UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 9, 2017, at 3:00 p.m.

1.	**17-21402-E-13** **RCO-1**	**AARON BARSTOW** **Thomas Amberg**	**OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WELLS FARGO BANK, N.A.** **4-18-17 [15]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

Creditor having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on March 3, 2017, is confirmed.**

Counsel for 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.

2. **17-20506-E-13** **THERESITA GODINEZ** **OBJECTION TO CONFIRMATION OF**
MRG-1 **Mikalah Liviakis** **PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY**
3-9-17 [42]

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 9, 2017. By the court's calculation, 61 days' notice was provided. 14 days' notice is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Objection to Confirmation of Plan is overruled as moot.

Deutsche Bank National Trust Company, as Certificate Trustee on Behalf of Bosco Credit II Series 2010-1, Creditor with a secured claim, opposes confirmation of the Plan on the primary basis that 719 Atchison Drive, Vacaville, California, is not property of Theresita Godinez's ("Debtor") estate. Alternatively, Creditor argues that the Plan impermissibly modifies its rights, does not cure pre-petition arrears, cannot be afforded by Debtor's disposable income, and was not proposed in good faith.

A review of the docket shows that the court considered the Chapter 13 Trustee's Objection to Confirmation of the Plan at the April 4, 2017 hearing and sustained that Objection. The Plan that Creditor objects to is the same plan that has already been denied confirmation. Therefore, there is no active, confirmable plan for the court to consider related to this Objection. The Objection is overruled as moot.

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled as moot, the Chapter 13 Trustee's Objection to Confirmation of the Plan having been sustained at the April 4, 2017 hearing thereon.

3. 13-24610-E-13 RMP-1 | **DAX/TINA CHAVEZ** Peter Macalsuo | **MOTION TO RECONSIDER** 4-6-17 [191]

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 6, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Reconsider is continued to 3:00 p.m. on June 13, 2017. Continuance of the hearing is required due to the judge who issued the order to be reconsidered not hearing a Chapter 13 calendar until the continued hearing date.

U.S. Bank National Association, as Indenture Trustee on Behalf of and with Respect to AJAX Mortgage Loan Trust 2016-B Mortgage-Backed Notes, Series 2016-B AJX Mortgage Trust I ("Creditor") moves for the court to consider an order entered on March 27, 2017, sustaining Dax Chavez and Tina Chavez's ("Debtor") Objection to Notice of Mortgage Payment Change. Creditor contends that:

A. The Notice of Mortgage Payment Change was based solely on an increase in property taxes, and the record shows that there was no increase in the monthly installment payment due to forced-place insurance premiums;

B. Debtor caused the issue with cancellation of the Ameriprise insurance policy by refusing to cooperate with Ameriprise or Creditor; and

C. Ameriprise agreed to reinstate the hazard insurance policy only if Debtor agreed to reinstatement because Creditor had no contractual privity to reinstate the policy on its own.

Creditor's Failure to Comply with Local Bankruptcy Rules

Creditor has filed a Motion combined with a points and authorities, a document this court refers to as a "Mothorities." The Local Bankruptcy Rules require that the motion (which must state with particularity the grounds upon which the relief is based, FED. R. BANKR. P. 9013) is separate from the points and authorities (which contains the citations, quotations, and arguments), which are separate from each declaration, which are separate from the exhibits (which may be combined into one exhibit document). LOCAL BANKR. R. 9004-1 and the Revised Guidelines for Preparation of Documents.

While counsel may feel that the rules should not be enforced because this matter is so simple, this court does not leave attorneys to guess when they need to comply with the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules. If this is so simple, then counsel could have easily and simply complied with the uniformly enforced Rules in this court. The Rules for filing pleadings exist for a very simple reason: to make the court's docket and electronic files reasonably accessible to the court, court staff, attorneys, and the public. Hiding declarations, points and authorities, and proofs of service in one pleading only works to obfuscate the record and make the judicial process less transparent. Further, it creates unnecessary work for the court and other parties in deconstructing a Frankensteinian pleading created by counsel stitching together a series of separate pleadings.

By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 19, 2017. Dckt. 196. The Trustee is unsure what new factor Creditor asks the court to consider, but the Trustee believes that the factors are that the payment change was based solely on increased property taxes and that any issue as to insurance was caused by Debtor.

The Trustee believes that Creditor is partly correct. While Creditor listed an entry for "Estimated Force-Placed Insurance/Pending Proof of Insurance" of $916.27, the Trustee notes that Creditor reduced both the Projected Escrow Account Balance and the Required Escrow Account Balance by $916.27. Additionally, the Trustee points to page 4 of the Notice where Creditor lists $10,778.31 for "Escrow Advances – Purchased – BSI" and then deposits it back at the end of the statement.

The Trustee notes that Creditor does not explain how a shortage of $591.41 collected over twelve months results in an increase of $336.75, rather than an increase of $49.29.

CREDITOR'S REPLY

Creditor filed a Reply on April 21, 2017. Dckt. 198. Creditor states that its Motion "does not introduce 'new factors,' but rather truly seeks reconsideration of the prior order." *Id.*, at 2.

Creditor disagrees with the Trustee's assertion that Creditor deposited $10,778.31 back into the escrow account. Creditor states that a loan was transferred from BSI Servicing to Gregory Funding on April 22, 2016. *See* Dckt. 194, at 9. Creditor explains that at the time of transfer, Debtor owed a negative balance of $10,778.31, but Creditor chose to write it off on December 20, 2016, because of concerns of conflicting with Federal Rule of Bankruptcy Procedure 3002.1(b) and (i), coupled with the failure of the prior servicer to timely file payment change notices. After the write off, the amount Debtor owed changed from a debit of $10,520.38 in favor of Creditor to a credit of $257.93 in favor of Debtor.

Creditor also disagrees with the Trustee's allegation that Creditor engaged in double entry reducing for each of the projected and required balances by $916.27. Creditor argues that $591.41 was the shortage calculated by an accounting system to calculate an amount for the Real Estate Settlement Procedures Act ("RESPA"). RESPA requires Creditor to maintain a "cushion" as part of the projected monthly escrow account balance, which 12 C.F.R. 1024.17(b) provides is equal to one-twelfth of the total annual escrow payments that the servicer reasonably anticipates paying from the account. Additionally, Creditor may add an amount to maintain a cushion of no greater than one-sixth of the estimated total annual payments from the account. Creditor argues that the RESPA cushion was clearly disclosed. *See* Dckt. 194, at 8.

Creditor argues that the increase in monthly escrow payment arises only from higher property taxes, higher insurance costs, and the RESPA shortage amount to the cushion caused by the other increases. Since the last payment change in June 2013, property taxes increased by $2,649.26, and the hazard insurance policy negotiated by Debtor increased $800.25. Creditor stresses that no part of the payment change was allocated to a higher insurance rate for forced-place insurance, and no portion was allocated to the $10,778.31 write off of Debtor's negative escrow balance previously owed to Creditor.

TRUSTEE'S AMENDED RESPONSE

The Trustee filed an Amended Response on April 24, 2017. Dckt. 200. The Trustee agrees that $10,778.31 is not at issue because he has already noted that the statement shows a net-zero charge to Debtor. The Trustee notes that Creditor does not apply the RESPA provisions to show a mathematical calculation of the cushion. The Trustee calculates that a one-sixth cushion could be higher than Creditor is seeking—$742.18 compared to the $685.40 Creditor seeks.

The Trustee states that he does not oppose the Motion.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 25, 2017. Dckt. 204. Debtor argues first that the Motion should be denied because it lacks a separate Memorandum of Points and Authorities pursuant to Local Bankruptcy Rule 9004-1(a). Next, Debtor argues that there are no clerical mistakes under Federal Rule of

Civil Procedure 60(a) to support the Motion. As for the grounds for relief in Federal Rule of Civil Procedure 60(b), Debtor argues that Creditor has not explicitly asserted a ground listed in Federal Rule of Civil Procedure 60(b)(1)–(5), and as for subsection (6), Debtor argues that it should be used sparingly. *Id.*, at 2 (citing *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006); *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)).

Additionally, Debtor states that relief under Federal Rule of Civil Procedure 60(b)(6) requires a showing that the moving party was affected by "external, extraordinary circumstances" and was "faultless in the delay." *Id.*, at 3 (citing *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 393 (1993)). Debtor argues that Movant has not demonstrated any external, extraordinary circumstances beyond its control.

Debtor argues that there is no dispute that Creditor has a claim listed in Class 1, that the Trustee made timely payments during the period at issue, that Creditor had a fiduciary duty to make timely payments through the escrow account, that Creditor failed to timely pay the property insurance with Ameriprise, that Ameriprise cancelled the property insurance for non-payment, and that Debtor sustained damage to their property's roof during winter storms and are now unable to make an insurance claim.

Debtor asserts that Creditor's filing of this Motion is merely an attempt to relitigate the matter, and the cases cited by Creditor are inapplicable because they relate to default judgment. While Creditor argues that it has been prejudiced by sustaining the Objection to Notice of Mortgage Payment Change, Debtor argues that Creditor has not stated what kind of prejudice.

Debtor argues that they have incurred additional attorney's fees for defending this erroneous motion, and an award of fees by California Civil Code §§ 1717 and 2941 is appropriate. Debtor requests an award of $1,575.00 in fees for opposing a motion in which no error has been shown to the court.

CREDITOR'S RESPONSE

Creditor filed a Response on May 1, 2017. Dckt. 211. Creditor alleges that there is clear error caused by misinformation placed into the record by Debtor. Second, Creditor states that it did tender payment to Ameriprise, but Ameriprise did not cash the check that Creditor sent, and Creditor acted to reinstate the policy after it was cancelled.

Creditor again asserts that the payment change is based entirely on an increase in property taxes and insurance policies that Debtor negotiated. Creditor argues that Debtor could have made—and continue to make—an insurance claim for roof damage under the forced-place policy. Creditor also notes that the Trustee does not oppose the Motion.

Creditor places blame on Debtor for being delinquent $11,100.00 in plan payments to the Trustee, which has prevented him from making mortgage payments to Creditor. Finally, Creditor claims that Debtor has been unjustly enriched by improperly taking $916.27 in funds that Creditor paid to reinstate the Ameriprise insurance policy.

APPLICABLE LAW

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

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

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

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

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

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

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

IT IS ORDERED that the hearing on the Motion to Reconsider is continued to 3:00 p.m. on June 13, 2017.

4. 13-24610-E-13 DAX/TINA CHAVEZ MOTION TO MODIFY PLAN
PGM-7 Peter Macaluso 3-27-17 [183]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 27, 2017. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

The hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on June 13, 2017, to be heard in conjunction with the motion to reconsider the order sustaining the objection to notice of mortgage payment change.

Dax Chavez and Tina Chavez ("Debtor") seek confirmation of the Modified Plan because business slowed down for several months, and they did not have backup funds. Dckt. 186. The Modified Plan proposes that $11,000.00 in missed payments be forgiven, that Debtor make plan payments of $3,700.00 beginning in April 2017 for the remaining thirteen months of the plan term, and that unsecured claims receive a dividend of 5%. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CREDITOR'S OPPOSITION

U.S. Bank National Association, as Indenture Trustee on Behalf of and with Respect to AJAX Mortgage Loan Trust 2016-B, Mortgage-Backed Notes, Series 2016-B AJX Mortgage Trust I, Creditor with a secured claim, filed an Opposition on April 24, 2017. Dckt. 202. Creditor argues that the Plan has not been proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) because it once again asks for forgiveness of missed payments and because it improperly modifies a claim secured only by an interest in Debtor's principal residence, and the Plan is not feasible pursuant to11 U.S.C. § 1325(a)(6) because Debtor's projected business income is too speculative.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 208. The Trustee notes that Debtor is current under the Plan and that the Plan is feasible with the current ongoing monthly mortgage amount of $1,700.05, but that amount depends on the court's ruling with a related Motion to Reconsider Order Sustaining Objection to Notice of Mortgage Payment Change. The Trustee thinks that Debtor appears able to increase the plan payment to pay a modestly-increased mortgage payment.

DEBTOR'S REPLY

Debtor filed a Reply on May 2, 2017. Dckt. 213. Debtor argues that the Plan would be feasible at $1,700.05 or at $1,993.16 depending on what the monthly mortgage payment is determined to be.

Second, Debtor argues that "forgiven" applies only to amounts due within the previous plan and are still to be paid before the completion of the end of the modified plan.

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

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

5. **15-26710-E-13** **ROBERTO RAMIREZ**
RLR-1 **Pro Se**

AMENDED MOTION FOR CONTEMPT AND SANCTIONS, MOTION FOR WILLFUL VIOLATION OF THE AUTOMATIC STAY PURSUANT TO 362(A)(2)((5)(6)(K) TO RECOVER EMOTIONAL DAMAGES AND MOTION FOR PUNITIVE DAMAGES, MOTION FOR COSTS AND SET ASIDE FORECLOSURE SALE AND RESCIND DEED
3-29-17 [153]

DEBTOR DISMISSED: 01/21/2016

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on March 25, 2017. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion for Sanctions for Violation of the Automatic Stay is denied as moot.

