(6) provides that one of the necessary elements for confirmation of a chapter 13 plan is that "the debtor will be able to make all payments under the plan and to comply with the plan." If a proposed sale that is funding the plan is too uncertain, a debtor cannot show that the Chapter 13 plan is feasible.

The court is encouraged by Debtors' proposal of a drop dead date eight months after confirmation of the plan. However, before the court can determine that the sale is sufficiently probable to confirm this plan, it requires more information, perhaps from the employed real estate professional, concerning current sale prospects, the state of the market for the subject property, and the final terms of the listing agreement. The court suggests preparing a Declaration by the real estate professional setting forth this information and any other information the court would find useful in determining that the proposed sale is not "too speculative" for the purposes of Chapter 13 plan confirmation.

The court will provide a continuance to [date] at [time], for Debtors' to submit evidence in support of confirmation.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to **[date]** at **[time]**.