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Roberto Ramirez ("Movant"). The claims are asserted against Nationstar Mortgage LLC, McCarthy Holthus LLP, and Quality Loan Service Corporation ("Respondent"). FN.1.

FN.1. The Motion is actually brought against Nation**wide** Mortgage LLC, but Nation**star** Mortgage LLC is one of the responding parties. The court treats that mistake as a scrivener's error that does not rise to immediate denial without prejudice of the Motion for naming the wrong party.

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant argues that Respondent knew of the existence of the bankruptcy case and knew that any actions taken to foreclose would be intentional.

LEGAL STANDARD

A request for an order of contempt by the debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on April 25, 2017. Dckt. 164. Respondent opposes the Motion on the following grounds:

A. The Motion is moot procedurally because the court has granted annulment of the automatic stay.

B. No willful violation of the stay occurred.

C. Movant is not entitled to damages because no willful violation occurred.

DISCUSSION

Respondent's ground in opposition that this Motion is moot is correct. On March 29, 2017, the court heard and ruled on a Motion for Relief from the Automatic Stay to annul the automatic stay and make valid, as a matter of bankruptcy law, a foreclosure sale that occurred on August 26, 2015, which was less than one day after the 4:00 p.m. filing of this bankruptcy case. Dckt. 158.

In ruling on the Motion for Relief from the Automatic Stay, the court concluded that Movant has misused, and abused, bankruptcy laws in his multiple filings of non-productive bankruptcy cases for the sole purpose of obtaining the automatic stay to prevent a foreclosure sale by Respondent. *Id.*

The court issued an extensive ruling and annulled the automatic stay effective to August 25, 2015, the filing date of this case. Movant cannot now seek to have the court rule that Respondent violated the automatic stay and award sanctions after the court has already annulled the automatic stay. This Motion is inappropriate, and it is denied as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Sanctions for Violation of the Automatic Stay by Roberto Ramirez ("Movant"), the Debtor (*pro se*) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied as moot, the court having annulled the automatic stay retroactively to the commencement of the case.

6. **16-25610-E-13** **PAUL FERNANDES** **MOTION TO CONFIRM PLAN**
HLG-2 **Kristy Hernandez** **3-25-17 [71]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2017. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is denied.

Paul Ferndandes ("Debtor") seeks confirmation of the Amended Plan because a Class 1 creditor objected that pre-petition arrears be satisfied in equal installments. Dckt. 73. The Amended Plan pays $2,900.00 for eight months, $5,629.00 for fifty-three months, a lump sum of $10,000.00 in month two, and a 100% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 13, 2017. Dckt. 81. The Trustee notes that the Plan proposes payments for sixty-one months, but by the Trustee's calculations, the Plan will complete in sixty months. The Trustee is not opposed to an amendment in the order confirming specifying that the plan term is sixty months.

CREDITOR'S OPPOSITION

Wells Fargo Bank, National Association, as Trustee for the Holders of the Banc of America Mortgage Securities, Inc. Mortgage Pass-Through Certificates, Series 2004-E, its assignees and or successors in interest ("Creditor") filed an Opposition on April 13, 2017. Dckt. 83. Creditor objects to speculative, stepped-up payments and objects to delayed payments until month nine of the Plan.

DEBTOR'S DECLARATION IN RESPONSE

Debtor filed a late Declaration in Response on May 3, 2017. Dckt. 88. Debtor states that his wife has begun earning approximately $500.00 per month from babysitting, and his son has been contributing $1,400.00 per month from renting a room. Debtor asserts that he has filed updated Schedules I and J and is current on all plan payments. Debtor states that the October 2016 lump sum of $10,000.00 has been remitted to the Trustee already. Finally, Debtor believes that he can afford the increased plan payments in May 2017.

DISCUSSION

11 U.S.C. § 1325(a)(5)(B)(iii)(I) requires that the Plan provide equal monthly payments with respect to each secured claim provided for in the Plan. Debtor's Plan proposes making unequal payments, however, because the Plan delays payment to Creditor until May of 2017. Second Amended Plan, ¶ 2.08. This bankruptcy case was filed on August 25, 2016, and May 2017 is month nine of the Chapter 13 case.

The Second Amended Plan requires the following payments by Debtor:

A.	Months 1–8 at $2,900 per month	$23,200.00
B.	Additional $10,000 Payment in Month 2	$10,000.00
	Total Payments Through April 2017	$33,000.00

For the first eight months of the plan the monthly payments average $4,125.00 per month. In the month the Second Amended Plan is to be confirmed, the plan payments by Debtor increase to $5,629 for the remaining 52 months of the Plan. These 52 payments will total an additional $292,708.

As proposed, the 60 months of plan payments total $325,708. From this, the Chapter 13 Trustee is to distribute:

A.	Chapter 13 Trustee's Fees, estimated at 7%	$ 20,489.56
B.	Debtor Attorney's Fees	$ 2,500.00
C.	Class 1 Arrearage	$139,675.30
D.	60 Monthly Mtg Payments of $2,303.83 each	$138,229.80
E.	General Unsecured Claims	$ 17,942.14
	Total Plan Distributions	$318,836.80

On its face, the Plan has more than $7,000 of excess funding over the life of the Plan, if all of the funding sources deliver as promised.

The amount of income that Debtor has reported receiving from his family on a monthly basis totals $1,900.00. Debtor's Plan calls for payments of $5,629.00 beginning in month nine and continuing for the plan term. That plan payment represents all of Debtor's disposable income, which in turn includes the contributions from his family members. There is no guarantee that Debtor's wife will earn $500.00 per month babysitting for the remainder of the term, and there is no guarantee that Debtor's son will be able to continue renting out space to provide $1,400.00 per month to the Plan. But in life, there are few "guaranteed" income sources.

At the January 10, 2017, the court advised Debtor and Creditor to "take a hard look" at the financial situation in this case. Dckt. 57. Creditor seems locked into wanting to foreclose on Debtor's property, and Debtor seems locked into wanting to keep the property by pooling funds from family members. The parties do not appear to have determined what course of action is really in the best financial interest of each party.

At the core of this dispute is where does the first $33,000.00 in payments (months 1–8) go, and why is nothing paid to Creditor for its secured claim arrearage. It appears that the $33,000 will be used to pay:

A.	Chapter 13 Trustee Fees	$ 2,310.00
B.	8 Current Monthly Mortgage Payments of $2,303.83 each	$18,430.00
C.	Debtor's Attorney's Fees	$ 2,500.00
	Total Disbursements	$23,240.00

That leaves $9,760.00 of monies not provided for, other than to begin paying general unsecured claims in advance of addressing the arrearage.

Debtor offers no explanation as to why Creditor should be delayed in the cure beginning on its arrearage for which its claim is secured by the residence in which Debtor continues to live. Creditor filed Proof of Claim No. 4, which breaks down the $139,675.30 arrearage as follows:

A.	Interest	$63,995.05
B.	Fees/Costs	$ 6,258.47
C.	Escrow Advances	$51,079.08
D.	Principal Payments Due	$15,526.84

Creditor also lists an additional $2,815.86 "Projected Escrow Shortage." The court is unsure what a future projected shortage is when stated as part of a past-due prepetition arrearage. However, this is a nominal amount of the pre-petition arrearage stated. The Mortgager Proof of Claim Attachment to Proof of Claim No. 4 also states, "The UPB [which the court interprets as the "unpaid principal balance"] includes $43,385.38 of deferred principal." This appears to indicate that in addition to the $15,526.84 of unpaid

principal, there were prior defaults for which triple that amount was unpaid and deferred as part of a loan modification.

Attached to Proof of Claim No. 4 is a spreadsheet showing various payments and disbursements made on the loan. The last reported "funds received" on the loan were $1,851.82 on June 18, 2013.

Dividing the $139,675.30 arrearage over 60 months yields a cure amount of $2,327.92 per month.

Debtor not being able to articulate any reason for the delay in starting the cure payments, the court cannot divine any good faith reason for such delay. Debtor has a long history of not paying Creditor on its secured claim, and now with the assistance of counsel has continued that practice (as to the arrearage) into this bankruptcy case.

Based on Schedule D, Debtor asserts having a $126,000 equity in the property securing creditor's claim. Dckt. 14 at 12. Debtor has been able to "preserve" that equity by not paying Creditor for "$139,675.30" worth of time. Presumably, Debtor's first good faith priority (after paying his bankruptcy counsel for assisting in getting the plan in place) would be in getting the secured debt knocked down and putting "dollars into the Debtor's pocket" by increasing the equity post-petition. Of course, that presumes Debtor having a good faith belief that the plan can be performed, completed, and the Chapter 13 case closed with a discharge entered.

Possible Terms of Repayment for a Good Faith Plan

The Plan having been funded with $33,000.00 for the first eight months, and after payment of the Chapter 13 Trustee's fees, Debtor's attorney's fees, and the currently monthly mortgage payment to creditor, there is $9,760.00 of monies remaining to go one of two places—either a $9,760.00 in the pre-petition arrearage due Creditor on its secured claim or to dischargeable unsecured claims. Debtor's plan provides for a 100% dividend to creditors holding general unsecured claims, so making the arrearage payment would not prejudice them, just delay slightly Debtor's plan payment for them.

Assuming there is a $139,675.30 arrearage that is paid down by the $9,760.00 in the first eight months, then the remaining balance is $129,915.30. That amount amortized over 52 months equals $2,498.38.

Taking the $5,629 monthly plan payment for months 9 through 52 and applying them to the obligations to be paid from that point forward:

A.	Chapter 13 Trustee Fees (Est. 7%)	$ 394.03
B.	Current Monthly Mortgage Payment	$2,303.83
C.	52 Month Arrearage Cure ($129,915.30)	$2,498.37
D.	48 Month Payment of Unsecured Claims ($16,855.48)	$ 351.16
	Disbursement Total	$5,547.39

That leaves an "extra" $81.61 per month that the plan payment exceeds the above projected disbursement. The plan could provide for that to be disbursed quarterly to Creditor to be applied against the arrearage if not used for current mortgage payment, accelerate the 48 month the 100% payout period to general unsecured creditors to 39 months ("extra" not needed for current mortgage payment increase), and after the general unsecured claims are paid faster, increase the monthly arrearage payment to Creditor by $432.77 for the balance of the plan to complete it sooner.

What is not in good faith is merely delaying beginning payment later, paying off unsecured claims faster, and then not accelerating payment of the arrearage.

Conclusion

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

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

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

7. 16-28010-E-13 MYRANDA AGUILAR MOTION TO CONFIRM PLAN
MG-1 Matthew Gilbert 3-27-17 [36]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2017. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is denied.

Myranda Aguilar ("Debtor") seeks confirmation of the Amended Plan to resolve issues about home mortgage arrearages and student loans. Amended Plan, Dckt. 41. The Amended Plan accounts for higher mortgage arrears, provides for all claims, and pays general unsecured claims a 100% dividend. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on April 13, 2017. Dckt. 43. The Trustee asserts that Debtor is $402.00 delinquent in plan payments, which represents less than one month of the $2,610.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

8. **16-24111-E-13** **ABBIGAIL CLYMER** **MOTION TO SELL**
DMW-2 **D. Randall Ensminger** **4-7-17 [137]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

The Motion to Sell is dismissed without prejudice.

Douglas Whatley, the court appointed representative of the estate for purposes of selling property of the estate having filed a "Withdrawal of Motion," which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on May 1, 2017, Dckt. 149; no prejudice to the responding party appearing by the dismissal of the Motion; Mr. Whatley having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the responses filed by the Chapter 13 Trustee and Creditor; the *Ex Parte* Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar. FN.1.

FN.1. In the Motion, Mr. Whatley identified himself as "Chapter 7 Trustee." While Mr. Whatley does serve as a Chapter 7 trustee in other cases, he is not the Chapter 7 trustee in this Chapter 13 case. He has been employed as a professional, to serve as a special purpose representative of the estate for the marketing and sale of real property. The appointment was necessary due to an inability of Debtor to accomplish such a sale which is not only a necessary part of her plan, but critical for her to receive her substantial equity in the property. In the future, Mr. Whatley should not refer to himself as "the Chapter 7 Trustee" in this Chapter 13 bankruptcy case.

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

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

The Motion to Sell filed by the Douglas Whatley, the special purpose representative of the bankruptcy estate, having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 149, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Sell is dismissed without prejudice.

9. 16-21719-E-13 JANEE FARRIS — MOTION TO MODIFY PLAN
PSB-2 Pauldeep Bains — 4-4-17 [43]

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2017. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

Janee Farris ("Debtor") seeks confirmation of the Modified Plan because health issues forced her to change jobs, earning less income. Dckt. 46. The Modified Plan will pay a claim to Travis Credit Union in Class 4 for a 2007 Jeep Wrangler at $330.00 per month, will reject a lease with Lincoln Automotive Financial Services, will have plan payments of $404.00 beginning in month 13, and will pay 0.00% to unsecured claims. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on April 25, 2017. Dckt. 55. The Trustee asserts that the claim of Travis Credit Union for a 2007 Jeep Wrangler should be listed in Class 2B and not Class 4 because the underlying debt was incurred on March 24, 2013, with a final payment due on April 8, 2020. Debtor's case was filed on March 20, 2016, and Debtor has proposed a sixty-month plan term.

The Trustee notes that Schedule B values the vehicle at $14,769.00, but Travis Credit Union's claim values the vehicle at $15,404.92. Additionally, the Trustee notes that a Motion to Value Secured Claim could have been brought for the claim.

DEBTOR'S RESPONSE

Debtor filed a Response on April 25, 2017. Dckt. 58. Debtor argues that a Motion to Value would be unsuccessful because Kelley Blue Book lists a retail value for the vehicle at $18,026.00, while the proof of claim is listed at $15,404.92. Proof of Claim 9 (containing a copy of the Kelley Blue Book Vehicle Valuation report in addition to the claim). Debtor admits that "technically the Trustee is correct in that the loan will mature prior to the completion of the Chapter 13 Plan." *Id.* Debtor is not opposed to the claim being moved, if the court thinks that it should be moved.

RULING

Debtor has established that the vehicle's value, as listed on the Kelley Blue Book report attached to Proof of Claim 9, likely would prevent a successful Motion to Value Secured Claim. Therefore, not filing a Motion to Value Secured Claim was proper. The Trustee is correct, however, that the claim should be paid through Class 2 of the Plan because the note underlying the claim will mature during the plan term.

The Modified Plan, as amended to move the claim of Travis Credit Union secured by a 2007 Jeep Wrangler from Class 4 to Class 2, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Modified Chapter 13 Plan filed on April 4, 2017, and as amended to move the claim of Travis Credit Union secured by a 2007 Jeep Wrangler from Class 4 to Class 2, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan,

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

10.	**17-21123-E-13 DPC-1**	**VICTOR NAVARRO JR AND KRISTINA ZAPATA George Burke**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-19-17 [33]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 19, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Victor Navarro, Jr., and Kristina Zapata ("Debtor") cannot afford plan payments, and

B. The Plan will not complete within sixty months.

The Trustee's objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Form 122C-1 states that there were seven people in Debtor's household in the six months prior to filing, but Schedule J does not list any dependents. Debtor provided a 2016 tax return that shows five dependents, four of whom were children under the age of

seventeen. The Trustee cannot determine whether Schedule J includes sufficient expenses for Debtor's dependents. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in more than sixty months due to creditor Nationstar Mortgage, LLC, filing a Notice of Mortgage Payment Change on April 10, 2017, that raised the mortgage payments from $1,172.50 per month to $1,430.96 per month effective May 1, 2017. Debtor's Plan provides for payments of $689.52 per month. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

11. **17-21624-E-13 JMC-2** | **ELIEZER/EVANGELINE DELMENDO** **Joseph Canning** | **MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCE CORPORATION** **3-30-17 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and Office of the United States Trustee on March 30, 2017, and on the Chapter 13 Trustee on April 3, 2017. By the court's calculation, 40 days' notice and 36 days' notice were provided, respectively. 28 days' notice is required.

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

The Motion to Value Secured Claim of American Honda Finance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $17,677.00.

The Motion filed by Eliezer Delmendo and Evangeline Delmendo ("Debtor") to value the secured claim of American Honda Finance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Honda Accord ending in VIN 0488 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $15,680.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on April 12, 2017. Dckt. 62. Creditor argues that the underlying note on the Vehicle indicates that Debtor purchased the Vehicle for personal use, which subjects its value to the retail price of a vehicle of similar age and condition under 11 U.S.C. § 506(a)(2). *See* Dckt. 66, Exhibit 2 (Retail Installment Sale Contract).

Creditor asserts that a fair purchase price gathered from Kelley Blue Book is $17,677.00 and the retail purchase price would be $18,902.00. Dckt. 66, Exhibit 3. Creditor asserts that $17,677.00 is a better reflection of the market value for the used Vehicle.

Creditor notes that Debtor has not provided any evidence in support of its valuation other than Debtor's Declaration.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 81. The Trustee notes that Debtor has not provided any information about the Vehicle's condition, its options, or any necessary repairs. The Trustee also notes that Creditor filed a secured claim on March 31, 2017, for $19,741.48, indicating that the Vehicle's value is $17,375.00. *See* Proof of Claim No. 4.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on July 24, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $19,430.18. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

Creditor's secured claim is determined to be in the amount of $17,677.00, the value of the collateral listed on Creditor's copy of the Kelley Blue Book report. *See* 11 U.S.C. § 506(a). The court finds the Kelley Blue Book valuation more credible than the opinion of the Debtor, which provides no discussion of the condition of the vehicle. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Eliezer Delmendo and Evangeline Delmendo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of American Honda Finance Corporation ("Creditor") secured by an asset described as a 2014 Honda Accord ending in VIN 0488 ("Vehicle") is determined to be a secured claim in the amount of $17,677.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $17,677.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

12. **17-21624-E-13 JMC-3** | **ELIEZER/EVANGELINE DELMENDO** **Joseph Canning** | **MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCE CORPORATION** **3-30-17 [35]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and Office of the United States Trustee on March 30, 2017, and on the Chapter 13 Trustee on April 3, 2017. By the court's calculation, 40 days' notice and 36 days' notice were provided, respectively. 28 days' notice is required.

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

The Motion to Value Secured Claim of American Honda Finance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $18,045.00.

The Motion filed by Eliezer Delmendo and Evangeline Delmendo ("Debtor") to value the secured claim of American Honda Finance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Honda Accord ending in VIN 9069 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $16,041.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on April 12, 2017. Dckt. 68. Creditor argues that the underlying note on the Vehicle indicates that Debtor purchased the Vehicle for personal use, which subjects its value to the retail price of a vehicle of similar age and condition under 11 U.S.C. § 506(a)(2). *See* Dckt. 72, Exhibit 2 (Retail Installment Sale Contract).

Creditor asserts that a fair purchase price gathered from Kelley Blue Book is $18,045.00 and the retail purchase price would be $19,270.00. Dckt. 72, Exhibit 3. Creditor asserts that $18,045.00 is a better reflection of the market value for the used Vehicle.

Creditor notes that Debtor has not provided any evidence in support of its valuation other than Debtor's Declaration.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 84. The Trustee notes that Debtor has not provided any information about the Vehicle's condition, its options, or any necessary repairs. The Trustee also notes that Creditor filed a secured claim on March 30, 2017, for $19,064.14, indicating that the Vehicle's value is $17,375.00. *See* Proof of Claim No. 3.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on July 27, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $18,760.42. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

Creditor's secured claim is determined to be in the amount of $18,045.00, the value of the collateral listed on Creditor's copy of the Kelley Blue Book report. *See* 11 U.S.C. § 506(a). The court finds the Kelley Blue Book valuation more credible than the opinion of the Debtor, which provides no discussion of the condition of the vehicle. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Eliezer Delmendo and Evangeline Delmendo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of American Honda Finance Corporation ("Creditor") secured by an asset described as a 2014 Honda Accord ending in VIN 9069 ("Vehicle") is determined to be a secured claim in the amount of $18,045.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $18,045.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

13. **17-21624-E-13 VVF-1** | **ELIEZER/EVANGELINE DELMENDO** **Joseph Canning** | **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR AMERICAN HONDA FINANCE CORPORATION** **4-12-17 [48]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 12, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

American Honda Finance Corporation, Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan incorrectly states that Creditor's claim does not arise from a Purchase Money Security Interest and that it proposes an interest rate that is too low.

Creditor's objections are well-taken. Creditor alleges that the Plan violates 11 U.S.C. § 1326(a)(1)(C) because it does not propose adequate protection payments to Creditor. That section of the Code states a debtor shall make adequate protection payments to a creditor with an allowed claim secured by personal property to the extent that the claim is for the purchase of the personal property. Creditor has provided a copy of the Retail Installment Sale Contract showing that a 2014 Honda Accord was purchased by Debtor and subject to seventy-two payments of $557.12 beginning September 10, 2014—a purchase money security interest. Dckt. 50, Exhibit 2. The Plan does not propose to pay adequate protection payments to Creditor on the underlying note in violation of 11 U.S.C. § 1326(a)(1)(C).

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.75%. Creditor's claim is secured by a 2014 Honda Accord. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 4.00%, plus a 1.25% risk adjustment, for a 5.25% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

14. **17-21624-E-13 VVF-2** | **ELIEZER/EVANGELINE DELMENDO**
Joseph Canning | **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR AMERICAN HONDA FINANCE CORPORATION**
4-12-17 [55]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 12, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

American Honda Finance Corporation, Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan incorrectly states that Creditor's claim does not arise from a Purchase Money Security Interest and that it proposes an interest rate that is too low.

Creditor's objections are well-taken. Creditor alleges that the Plan violates 11 U.S.C. § 1326(a)(1)(C) because it does not propose adequate protection payments to Creditor. That section of the Code states a debtor shall make adequate protection payments to a creditor with an allowed claim secured by personal property to the extent that the claim is for the purchase of the personal property. Creditor has provided a copy of the Retail Installment Sale Contract showing that a 2014 Honda Accord was purchased by Debtor and subject to seventy-two payments of $557.12 beginning September 10, 2014—a purchase money security interest. Dckt. 60, Exhibit 2. The Plan does not propose to pay adequate protection payments to Creditor on the underlying note in violation of 11 U.S.C. § 1326(a)(1)(C).

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.75%. Creditor's claim is secured by a 2014 Honda Accord. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 4.00%, plus a 1.25% risk adjustment, for a 5.25% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

15. 15-20336-E-13 ANTWANETTE RAYMOND MOTION TO MODIFY PLAN
DEF-5 David Foyil 3-15-17 [117]

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 15, 2017. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Response on April 25, 2017, indicating that Debtor is current and that the Plan is feasible. Dckt. 131. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Modified Chapter 13 Plan filed on March 15, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the

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

16. 16-25441-E-13 BLG-4 | **AVELINO SANTOS** **Chad Johnson** | **MOTION TO CONFIRM PLAN** **3-23-17 [115]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2017. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 24, 2017. Dckt. 127. The Trustee does not oppose the Motion. He requests, however, that the plan terms be reiterated in the order confirming because the additional provisions in Section 6 may cause confusion about the plan payments.

Specifically, the Trustee requests that the order confirming include:

Total paid into plan through February 25, 2017 is $7,680 and effective March 25, 2017 the plan payments shall be $1,200 per month for the remaining 41 months of the 47 month plan.

RULING

The Trustee's request to include the additional plan payment terms is reasonable to avoid any confusion. The court orders that the plan terms be included in the order confirming. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Amended Chapter 13 Plan filed on March 23, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, shall include the terms relating to plan payments, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. 16-26043-E-13 SUSAN GEDNEY
TAG-5 Aubrey Jacobsen

MOTION TO EMPLOY JCL REALTY, INC. AS REALTOR(S)
4-11-17 [99]

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Employ is continued to 10:00 a.m. on May 31, 2017 (specially set to the court's dismissal calendar, the next available Chapter 13 date).

Susan Gedney ("Debtor") seeks to employ realtor Dawn Robinson of JCL Realty, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of a realtor to assist with short selling her property.

Debtor argues that the realtor's appointment and retention is necessary because the Chapter 13 Plan contemplates the short sale of her property.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 105. The Trustee states that there is a pending adversary proceeding (No. 17-02006) dealing with a prior real estate listing agreement between Debtor and realtor Sarah Wright and broker Gabriel Witkin.

The Trustee notes that JCL Realty, Inc. is owned by Ted Greene who is also the owner of Law office of Ted A. Greene, Inc., who represents Debtor in this Chapter 13 case.

The Trustee does not oppose the Motion.

DISCUSSION

Dawn Robinson, realtor with JCL Realty, Inc., testifies that she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. She testifies that her fee for selling Debtor's property will be 3.5% of the purchase price.

This case has had an interesting dynamic in which the real estate broker that Debtor hired pre-petition was determined post-petition to "not be qualified." No mention was made during the long, multiple hearings that the new, better realtor was one owned by Debtor's attorney, Ted Greene. Though Mr. Greene has a new, young associate appearing as attorney of record in this case, it is his law firm that has Debtor as the client. Mr. Greene's name appears on all the pleadings.

The court is concerned whether Mr. Greene and his firm can fulfill their duties as counsel to the Debtor, who is the fiduciary to the bankruptcy estate and will be the fiduciary under a Chapter 13 Plan (if one can be confirmed). The court is unsure how Mr. Greene and his firm can represent Debtor and advise Debtor as to the performance by Mr. Greene's real estate company, advocating for her with Mr. Greene's real estate company.

The pleadings also do not contain evidence showing compliance with California Rule of Professional Conduct 3-300.

The court continues the hearing to 10:00 a.m. on May 31, 2017 (specially set to the court's dismissal calendar, the next available Chapter 13 date). The court orders Ted Greene, Aubrey Jacobson, Susan Gedney (Debtor), and Dawn Robinson (the real estate agent working for Ted Greene's real estate business) to appear in person at the continued hearing, no telephonic appearances permitted.

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 Employ filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Employ is continued to 10:00 a.m. on May 31, 2017 (specially set to the court's dismissal calendar, the next available Chapter 13 date).

IT IS FURTHER ORDERED that Ted Greene, Aubrey Jacobson, Susan Gedney (Debtor), and Dawn Robinson (the real estate agent working for Ted Greene's real estate business), and each of them, shall appear in person at the continued hearing. No telephonic appearances are permitted.

The court shall address with the various person the propriety of the employment of Mr. Greene's real estate business as a professional for Debtor, who is the fiduciary of this bankruptcy estate and would be the fiduciary of the plan estate under any confirmed Chapter 13 Plan. The court will also address the propriety of such business transaction between Mr. Greene, who has Debtor as a client, and Mr. Greene's real estate business being employed by Debtor.

IT IS FURTHER ORDERED that the court has suspended the application of Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041 as made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014(c), with dismissal of this Motion to Employ only by order of the court.

18. **17-21345-E-13** **WILLIAM MCDANIELS JR.** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Richard Jare** **PLAN BY DAVID P. CUSICK**
4-19-17 [29]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 19, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Tax returns have not been filed;

B. Tax returns have not been provided;

C. The Plan may not be proposed in good faith;

D. William McDaniels, Sr. ("Debtor") may not be able to make plan payments; and

E. Debtor has not provided all disposable income.

The Trustee's objections are well-taken. According to a claim filed by the Internal Revenue Service, the federal income tax return for the 2015 tax year has not been filed still. Filing of the return is required. 11 U.S.C. § 1308.

The Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

The Plan proposes to pay a zero percent dividend to unsecured claims, which total $132,000.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $14,927.88. Thus, the court may not approve the Plan.

Additionally, the Trustee notes that the Plan may have been filed in bad faith because Debtor has not include the community property of his non-filing spouse's income, has not scheduled any amount in tax refunds, and has used the wrong case number throughout the Schedules and Statement of Financial Affairs. Those are additional grounds to deny confirmation. 11 U.S.C. § 1325(a)(3).

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

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

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

19. **16-24147-E-13** **KATHLEEN MCKELVIE** **OBJECTION TO CLAIM OF UTE**
PGM-2 **Peter Macaluso** **MANTELL, CLAIM NUMBER 4**
3-17-17 [52]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

20. **16-26349-E-13** **RICARDO VEGA** **MOTION TO CONFIRM PLAN**
PGM-2 **Peter Macaluso** **3-27-17 [53]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2017. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

The Motion to Confirm the Amended Plan is granted.

Ricardo Vega ("Debtor") seeks confirmation of the Amended Plan to reorganize his debts. Dckt. 53. The Amended Plan proposes payments of $1,530.00 for three months, then payments of $1,535.00 for

fifty-seven months, and a 0.00% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on April 11, 2017. Dckt. 70. The Trustee asserts that the Plan relies on the court sustaining an Objection to Claim of State of California, Franchise Tax Board, and that Objection is set for hearing on June 6, 2017. The Trustee does not oppose continuing the hearing on this Motion to a date after the hearing on the Objection.

DEBTOR'S REPLY

Debtor filed a Reply on May 2, 2017. Dckt. 77. Debtor notes that he filed and served a Notice to Withdraw the Objection to the Claim of State of California Franchise Tax Board on May 2, 2017, because the Franchise Tax Board amended its claim to show that Debtor does not owe anything.

TRUSTEE'S AMENDED RESPONSE

The Trustee filed an Amended Response on May 4, 2017. Dckt. 81. The Trustee no longer opposes the Motion.

DISCUSSION

Debtor's Plan relies upon the court sustaining an objection to claim, and without that objection being sustained, the Plan would not be feasible. 11 U.S.C. § 1325(a)(6). A review of the docket shows that the Franchise Tax Board amended its claim on April 19, 2017, to be $0.00. Proof of Claim No. 2-2. Additionally, Debtor withdrew his Objection to Claim on May 2, 2017. Dckt. 75.

The Objection and the Trustee's Opposition having been resolved by the filing of an amended claim, the court determines that the Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Amended Chapter 13 Plan filed on March 27, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the

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

21. 17-21150-E-13 DPC-1 — JEFFREY/TAMI DIEFENBACH — Linda Deos — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 4-11-17 [15]

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 11, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

The Objection to Confirmation of Plan is overruled.

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

A. Paying student loans directly is unfair discrimination;

B. Jeffrey Diefenbach and Tami Diefenbach ("Debtor") have unreported expenses that cause them to have insufficient disposable income; and

C. Tami Diefenbach did not provide proof of her Social Security Number to the Trustee.

DEBTOR'S OPPOSITION

Debtor filed a late Opposition on May 3, 2017. Dckt. 19. Debtor states that the Trustee is wrong and that Debtor ceased making student loan payments when this case was commenced. Additionally, Debtor claims to have disclosed all student loans in the Chapter 13 Plan under Class 7 unsecured claims to be paid a dividend of 32%. Debtor states that there was a miscommunication at the meeting of creditors regarding

the student loans. Debtor had been in a student loan rehabilitation program, but they have not and will not make any direct student loan payments during the life of the plan.

Debtor claims to be able to make all payments and states that all expenses have been reported on Schedule J. Finally, Debtor states that Tami Diefenbach has provided proof of her Social Security Number to the Trustee.

DISCUSSION

Debtor appearing to have resolved all of the Trustee's grounds for opposing confirmation, the court finds that the Plan complies with 11 U.S.C. §§ 1322 and 1325(a).

The Trustee now concurs, stating in his supplemental pleading that his Objection may be dismissed. Dckt. 23. The court, based on the concurrence of the Trustee that the Plan may be confirmed, overrules this Objection.

The Objection is overruled, and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Debtor's Chapter 13 Plan filed on February 24, 2017, is confirmed. Counsel for 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.

22. **17-21057-E-13** **PAUL BOUTIETTE** **CONTINUED MOTION TO VALUE**
PGM-1 **Peter Macalsuo** **COLLATERAL OF U.S. BANK, N.A.**
3-23-17 [15]

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on March 23, 2017. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Paul Boutiette ("Debtor") to value the secured claim of US Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3124 Clay Street, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $110,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 1 filed by Creditor appears to be the claim that may be the subject of the present Motion.

APRIL 12, 2017 ORDER

On April 12, 2017, the court issued an Order Continuing Hearing Pursuant to Joint *Ex Parte* Motion. Dckt. 32. The hearing was continued to 3:00 p.m. on May 9, 2017.

NO OPPOSITION TO MOTION FILED BY CREDITOR

Creditor has not filed an Opposition to this Motion, but Creditor did file an Objection to Confirmation, in which Creditor asserts that the Property's value is not what Debtor claims. However, Creditor has not opposed this Motion and there is no evidence to contradict Debtor's evidence of value.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 11, 2017. Dckt. 28. The Trustee states that he has no basis to oppose the Motion.

The Trustee notes that the creditor asserted to hold a first deed of trust (Real Time Resolutions) has not filed a claim for the deed valued at $120,952.00.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $120,952.00. Creditor's second deed of trust secures a claim with a balance of approximately $53,454.07. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Paul Boutiette ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of US Bank, N.A., secured by a second in priority deed of trust recorded against the real property commonly known as 3124 Clay Street, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $110,000.00 and is encumbered by a senior lien securing a claim in the amount of $120,952.00, which exceeds the value of the Property that is subject to Creditor's lien.

23. **17-21057-E-13** **PAUL BOUTIETTE** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION**
CJO-1 **Peter Macaluso** **3-30-17 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 30, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

U.S. Bank National Association, Creditor with a secured claim, opposes confirmation of the Plan on the basis that it relies on a motion to value Creditor's secured claim.

A review of Debtor's Plan shows that it relies on the court valuing Creditor's secured claim. Debtor filed a Motion to Value Creditor's Secured Claim, which has also been heard at the May 9, 2017 hearing.

APRIL 25, 2017 HEARING

At the hearing, the court noted that Creditor has not provided any declaration from a witness who is knowledgeable and competent to testify as to supporting facts for Creditor's Objection pursuant to Federal Rules of Evidence 601 & 602. Also, Creditor has not followed any procedure for admitting evidence to the

record. The filed exhibits have not been authenticated, and they are not admissible when filed by themselves. *See* Dckt 26; *see also* Federal Rules of Evidence 901 & 902.

Without any evidence to support Creditor's position, the court observed that the Objection could be overruled. The court continued the hearing on the Motion to 3:00 p.m. on May 9, 2017, and advised Creditor to provide supplemental evidence during the interim period. Dckt. 34.

DISCUSSION

No further pleadings have been filed since the April 25, 2017 hearing. Creditor has not heeded the court's warning that this Objection could be overruled because it lacks evidence. Creditor argues that the Property's value is other than what Debtor asserts in the Motion to Value, but Creditor has not introduced any evidence for the court to consider.

Further, the court has now granted Debtor's Motion to Value Creditor's secured claim and declared it to be $0.00.

Without any evidence to support the Objection, the Objection is overruled.

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

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

24. **17-21057-E-13** **PAUL BOUTIETTE** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Peter Macaluso**
3-29-17 [20]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 29, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor's Plan relies on the Motion to Value Secured Claim of US Bank, N.A.

APRIL 25, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on May 9, 2017, to coincide with the Motion to Value.

DISCUSSION

A review of Debtor's Plan shows that it relies on the court valuing US Bank, N.A.'s secured claim. That Motion has also been heard at the May 9, 2017, and the court granted the Motion, valuing the claim at $0.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Debtor's Chapter 13 Plan filed on February 21, 2017, is confirmed. Counsel for 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.

25. **11-29166-E-13 WW-6** | **MICHAEL/JENNIFER PETERS** **Mark Wolff** | **OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 4-25-17 [152]**

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

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

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

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held on an Objection to Notice of Mortgage Payment Change. Based upon language that any opposing party must appear at the hearing to be heard, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on April 25, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Objection to Notice of Mortgage Payment Change is sustained.

Michael Peters and Jennifer Peters ("Debtor") object to a Notice of Mortgage Payment Change filed by MTGLQ Investors LP ("Creditor") on March 1, 2017. Debtor alleges that creditor violated Federal Rule of Bankruptcy Procedure 3002.1(c) by failing to file and serve Debtor, Debtor's attorney, and David Cusick (the Chapter 13 Trustee), with a notice itemizing all fees, expenses, and charges.

Debtor requests that the court, pursuant to Federal Rule of Bankruptcy Procedure 3002.1(I):

A. Preclude Creditor from presenting omitted information as evidence;

B. Determine that payment of the fees, costs, and expenses allegedly incurred in the past 180 days are not required by the underlying agreement and applicable bankruptcy law to cure a default or to maintain payments in accordance with 11 U.S.C. § 1322(b)(5);

C. Require Creditor to pay Debtor's incurred attorney's fees; and

D. Award sanctions to Debtor and against Creditor and Rushmore Loan Management Services.

Summary of Debtor's Objection

Debtor argues that Creditor has collected, or charged Debtor for, fees, costs, or expenses after December 1, 2011, without giving notice. A review of the docket shows that Creditor has not filed any Notice of Fees, Expenses, and Charges since December 1, 2011. Nevertheless, Debtor has asserted—and attached as Exhibit A—that Creditor has charged for various fees, including:

1/20/16	Property Preservation DI	$96.00
1/22/16	Property Preservation DI	$55.00
1/22/16	Property Preservation DI	$15.00
1/22/16	Property Preservation DI	$1.50
2/9/16	Property Preservation DI	$10.50
2/24/16	Property Preservation DI	$15.00
2/24/[16]	Property Preservation DI	$1.50
3/8/16	Misc Corporate Disbursem	$1.18
3/16/16	Misc Corporate Disbursem	$1.18
3/25/16	Property Preservation DI	$1.50
3/25/16	Property Preservation DI	$15.00
4/28/16	Property Preservation DI	$15.00
4/28/16	Property Preservation DI	$1.50
5/5/16	Misc Corporate Disbursem	$1.18
5/20/16	Property Preservation DI	$15.00
5/20/16	Property Preservation DI	$1.50
5/24/16	Misc Corporate Disbursem	$1.18

5/31/16	Misc Repayment	$109.00
6/2/16	Misc Corporate Disbursem	$1.18
6/23/16	Property Preservation DI	$1.50
6/23/16	Property Preservation DI	$15.00
6/27/16	Misc Corporate Disbursem	$1.18
7/7/16	Misc Corporate Disbursem	$1.18
7/8/16	Misc Repayment	$1.18
7/15/16	Attorney Advance Disburs	$215.00
7/25/16	Misc Corporate Disbursem	$1.18
7/25/16	Property Preservation DI	$55.00
7/27/16	Property Preservation DI	$96.00
7/27/16	Property Preservation DI	$15.00
7/27/16	Property Preservation DI	$1.50
8/1/16	Property Preservation DI	$10.50
8/2/16	Escrow Advance	$10,859.60
8/10/16	Misc Corporate Disbursem	$1.18
8/10/16	Misc Corporate Disbursem	$0.29
8/29/16	Property Preservation DI	$15.00
8/29/16	Property Preservation DI	$1.50
9/6/16	Misc Corporate Disbursem	$1.18
9/26/16	Property Preservation DI	$15.00
9/26/16	Property Preservation DI	$1.50
9/29/16	Corporate Advance Disbursem	$1.18
10/26/16	Corporate Advance Disbursem	$1.18
10/26/16	Property Preservation DI	$15.00
10/26/16	Property Preservation DI	$1.50
10/31/16	Misc Corporate Disbursem	$1.18
11/1/16	Misc Corporate Disbursem	$0.79

11/23/16	Property Preservation DI	$15.00
11/23/16	Property Preservation DI	$1.50
11/29/16	Misc Corporate Disbursem	$1.18
12/1/16	Escrow Advance	$2,443.05
12/7/16	Misc Corporate Disbursem	$0.63
12/30/16	Property Preservation DI	$1.50
12/30/16	Property Preservation DI	$15.00
5/6/15	Corp. Advance Adjustment	$5,327.95
5/27/15	Property Preservation	$1.50
5/27/15	Property Preservation	$15.00
6/26/15	Property Preservation	$15.00
6/26/15	Property Preservation	$1.50
7/16/15	Property Preservation	$96.00
7/28/15	Attorney Advances	$25.00
7/28/15	Property Preservation	$55.00
7/28/15	Misc. F/C and B/R expenses	$1.44
7/28/15	Misc. F/C and B/R expenses	$1.44
7/30/15	Property Preservation	$15.00
7/30/15	Property Preservation	$1.50
7/30/15	Property Preservation	$9.50
8/3/15	Property Preservation	$9.50
8/27/15	Property Preservation	$15.00
8/27/15	Property Preservation	$1.50
9/11/15	Attorney Advances	$150.00
9/25/15	Property Preservation	$15.00
9/25/15	Property Preservation	$1.50
10/27/15	Property Preservation	$1.50
10/27/15	Property Preservation	$15.00

11/30/15	Property Preservation	$15.00
11/30/15	Property Preservation	$1.50
12/10/15	Misc Corporate Disbursement	$1.18
12/10/15	Misc Corporate Disbursement	$1.18
12/23/15	Property Preservation	$15.00
12/23/15	Property Preservation	$1.50
	Total	**$19,977.25**

Debtor argues that Creditor's charges were discovered only recently. Debtor believed that an escrow account had been established to pay Creditor and that Creditor was collecting its necessary amount through the Chapter 13 Plan.

Debtor provides a task billing for the attorney fees incurred with this Objection and asserts that the total amount of fees is $8,695.00.

Opposition

Creditor was not obligated to file an opposition in advance of the hearing, the Objection having been noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2).

DISCUSSION

Federal Rule of Bankruptcy Procedure 3002.1(c) states that a claimholder must file and serve a notice of fees, expenses, and charges "within 180 days after the date on which the fees, expenses, or charges are incurred."

On April 24, 2017, Creditor filed its Response to Notice of Final Cure Payment, expressly affirming under penalty of perjury, that:

> "Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim."

and

> "Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.
>
> The next postpetition payment from the debtor(s) is due on: 04/24/2017"

Creditor Response to Notice of Final Cure Payment (Form 4100R), April 24, 2017 Docket Entry, Filed as part of Proof of Claim No. 5-1.

This Response confirms that Creditor admits that the Chapter 13 Trustee's Notice of Final Cure Payment (Dckt. 145) is correct and that there is no outstanding pre-petition or post-petition arrearage as of the February 2017 completion of Plan payments.

It appears that this Response crossed in the mail with the Objection to Notice of Mortgage Payment Change.

The March 1, 2017 filed Notice of Mortgage Payment Change (filed under Proof of Claim No. 5) states that Debtor's monthly mortgage payment is increasing to $3,407.12 per month. The reason is stated to be an increase of the escrow impound from $0.00 to $1,169.50. Doing the simple math, that indicates that the prior monthly mortgage payment was $2,237.62.

Attached to the Notice of Mortgage Payment Change is an Escrow Analysis Disclosure Statement dated February 23, 2017. That Statement identifies the Principal and Interest Payment to be $2,237.22. In addition, the "required escrow payment" is stated to be $407.18. In "double addition," the Statement says that there is an additional $762.72 that must be paid for "shortage/Surplus Spread."

It further states that there is a $24,457.90 "Shortage Amount."

As shown by Creditor's Response to the Notice of Final Cure, there is no "shortage amount" that is owing. It has been stated under penalty of perjury that there is no "shortage amount" for any pre- or post-petition period through February 2017.

Exhibit A to Proof of Claim No. 5 states that the total monthly payment is $2,237.22, with that amount subject to either a change in the escrow requirement or interest rate. The arrearage is stated to consist of $31,321.08 for fourteen missed monthly payments and $134.50 for appraisal and inspection fees.

As provided in the testimony of Debtor (Declaration, Dckt. 154), the 2016 Mortgage Interest 1098 Statement issued by Creditor (that was received in 2017) shows that Creditor and Rush Loan Management Services, LLP were assessing various "Property Preservation DI" charges, with multiple charges in each month. No such "fees" and "charges" were disclosed in this bankruptcy case. The 1098 Statement also states that there was an escrow advance of $2,443.05 in December 1, 2016 for "county tax." Exhibit A, Dckt. 156.

Exhibit B is the Annual Escrow Account Disclosure Statement dated December 27, 2016, advising Debtor that the monthly mortgage payment was going to increase to $4,032.56. *Id.* Further, Creditor and Rushmore Loan Management Services asserted that there was a $25,422.03 escrow shortage (taking the "starting balance" shown on the statement).

The Statement continues, indicating that prior to 2016 there was a negative escrow balance of $12,119.38, and in 2015, Creditor and Rushmore Loan Management Services made payments of $11,392.09

for "County/Paris" and $1,911.56 for "County Tax." This ballooned the stated shortfall to $25,422.03. *Id.* The Statement does not indicate what a "County/Paris" disbursement is for with respect to Debtor's loan.

Fortunately, Creditor has confirmed that there are no pre- or post-petition arrearages to be addressed, with the Debtor starting with the loan as current as of February 28, 2017. Response under penalty of perjury, filed with Proof of Claim No. 5, April 24, 2017 Docket Entry. It seems inconceivable that Creditor and the expert professional loan servicers would have allowed an undisclosed arrearage to build up, and if it actually did, to then spring it on the consumer Debtor as the long, arduous five-year bankruptcy plan was coming to a successful conclusion.

Creditor's admission is bolstered by there having been no notice of any fees, expenses, or charges as required by Federal Rule of Bankruptcy Procedure 3002.1(c). If any had actually existed, they would have been raised timely, and Debtor would then have had the opportunity to address them during the five years of the bankruptcy plan. If such actually existed and Creditor failed to provide the notice (and waited until the case was completed to spring them on the consumer debtor), then such non-compliance clearly works a prejudice on Debtor caused by Creditor's non-compliance.

As provided in Federal Rule of Bankruptcy Procedure 3002.1(e) and (h), the final notice of cure having been given, the confirmation that all pre- and post-petition obligations of Debtor under the loan are current through February 2017, the proof of claim specifying the pre-petition arrearage, and there being no notice during the bankruptcy case of any such post-petition, the court confirms that there are no pre-petition or post-petition (through February 2017) fees, expenses, charges, or arrearages due on the loan upon which Proof of Claim No. 5 is based.

Award of Attorneys' Fees

Federal Rule of Bankruptcy Procedure 3002.1(f)(2) further authorizes the award of attorney's fees and costs related to the failure to provide the required notice of fees, expenses, and charges. In this case, Creditor having filed a Notice of Mortgage Payment Change and sent a Statement purporting to state Debtor owed payment for charges, fees, expenses, advances for which no Notice had been given, Debtor was forced to both investigate this contention and then file the Objection to Notice of Mortgage Payment Change.

Creditor has ameliorated the problem a bit with its admission in the Reply that there are no pre- or post-petition (through February 2017) arrearages owed by Debtor. However, Creditor did not rescind its Notice of Mortgage Payment Change and file a new one accurately stating the payment amount and that there were no pre- or post-petition (through February 2017) arrearages owed under the loan. This inaction required Debtor and Debtor's counsel to continue in having to prosecute the Objection.

Debtor's counsel has provided copies of time records for work asserted to have been done in connection with the December 27, 2016 Annual Escrow Account Disclosure Statement and the more than doubling the amount of the asserted regular mortgage payment to $4,932.56. No declaration of counsel is provided authenticating the records.

The billing records state a total of $8,345.00 in fees requested. That is 21 hours of time at $350.00 per hour and 3 hours at $250.00 per hour by Mark Wolff, counsel for Debtor. No task billing analysis is provided. The court organizes the legal work into several task areas:

A. Communications with Client and Initial Review of Statement Doubling Payment and Stating Arrearage..... 3.7 hours

B. Communications with Counsel for Creditor..... 1.4 hours

C. Research in Preparation of Objection..... 5.5 hours

D. Drafting Objection Pleadings.....10.5 hours

E. Meeting with Client Re Objection, Declaration..... 3.6 hours

For the above 24.7 hours, the total fees average $337.85 per hour, not an unreasonable hourly rate.

The need for Debtor to have counsel address the Notice of Mortgage Payment Change that doubled Debtor's mortgage payment was driven by the Notice itself and Creditor asserting theretofore undisclosed charges, fees, advances, and costs purported to have been piled up by Creditor and its loan servicer.

From a review of the pleadings, the court allows $7,070 in attorney's fees for this Objection, which includes an additional one hour of time for the May 9, 2017 hearing. That could be viewed as allowing for 19.2 hours of the 24.7 hours of work at $350.00 per hour, or it could be viewed as lowering the hourly rate to $300.00 for 22.5 hours for the above work. Either way, the court is convinced that $7,070 in attorneys' fees were reasonably incurred in having to address the Notice of Mortgage Payment Change purporting to double the Debtor's monthly mortgage payment. The court notes that counsel for Debtor did attempt to communicate with counsel for Creditor for two weeks before beginning to work on the Objection.

The Objection is sustained, the court determines that as of February 28, 2017, there were no pre-petition or post-petition monetary defaults or arrearages for any period prior to April 1, 2017, and that Debtor is awarded $7,070.00 in legal fees for having to prosecute the Objection to Notice of Mortgage Payment Change filed on March 1, 2017, by Creditor.

Requested Award of Sanctions

The Objection also requests the additional award of Sanctions, citing the court to Federal Rule of Bankruptcy Procedure 3002.1(i)(2) "other appropriate relief" language as the legal basis. Debtor also directs the court to *In re Gravel* for the contention that Rule 3002.1 provides that the court can issue an order for sanctions pursuant thereto. 556 Br. 561 (Bankr. D. Vt. 2016).

First, the court is not as convinced as Debtor that Rule 3002.1 "explicitly" empowers the court to issue punitive sanctions. While there may be other grounds for doing so, they are not now before this

court. Second, the court is ordering the payment of $7,070.00 in compensatory attorneys' fees as damages. That is not an insignificant amount.

The court denies, without prejudice, any request for sanctions.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment Change filed by Michael and Jennifer Peters, 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 Objection is sustained, and the Notice of Mortgage Payment Change filed on March 1, 2017, for Proof of Claim No. 5 by MTGLQ Investors, LP is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** that all pre-petition and post-petition monetary defaults and arrearages were cured, and all obligations therefore owing by Debtor to Creditor MTGLQ Investors, LP ("Creditor"), or any other person, for the debt that is the basis for Proof of Claim No. 5 filed by Creditor were current as of February 28, 2017.
>
> **IT IS FURTHER ORDERED** that Debtor is awarded $7,070.00 in attorney's fees against MTGLQ Investors, LP.
>
> **IT IS FURTHER ORDERED** that the request for "sanctions" is denied without prejudice.
>
> This Order constitutes a judgment (FED. R. CIV. P. 54(a) and FED. R. BANKR. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure (including FED. R. CIV. P. 69 and FED. R. BANKR. P. 7069, 9014).

26. **16-23768-E-13** **DAVID KENNEDY** **MOTION FOR ADMINISTRATIVE EXPENSES**
RRJ-1 **Mikalah Liviakis** **3-7-17 [32]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 7, 2017. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

State Compensation Insurance Fund ("Movant") requests payment of administrative expenses in the amount of $1,431.74, incurred during the period of June 10, 2016, to October 6, 2016, for providing post-petition worker's compensation insurance to David Kennedy ("Debtor").

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on March 17, 2017.

DISCUSSION

Movant argues California law requires Debtor to maintain worker's compensation insurance to conduct his business. CAL. LABOR CODE § 3700. California Insurance Code § 11784 requires Movant to issue worker's compensation insurance to any employer that tenders a premium. Exhibit A shows a premium bill to Carmichael Glass from November 29, 2016. FN.1. The court notes that on the petition Debtor listed Carmichael Glass as a business name he uses. Dckt. 1. Therefore, Movant argues that it was required to issue worker's compensation insurance to Debtor to conduct his business during this case.

FN.1. Movant filed the Declaration and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant has demonstrated that Debtor was required to have worker's compensation insurance for his business, and Movant was required to issue a premium to him when he tendered payment.

Movant argues that Debtor could not have operated his business without worker's compensation insurance, thus making Movant's administrative expense a substantial contribution to the Estate.

Movant having demonstrated that the expenses were necessary, and the Trustee not opposing the Motion, the court finds that Movant providing a worker's compensation insurance policy for Debtor was necessary for Debtor maintain his business, which provided benefit to the Estate. The Motion is granted, and the Trustee is authorized to pay Movant its administrative expenses in the amount of $1,431.74.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Trustee is authorized to pay State Compensation Insurance Fund $1,431.74 as an administrative expense of the Chapter 13 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

27. **17-21071-E-13 ET-1** | **CLIFTON OVERTON** **Diana Cavanaugh** | **OBJECTION TO CONFIRMATION OF PLAN BY HOUSING GROUP FUND CORP/401K PLAN** **3-28-17 [16]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

Creditor having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on March 8, 2017, is confirmed.**

Counsel for 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.

28. **17-20373-E-13 DPC-1** | **FLOYDETTE JAMES** **Steven Alpert** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-1-17 [33]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on January 20, 2017, is confirmed.**

Counsel for 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.

29. **16-27675-E-13** **DAWN BASURTO** **MOTION FOR ASSESSMENT OF FINES AGAINST, AND FOR FORFEITURE OF FEES BY, DIANE LORE, PURSUANT TO 11 U.S.C. § 167; 110**
UST-1 **Pro Se** **3-24-17 [64]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Diane Lore, Debtor (*pro se*), Chapter 13 Trustee, and parties requesting special notice on March 24, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Assess Fines and Forfeiture of Fees is continued to 10:00 a.m. on May 31, 2017.

On March 24, 2017, the U.S. Trustee ("UST") filed a Motion for the Assessment of Fines Against and Forfeiture of Fees Paid to Diane Lore ("Lore"). Dckt. 64. The Motion asserts that Lore charged Dawn Basurto ("Debtor") and Anthony Basurto $9,000.00 to do "loan modification work" and prepare six bankruptcy cases for them.

The Motion asserts that Lore's participation was hidden from the court, UST, and other parties in interest on the various bankruptcy cases filed. Further, the Motion asserts that Lore failed to comply with the disclosure and information requirements for a person assisting in the preparation of bankruptcy documents.

In her declaration, Judith Hotze of the UST's Office refers the court to a prior determination that Lore was in violation of 11 U.S.C. § 110, with this court imposing $24,300.00 in fines and penalties in the *Valerie Jean Keys* bankruptcy case. No. 13-22393. The court's order in the *Keys* bankruptcy case was

entered on January 21, 2014—now more than three years ago. No. 13-22393; Order, Dckt. 81. The testimony is that Lore has not paid any of the amounts ordered by the court in January 2014.

The fees paid by the Basurtoes in the current case at issue are asserted to have been received by Lore over an eighteen-month period beginning with the first bankruptcy case (No. 15-28915) being filed on November 17, 2015 (twenty-three months after this court's January 21, 2014 Order addressing Lore's failure to comply with bankruptcy laws).

***Ex Parte* Motion to Continue Hearing**

On April 25, 2017, Lore filed an *ex parte* motion to continue the May 9, 2017 hearing on the UST's motion. Dckt. 75. The grounds stated with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013 in the *ex parte* motion are:

A. "I Diane Lore request for an continuance of this matter and to be continued for (30) days in order for me to gather supporting documents for my case."

B. At this time I am looking for counsel to represent me in this case."

Id.

In the *Keys* case, though the court continued the hearing on that motion, Lore failed to file any responsive pleadings or appear to address the issues presented to the court.

Continuance of Hearing and Issuance of Order to Appear

The court continued the hearing on the Motion for two reasons. Dckt. 76. First, for the May 9, 2017 hearing date, another judge would be hearing the matter. In light of the prior order in the *Keys* case, it made sense for the same judge that issued that order to consider the present Motion.

Second, it may well be that Lore does not fully appreciate the seriousness of the allegations in the Motion, as well as the prior findings of this court in issuing the January 2014 Order in the *Keys* case.

The declarations provided by Debtor and Anthony Basurto include testimony indicating that Lore instructed the Basurtoes to give false testimony in federal court. The testimony includes contentions that Lore, not an attorney, provided legal advice to the Basurtoes. The testimony includes statements that Lore was paid money in advance to work on a loan modification. *See* Cal. Civ. 2944.7. The testimony includes statements that Lore was in league with "[a]ttorneys who work with me don't want people to know they are doing it." Dckt. 69, 5:20–21.

The above may violate federal and state law for which reporting to the respective authorities, including the California State Bar, may be appropriate. Before doing so, the court wants to ensure that Lore understands the seriousness of the allegations made and possible repercussions—which would not merely be an order to pay money that Lore could try to ignore.

Therefore, the court determined that the appropriate action was to continue the hearing to allow Lore, and her counsel if she so chooses, to respond to the allegations and address the situation. The court continued the hearing on the Motion to 10:00 a.m. on May 31, 2017, specially set with the court's Chapter 13 dismissal calendar, and ordered Lore to appear personally at the hearing.

The court warned that failure to appear at the May 31, 2017 hearing will result in the issuance of an order for the U.S. Marshal to place Lore in custody (sufficiently in advance of the continued hearing date to ensure her availability to address the court) and escort her to the court for the hearing as further continued by the court.

The court ordered that any opposition to the Motion from Lore must be filed and served on or before May 24, 2017.

DISCUSSION

The court issued its Order on the *Ex Parte* Motion, continuing the matter from the May 9, 2017 hearing. The hearing on the Motion is continued to 10:00 a.m. on May 31, 2017.

30. 17-20775-E-13 RCO-1 | **JAMES/ROSINA MARKS** **Eric Schwab** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 3-28-17 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 28, 2017. FN.1. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

FN.1. Movant filed the Objection, Notice of Hearing, Proof of Service, Declaration, and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

If such practice should occur again, the attorney filing the pleading and the senior attorney(s) responsible for the firm can anticipate an order to appear in the Sacramento or Modesto Division Court, in person with no telephonic appearance permitted, to address the failure to comply with this basic pleading requirement.

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

and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that it does not provide for Creditor's claim. Creditor also argues that the Plan does not cure pre-petition arrears, but Creditor has not filed a Proof of Claim in this case for the court to examine.

In addition, Creditor cites various code provisions—11 U.S.C. §§ 1322(b)(2) & (3); 1325 (a)(1), (3), and (6)—that are not supported in the Motion by grounds stated with particularity. *See* FED. R. BANKR. P. 9013. Instead, Creditor attaches statutory provisions to legal conclusions without directing the court to any grounds for reaching the conclusions. The court does not grant unsupported arguments.

Nevertheless, Creditor's objection under 11 U.S.C. § 1325(a)(5) is well-taken.

The objecting Creditor asserts a claim of $425,353.28 in this case. Debtor's Schedule D estimates the amount of the Creditor's claim as $425,354.00 and indicates that it is secured by a first deed of trust on Debtor's residence. The Plan does not provide for the claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

31. 17-20681-E-13 KEVIN/ELEANOR MOONEY MOTION TO CONFIRM PLAN
MRL-1 Mikalah Liviakis 3-22-17 [23]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2017. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

The hearing on the Motion to Confirm the Chapter 13 Plan is continued to 3:00 p.m. on June 13, 2017. Debtor shall file and serve a Supplemental Pleading stating proposed amendments to the Plan on or before May 17, 2017. Opposition to the Supplemental Pleading shall be filed and served on or before May 31, 2017, and Replies, if any, filed and served on or before June 6, 2017.

Kevin Mooney and Eleanor Mooney ("Debtor") seek confirmation of the Amended Plan. The Amended Plan proposes plan payments of $450.00 per month, a lump sum of approximately $435,000.00 during or before month twelve, and a 100% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 24, 2017. Dckt. 39. First, the Trustee notes that there appears to be sufficient equity in the property such that a sale within the first twelve months would pay all claims in full. The Plan proposes payments for sixty months, but the Trustee argues that the excess equity from the sale of property should be used to pay all claims sooner.

Second, the Trustee disagrees with the amount that would be due in the twelfth month from the sale of property. Debtor estimated it between $430,000.00 and $475,000.00, but the Trustee calculates that the amount due on March 25, 2018, would be no less than $519,000.00.

Finally, the Trustee does not oppose the provision to pay Nationstar Mortgage LLC with a lump sum by the twelfth month, provided that a title company is ready for a "check swap" to allow escrow to close sale of the property.

The Trustee requests that the Motion be considered and that plan term and payment amounts be clarified in the order confirming, if necessary.

Review of Plan Terms

As drafted, the plan provides for $450.00 per month in plan payments. From that, $244.95 will be paid for the claim secured by Debtor's vehicle, priority unsecured claims, Trustee fees, and Debtor's counsel. Nothing is paid for "using" Creditor's collateral during the marketing and sale period.

Looking at Schedules I and J, Debtor reports having limited income, when after expenses, has only the $450.00 as net monthly income. The income and expenses have not been placed in dispute.

However, no real estate broker has been employed. The Plan does not include any terms about the employment of the broker, the listing price, a procedure by which the broker provides period updates to the Chapter 13 Trustee of the marketing efforts, offers received, counteroffers, and whether the broker believes that he or she is supported by the Debtor in the broker fulfilling his or her fiduciary duties to the Plan estate.

The court continues the hearing to allow Debtor to: (1) obtain an order to employ the real estate broker and have the property listed for sale, and (2) file a supplemental pleading stating proposed amendments to the plan setting some objective factors for evaluating the Debtor's good faith performance of the marketing and sale of the property (including reporting to the Trustee the ongoing marketing efforts).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm is continued to 3:00 p.m. on June 13, 2017. Debtor shall file and serve a Supplemental Pleading stating proposed amendments for the marketing and sale of the real property to the Plan on or before May 17, 2017. Opposition to Supplemental Pleading shall be filed

and served on or before May 31, 2017, and Replies, if any, filed and served on or before June 6, 2017.

IT IS FURTHER ORDERED that Debtor shall file the ex parte motion to employ the real estate broker for the sale of the 3349 Adam Court El Dorado Hills, California Property on or before May 22, 2017.

32. 17-20681-E-13 PPR-1 | **KEVIN/ELEANOR MOONEY** | **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL ASSOCIATION** **4-13-17 [34]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

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

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on June 13, 2017. Debtor shall file and a Supplemental Pleading stating proposed amendments to the Plan on or before May 17, 2017. Opposition to Supplemental Pleading shall be filed and served on or before May 31, 2017, and Replies, if any, filed and served on or before June 6, 2017.

HSBC Bank USA, National Association as Trustee for Deutsche Alt-A Securities, Inc. Mortgage Loan Trust, Series 2007-1, Mortgage Pass-Through Certificates, Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan is not feasible because it proposes a cure by sale that is too speculative and because it fails to provide for the full value of Creditor's claim. FN.1.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Creditor cites to *In re Gavia* for the proposition that paying all creditors with any equity from the liquidation of a debtor's residence is not a confirmable plan term because "there is no certainty that any piece of real property can be sold in the foreseeable future with any degree of certainty in a specified period of time for a sum great enough to cover notes and deeds of trust upon the property, taxes, insurance and costs." *In re Gavia*, 24 B.R. 216, 218 (Bankr. E.D. Cal. 1982), *aff'd*, 24 B.R. 573 (B.A.P. 9th Cir. 1982). The court said additionally that "curing of a default might be allowed if done within a reasonable time and **while making ongoing payments**." *Id.*

Additionally, Creditor, serviced by Nationstar Mortgag LLC, has filed a proof of claim in this case in which it asserts a secured claim of $455,675.82. Proof of Claim 4. The Plan does not list Creditor, but does list "Nationstar Mortgage LI" holding a claim against Debtor's residence in the amount of $420,900.00. The amount paid on the claim is estimated to be $435,000.00 from the speculative sale of property. Debtor has not proposed a feasible plan that satisfies 11 U.S.C. § 1325(a)(6) because it does not provide the full value of Creditor's secured claim.

This court does not concur with *In re Gavia* and Creditor that a Chapter 13 Plan cannot include reasonable terms for the liquidation of assets for the payment of creditors and a debtor preserving equity in assets. Chapter 13 is not a death sentence forfeiture of equity for consumer debtors who are asset "rich" but "cash flow poor."

That being said, such does not allow a debtor to merely say that creditors will be paid, whenever I decide to sell the property during the next year—no adequate protection payments required from my projected disposable income. Especially for residential real estate, it is not difficult to set forth a good faith, commercially reasonable procedure for the marketing and sale of that property in less than one year, and more likely six months.

Review of Plan Terms

As drafted, the plan provides for $450.00 per month in plan payments. From that, $244.95 will be paid for the claim secured by Debtor's vehicle, priority unsecured claims, Trustee fees, and Debtor's counsel. Nothing is paid for "using" Creditor's collateral during the marketing and sale period.

Looking at Schedules I and J, Debtor reports having limited income, when after expenses, has only the $450.00 as net monthly income. The income and expenses have not been placed in dispute.

However, no real estate broker has been employed. The Plan does not include any terms about the employment of the broker, the listing price, a procedure by which the broker provides period updates to the Chapter 13 Trustee of the marketing efforts, offers received, counteroffers, and whether the broker

believes that he or she is supported by the Debtor in the broker fulfilling his or her fiduciary duties to the Plan estate.

The court continues the hearing to allow Debtor to: (1) obtain an order to employ the real estate broker and have the property listed for sale, and (2) file a supplemental pleading stating proposed amendments to the plan setting some objective factors for evaluating the Debtor's good faith performance of the marketing and sale of the property (including the reporting to the Trustee the ongoing marketing efforts).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a Creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on June 13, 2017. Debtor shall file and serve a Supplemental Pleading stating proposed amendments for the marketing and sale of the real property to the Plan on or before May 17, 2017. Opposition to Supplemental Pleading shall be filed and served on or before May 31, 2017, and Replies, if any, filed and served on or before June 6, 2017.
>
> **IT IS FURTHER ORDERED** that Debtor shall file the ex parte motion to employ the real estate broker for the sale of the 3349 Adam Court El Dorado Hills, California Property on or before May 22, 2017.

33. 17-21385-E-13 APN-1 | **JOANN NORRIS** **Eamonn Foster** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 4-20-17 [25]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 20, 2017. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on June 6, 2017.

Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, Creditor with a secured claim, opposes confirmation of the Plan on the basis that JoAnn Norris ("Debtor") has undervalued Creditor's claim.

What Creditor has presented to the court is not a proper Objection to Confirmation; it is actually opposition to Debtor's Motion to Value that has been set for hearing on June 6, 2017. Creditor presents two objections, which are:

A. "Creditor objects to the $6,900.00 valuation allocated to its secured collateral under Debtor's proposed Plan in that should . . . Creditor be forced to accept the low valuation of its secured claim hereunder, . . . Creditor's security interest will be severely diminished on collateral which already depreciates at a rapid rate during the normal course of its use."

B. "Creditor further objects to the $208.35 monthly adequate protection payments offered it under Debtor's proposed Plan in that the value of . . . Creditor's security will depreciate at a much higher rate than that at which . . . Creditor will receive adequate protection payments under the Plan."

Dckt. 25. Both of those objections relate to Creditor's assertion that Debtor has undervalued the collateral securing Creditor's claim. The court's review of the docket shows that Creditor has not opposed the Motion to Value Collateral. The objections in this matter should be handled with the Motion to Value Secured Claim on June 6, 2017. Creditor has until fourteen days (May 24, 2017) before that hearing to file its opposition and evidence on the issue of valuation.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a Creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on June 6, 2017.

34. 17-21385-E-13 DPC-1 | **JOANN NORRIS, Eamonn Foster** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-19-17 [20]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 19, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on June 6, 2017.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that it relies upon a Motion to Value Secured Claim of Wells Fargo Dealer Services, a hearing for which has been continued to June 6, 2017. *See* Dckt. 24.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services. A continued hearing on that motion has been set for June 6, 2017, and this Objection relates to the outcome of that hearing. Therefore, the hearing on the Objection is continued to 3:00 p.m. on June 6, 2017.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on June 6, 2017.

35. **17-20488-E-13** **PHILLIP/REHEMA PETE** **MOTION TO CONFIRM TERMINATION**
RDW-1 **Pro Se** **OR ABSENCE OF STAY**
4-25-17 [33]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on April 25, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Confirm Absence of the Automatic Stay is granted.

Cratus Homes, LLC, ("Movant") moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case is Phillip Pete, Sr., and Rehema Pete's ("Debtor") third bankruptcy case pending in the last year and that no motion seeking to impose the stay pursuant to 11 U.S.C. § 362(c)(4)(B).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a late Response on May 3, 2017. Dckt. 44. The Trustee states he is not aware of any basis to oppose the Motion. The Trustee's review shows that this is Debtor's fifth Chapter 13 filing since 2012, and he does not see a Motion to Impose the Automatic Stay in this case.

The Trustee is holding a payment to Shellpoint Mortgage Servicing in the amount of $3,860.04 and is uncertain that the amount should be disbursed due to this Motion and a claim not being filed.

DISCUSSION

A review of Debtor's prior bankruptcy cases reveals that two cases were pending in prior year, such that the provisions of 11 U.S.C. § 362(c)(4)(i) applied, and the automatic stay did not go into effect upon the filing of this case. *See* Order, Bankr. E.D. Cal. No. 16-23673, Dckt. 53, November 21, 2016; Order; Bankr. E.D. Cal. No. 16-27534; Dckt. 23, January 22, 2017.

This case was filed on January 26, 2017, and a review of the docket in this case reveals that Debtor has not moved to have the automatic stay provisions of 11 U.S.C. § 362 applied in this case. The provisions of 11 U.S.C. § 364(c)(4)(B) establishing that the automatic stay did not go into effect upon the filing of this case, and Debtor not having moved to impose the automatic stay, the court confirms that the automatic stay is not in effect in this bankruptcy case, No. 17-20488.

Additionally, more than thirty days have elapsed since the filing of this case, which means that Debtor would not be able to move the court to impose the stay pursuant to 11 U.S.C. § 362(c)(4)(B) because that provision requires that such a request be made within the first thirty days of a bankruptcy case.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant's request is irrelevant to this Motion, however. Movant has not requested relief from the automatic stay such that the fourteen-day stay would apply. Instead, Movant has requested that the court confirm that the automatic is not in effect. There is no relief for the court to grant, merely confirmation of the status of the stay in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Absence of the Automatic Stay filed by Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court confirms that the automatic stay provisions of 11 U.S.C. § 362 did not go into effect upon the filing of this bankruptcy case (No. 17-20488) pursuant to 11 U.S.C. § 362(c)(4)(A), and the court confirms that the automatic stay has not been subsequently imposed by the court in this case pursuant to 11 U.S.C. § 362(c)(4)(B).

36.	**17-21493-E-13 DPC-1**	**TEARA MENDEZ-OTLANG AND NEAL OTLANG Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-14-17 [18]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 14, 2017. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on June 6, 2017.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that it relies upon a Motion to Value Secured Claim set for hearing on June 6, 2017.

DEBTOR'S REPLY

Teara Mendez-Otlang and Neal Otlang ("Debtor") filed a Reply on April 24, 2017. Dckt. 22. Debtor requests that the hearing be continued to June 6, 2017, to coincide with the Motion to Value Secured Claim.

CONTINUANCE OF HEARING

The Objection relates directly to a Motion to Value Secured Claim that has been set for hearing on June 6, 2017. Continuing this matter to the same hearing as the Motion is appropriate. Therefore, the hearing on the Objection is continued to 3:00 p.m. on June 6, 2017.

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

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

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

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on June 6, 2017.

37. 16-28495-E-13 ULC-2 | **ANN ADAMS** **Ronald Holland** | **MOTION TO CONFIRM PLAN** **3-24-17 [52]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2017. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 24, 2017. Dckt. 57. The Trustee states that he does not oppose the Motion. He mentions that he cannot tell from the Motion and declaration

why the Amended Plan has been filed and what, if anything, has changed in the Plan. The Trustee notes that Debtor's Amended Plan provides for payment to Greenback Estates HOA in Class 1, while the prior plan had proposed to strip the lien in Class 2. The Trustee believes that Debtor's plan is feasible.

RULING

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Amended Chapter 13 Plan filed on March 17, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 17-20997-E-13 DPC-1 | **NATALIA JEFFS** | **Gerald White** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-29-17 [26]**

Final Ruling: No appearance at the May 9, 2017 hearing is required.

The court having issued an Order Dismissing Trustee's Objection, pursuant to Federal Rule of Civil Procedure 41 and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed, and the matter is removed from the calendar.**

39. 15-25098-E-13 NESTOR ROCES — CONTINUED MOTION TO MODIFY PLAN
PSB-1 Pauldeep Bains — 3-7-17 [109]

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

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

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

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

The Motion to Confirm the Modified Plan, as amended, is granted. Counsel for Debtor shall file a Second Modified Chapter 13 Plan that states the terms of the Plan, as amended, in one final unified document. Upon filing the Second Amended Plan, Counsel for Debtor shall transmit to the Chapter 13 Trustee the order confirming the Second Amended Plan.

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

TRUSTEE'S OPPOSITION

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

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

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

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

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

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

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

Order for Attorneys to Appear at Hearing

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

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

(1) Allow Creditor's claim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APRIL 18, 2017 HEARING

At the April 18, 2017 Hearing, the parties concurred in having the hearing continued, preparing and proposing additional provisions to the Plan for the agreed plan terms, and having Debtor file a Supplemental Pleading Re: Proposed Amendments. Dckt. 130. The court continued the hearing to 3:00 p.m. on May 9, 2017.

DEBTOR'S SUPPLEMENTAL PLEADINGS RE: PROPOSED AMENDMENTS

Debtor filed a Supplemental Pleading on April 25, 2017. Dckt. 131. Debtor proposes several additional provisions to be effective to the claim of Old Republic Insurance Company, which are:

A. Old Republic Insurance Company's claim shall be fully allowed and treated in the Plan in Class 1 pursuant to 11 U.S.C. Section 1322 (b)(5).

B. The prepetition arrears of $34,450.80 shall accrue interest at 0% while the case is pending, with a required minimum $100 per month dividend and is not expected to be paid in full through the Plan. The contractual interest allowed by the underlying loan documents on the unpaid amount of prepetition arrears owing after the conclusion of the case shall resume upon the closing of the case.

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

D. Ongoing amounts of $362.64 will resume as of March 1, 2017 to be paid through the Plan.

E. In the event of a default of any provisions as set forth hereinabove, Old Republic Insurance Company may, after a ten-day notice of default mailed to Debtor via regular first class mail at 8 Woodridge Place, Vallejo, CA 94591, and faxed *and* mailed to Debtor's counsel, file and serve a Declaration Re Non-Compliance and an Order Terminating the Automatic Stay. Upon the filing of such Order, the Automatic Stay with respect to subject Property shall terminate for all purposes to allow Old Republic Insurance Company to proceed with its foreclosure actions, without further Order of the Court.

F. In the event that Old Republic Insurance Company is granted relief from the automatic stay, the Parties hereby stipulate that the 14-day stay provided by Bankruptcy Rule 4001(a)(3) is waived.

G. At the request of the Old Republic Insurance Company, the Debtor shall execute such documents and instruments as are reasonably necessary to reflect the Debtor as the borrowers of the Secured Claim, and to modify the terms of the obligation to conform to the provisions of this this supplement.

H. The terms of this supplement may not be modified, altered, or changed by the Debtor's Chapter 13 Plan, any confirmation order thereon, any subsequently filed Amended Chapter 13 Plan and confirmation order thereon without the express written consent of the Old Republic Insurance Company.

I. In the event the Debtor's case is dismissed or converted to any other chapter under Title 11 of the United States Bankruptcy Code, Old Republic Insurance Company shall retain its lien in the full amount due under the Note, all terms on Old Republic Insurance Company's claim shall revert to the original terms of the Note and Deed of Trust and the automatic stay shall be terminated without further notice, order, or proceeding of the court.

J. The acceptance by Old Republic Insurance Company of a late or partial payment shall not act as a waiver of Old Republic Insurance Company's right to proceed by motion hereunder.

Dckt. 131.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on May 2, 2017. Dckt. 136. The Trustee states that his opposition stands, unless the court believes that Debtor can reasonably increase plan payments by $175.00 and correct the total paid in the order confirming.

The Trustee states that his feasibility objection has been resolved now that the Objection to the Claim of Midland Credit Management was sustained, with the claim being disallowed entirely. Debtor also resolved the Trustee's opposition to being able to pay ongoing mortgage payments with the additional provisions in the Supplemental Pleadings. The monthly dividend being too low has also been resolved by the additional provisions and by the disallowance of Midland Credit Management's claim.

The Trustee states that the total paid in listed in the additional provisions is incorrect. The amount listed is $18,550.00 as of February 2017, but the number is actually $19,875.00 that has been paid and disbursed as of February 2017.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee notes that Debtor has not submitted supplemental Schedules I & J with the Motion to support the increase of $175.00 in plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

DEBTOR'S RESPONSE

Debtor filed a late Response on May 3, 2017. Dckt. 138. Debtor notes that the Internal Revenue Service filed an updated Proof of Claim including the updated balance owed by Debtor. Separately, Debtor filed a Declaration explaining that he has "reduced several . . . expenses a small amount to allow . . . the additional disposable income on a monthly basis." Dckt. 139.

RULING

The Modified Plan, as amended to state the additional terms set forth in Paragraphs 2, 3, 4, 5, and 10, with the provisions of Paragraph 4 modified to provide that in the event of a default Creditor may file an ex parte motion to amend the order denying its motion for relief (DCN: PPR-1), the court not issuing orders based on declarations being filed (FED. R. BANKR. P. 9013). Additionally, the Plan is amended as stated by Debtor in his declaration (Dckt. 139) to increase the monthly plan payment to $1,500.00 beginning with March 2017 and continuing thereafter for the remaining term of the Plan.

Debtor shall filed a Second Modified Plan which states all of the amendments in one final unified document rather than being incorporated in the order confirming the plan. Upon filing the Second Modified Plan, Debtor shall transmit to the Trustee the order confirming the plan. If the Trustee concurs that the Second Modified Plan states the terms as now approved by this court, the Trustee shall lodge the proposed

order with the court. If the Trustee does not concur that the Second Modified Plan accurately states the terms as ordered by this court, after meeting and conferring on the issue with counsel for Debtor, the Trustee shall issue a Notice of Further Hearing on Motion to Confirm and file a Supplemental Opposition stating the points of disagreement.

The proposed modified Plan, as amended above, does comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is granted, and the Modified Chapter 13 Plan, as amended to state the additional terms set forth in Paragraphs 2, 3, 4, 5, and 10, with the provisions of Paragraph 4 modified to provide that in the event of a default Creditor may file an ex parte motion to amend the order denying its motion for relief (DCN: PPR-1). Additionally, the Plan is amended as stated by Debtor in his declaration (Dckt. 139) to increase the monthly plan payment to $1,500.00 beginning with March 2017 and continuing thereafter for the remaining term of the Plan.
>
> Debtor shall filed a Second Modified Plan that states all of the amendments in one final unified document rather than being incorporated in the order confirming the plan. Upon filing the Second Modified Plan, Debtor shall transmit to the Trustee the order confirming the plan.
>
> If the Trustee concurs that the Second Modified Plan states the terms as now approved by this court, the Trustee shall lodge the proposed order with the court. If the Trustee does not concur that the Second Modified Plan accurately states the terms as ordered by this court, after meeting and conferring on the issue with counsel for Debtor, the Trustee shall issue a Notice of Further Hearing on Motion to Confirm (setting the hearing on the court's regular Chapter 13 law and motion calendar pursuant to Local Bankruptcy Rule 9014-1) and file a Supplemental Opposition stating the points of disagreement.

40. **15-25098-E-13** **NESTOR ROCES** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION**
PPR-1 **Pauldeep Bains**
1-13-17 [91]

OLD REPUBLIC INSURANCE COMPANY VS.

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

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

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

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

The Motion for Relief from the Automatic Stay is denied.

Nestor Roces ("Debtor") commenced this bankruptcy case on June 25, 2015. Old Republic Insurance Company ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8 Woodridge Place, Vallejo, California ("Property"). Movant has provided the Declaration of Martin Podorsky to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Podorsky Declaration states that there are 18 post-petition defaults in the payments on the obligation secured by the Property, with a total of $6,527.52 in post-petition payments past due.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on February 13, 2017. Dckt. 102. The Trustee asserts that the Debtor is current under confirmed plan. The Trustee also states that the Movant's secured claim of $110,977.38 is not provided for in the Debtor's plan confirmed on January 24, 2016, which

Movant filed on April 15, 2016. The Notice of Filed Claims entered on August 22, 2016 listed the creditor as secured, but not provided for by the plan. The Trustee has not made any disbursements to the Movant. The Trustee alleges that the Movant appears secured by real property that is Debtor's residence.

DEBTOR'S RESPONSE

Debtor filed a Response on February 14, 2017. Dckt. 105. Debtor will file a Modified Plan prior to the scheduled hearing on Movant's Motion for Relief which will account for Movant's claim. Debtor also promises to be current on plan payments on any Modified Plan that is filed. Debtor requests the Court continue Movant's Motion for Relief to April 18, 2017, which is the projected hearing date for confirmation of the Modified Plan Debtor is to file. Unfortunately for Debtor, a promise of action is not evidence of such.

FEBRUARY 28, 2017 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on April 18, 2017. Dckt. 108.

APRIL 18, 2017 CONTINUED HEARING

No further pleadings had been filed with respect to this Motion for Relief (DCN: PPR-1).

The court noted that a number of other pleadings had been filed by Debtor since the February 28, 2017 Hearing. On March 7, 2017, Debtor filed an Amended Chapter 13 Plan (Dckt. 111), Motion to Confirm Modified Plan and supporting pleadings (Dckts. 109, 112, 114, 114), and Objection to Claim of Midland Credit Management (Dckt. 116).

On February 27, 2017, the Chapter 13 Trustee filed an Opposition to the Motion to Confirm Modified Plan. Dckt. 121. The Trustee's Opposition is first based on the amount of the monthly plan payment being insufficient to fund the Plan. The Trustee also objects in that the Plan improperly attempts to put a secured claim, for which the payments are in default, as a Class 4 Claim, not providing for the claim in the proposed Modified Plan.

The Trustee's Opposition continues, stating that the dividend for the Class 1 arrearage is insufficient, the Debtor has not provided any current financial information (this case now being two years old), and Debtor provides for a Class 5 post-petition tax obligation for which no proof of claim has been filed.

Motion to Approve Stipulation

On April 4, 2017, Creditor filed a Motion seeking an order approving a Stipulation with the Debtor. Dckt. 124. The Docket Control Number used for the Motion to Approve Stipulation is the same as Debtor's Motion to Confirm Modified plan, PSB-001. The court noted that Creditor's counsel and Debtor's counsel had sought such an order as required by the Federal Rules of Bankruptcy Procedure, by motion (or application when permitted by the Bankruptcy Rules). FED. R. BANKR. P. 9013.

A review of the Motion to Approve Stipulation discloses the following relief sought to be obtained through the Motion and order thereon:

A. Creditor's Claim shall be "fully allowed."

B. The fully allowed claim will be provided for as a Class 1 Claim.

C. The pre-petition arrearage of $24,450.80 shall accrue interest at 0% while the bankruptcy case is pending, the Plan shall provide for a minimum of $100.00 a month payment on the arrearage, and Creditor and Debtor acknowledge that the arrearage shall not be completely cured through the Plan.

D. The unpaid portion of the arrearage "will not be subject to any discharge order" and "will remain fully collectible after the discharge of Debtor and the conclusion of the case."

E. Interest shall commence accruing (at an unstated rate) upon the closing of the bankruptcy case.

F. The post-petition arrearage in the amount of $7,252.80 shall be paid through the Plan, with monthly minimum payments of $157.67.

G. Commencing March 1, 2017, "ongoing amounts" of $362.64 will resume and continue to be paid by the Trustee.

H. Debtor is to confirm a plan with the above terms within sixty days of the date of the Stipulation (April 2, 2017, the last signatory to the Stipulation; Dckt. 125).

I. Provisions for relief from the stay in the event of a default.

J. The Chapter 13 Plan may not alter or modify the terms of the Stipulation.

K. The Stipulation must be approved by the Bankruptcy Court.

L. If Debtor sells the property securing Creditor's Claim prior to confirming the Plan, Creditor shall be paid in full on its claim.

A review of the Certificate of Service discloses that the Motion for Order Approving Stipulation was served only on Debtor, Debtor's Counsel, and the Chapter 13 Trustee. Nobody else had been served.

The court appreciated the significant efforts of Debtor, Creditor, Debtor's Counsel, and Creditor's Counsel in achieving agreed plan terms to allow Debtor to continue in the prosecution of this case and maintain ownership of the property securing Creditor's claim. That being said, it appeared that the Stipulation was not a free floating compromise for which approval must be sought by a notice motion (on all parties in interest pursuant to FED. R. BANKR. P. 9019), but was "merely" a stipulation for the terms that

Debtor must propose for a modified plan to preclude Creditor opposing confirmation of such a modified plan.

The court cannot, and will not purport to, pre-confirm portions of a Chapter 13 plan through "stipulations" between a debtor and individual creditors. While not in this situation with these parties—having an order that pre-confirms the terms on deals which exist based on notice only between the debtor, creditor, and Chapter 13 Trustee, and cuts out all of the other parties in interest from the confirmation process—much mischief could be afoot.

The stipulation also appears to include a term which would be a waiver of the discharge of the arrearage portion of the claim. However, completion of the plan would result in a discharge for the balance of the secured claim. It was not clear what the parties intended with such an "unpaid arrearage will not be discharged" term as stated in the Motion.

In substance, substantially all of the terms in the "stipulation" are really plan terms which the court can "approve" and make binding only through confirmation of the plan.

The hearing on Debtor's Motion to Confirm the Modified Plan to which the terms stated in the Stipulation relate was conducted on the court's 3:00 p.m. April 18, 2017 Calendar. At that hearing, the proposed Modified Chapter 13 Plan was continued to 3:00 p.m. on May 9, 2017, to allow the parties the opportunity to prepare proposed additional provisions to the Chapter 13 Plan for the agreed treatment of Creditor's claim.

The court continued the hearing on the Motion to 3:00 p.m. on May 9, 2017, to be heard in conjunction with Debtor's Motion to Confirm Plan. Dckt. 129.

MAY 9, 2017 CONTINUED HEARING

No further pleadings have been filed for this Motion. The court granted the Motion to Confirm Plan.

The Motion for Relief from the Automatic Stay is denied, Creditor and Debtor having subsequently stipulated to terms for treatment of this claim in the Plan that the court has now confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Old Republic Insurance Company ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief form the Automatic Stay is denied.

41. **17-22975-E-13 SS-2** | **TERRY ARNOLD** **Scott Shumaker** | **MOTION TO IMPOSE AUTOMATIC STAY O.S.T.** **5-1-17 [10]**

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 1, 2017. By the court's calculation, 8 days' notice was provided.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Impose the Automatic Stay is granted on an interim basis, with a final hearing to be conducted at 3:00 p.m. on June 6, 2017. Opposition shall be filed and served on or before May 23, 2017, and Replies, if any, filed and served on or before May 31, 2017.

Terry Arnold ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) imposed in this case. This is the Debtor's fourth bankruptcy petition pending in the past year with the prior three cases having been dismissed. The Debtor's prior bankruptcy cases (Nos. 16-20587, 16-25349, and 16-27411) were dismissed on August 4, 2016; October 19, 2016; and March 30, 2017, respectively. *See* Order, Bankr. E.D. Cal. No. 16-20587, Dckt. 60, August 4, 2016; Order, Bankr. E.D. Cal. No. 16-25349, Dckt. 32, October 19, 2016; Order, Bankr. E.D. Cal. No. 16-27411, Dckt. 30, March 30, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 2, 2017. Dckt. 18. The Trustee does not oppose the Motion and has received $9,434.00 from Debtor.

DISCUSSION

Here, Debtor states that the instant case was filed in good faith and explains that the immediately previous case was dismissed because he could not make all plan payments after becoming sick, after the Franchise Tax Board levied funds, and after he paid approximately $19,000.00 in gambling debt. Dckt. 12. Debtor states that his gambling debts have been paid fully now and that he paid $4,717.00 to the Trustee on April 3, 2017. He also states that $4,717.00 has been deducted from his last paycheck and remitted to the Trustee.

Debtor pleads that time is of the essence because a Trustee's sale is scheduled for May 24, 2017.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if two or more of Debtor's cases were both pending within the year preceding filing of the instant case. *Id.* § 362(c)(4)(D)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(4)(D).

Debtor's prior cases were dismissed after Debtor moved to dismiss the case (No. 16-20587), after Debtor failed to make installment payments (No. 16-25349) and after Debtor failed to commence plan payments (No. 16-27411).

The Motion states that Debtor's income is adequate to fund a plan, and he should not have any problem funding a plan now that his gambling debts have been satisfied. Additionally, the Motion alleges that $9,500.00 has been paid already.

In the prior case, Debtor attempted to continue in prosecution of the case, explaining the reasons for the default, the levy on his bank account for a debt of his ex-wife (for which Debtor does not have liability), and the other factors causing the defaults. The court in the prior case concluded that rather than vacating the order dismissing that case, and there still being an arrearage to address, the filing of a new case and Debtor seeking imposition of the automatic stay appeared to be a more financially feasible alternative. 15-27411; Civil Minutes, Dckt. 40. This is a high income Debtor who should be able to prosecute this case and save a very substantial equity in his home. Well aware of his shortcomings, the court stated:

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

> recovering the $8,100.00 improperly levied on by the FTB (which levy could well be in violation of the automatic stay)."

Id. at 7.

Debtor and his attorney have provide that information. Debtor's Declaration explains that the wage order is in place to have the monthly plan payment made directly to the Chapter 13 Trustee. Dckt. 12. Debtor testifies what he is doing to address his health issues. Debtor also confirms that the Chapter 13 Trustee has also retained several payments made in the prior case, rather than those monies being disbursed back to Debtor.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

The Motion is granted, and the automatic stay is imposed on an interim basis for all purposes and parties, unless terminated by operation of law or further order of this court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is imposed on an interim basis through and including noon on June 16, 2017, pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.
>
> **IT IS FURTHER ORDERED** that the final hearing on this Motion will be conducted at 3:00 p.m. on June 6, 2017. Opposition to the Motion shall be filed and served on or before May 23, 2017, and Replies, if any, filed and served on or before May 31, 2017.