UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice
The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 15.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–14, attempting to first address the items in which short argument is anticipated.

June 5, 2018, at 3:00 p.m.

1.	**18-21900-E-13** **APN-1**	**CHRISTINA/RICHARD DELGADO** **Anh Nguyen**	**OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION** **4-30-18 [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 Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 30, 2018. By the court's calculation, 36 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 Chapter 13 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 Objection, 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 Objection. At the hearing ----------.

The Objection to Confirmation of Plan is overruled.

Toyota Motor Credit Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The $11,903.00 valuation of the secured collateral under Christina Delgado and Richard Delgado's ("Debtor") proposed Plan is substantially below the present value of the secured claim.

B. Debtor's proposed Plan monthly protection payments of $254.45 are inadequate to offset the depreciation in value of Creditor's secured collateral.

A review of Debtor's Plan shows that Debtor relies on a valuation of the secured claim that is $2,087.27 less than the amount claimed by Creditor of $13,990.27. No Motion to Value the Secured Claim pursuant to 11 U.S.C. § 506(a) has been filed by the Debtor.

A review of the Claims Register shows Creditor filed a Proof of Claim in the amount of $13,990.27 with pre-petition arrears of $524.54 on April 13, 2018. Proof of Claim No. 2. The Proof of Claim is prima facie evidence of the obligation owed by Debtor. FED. R. BANKR. P. 3001(d). Thus, irrespective of the amount stated in the Plan, the Proof of Claim controls. The issue becomes whether the Plan provides sufficient funding for the claim.

Creditor asserts that the monthly payments on its claim should be no less than $272.10 according to its proof of claim. The Plan proposes monthly payments of $254.45. The difference is $17.65 per month, which over the sixty months of the Plan totals $1,059.00. The court calculates that a reduction to the eight percent dividend proposed for general unsecured claims could generate sufficient funds to pay Creditor's claim.

Creditor's attorney further argues that the Plan cannot be confirmed because the terms do not adequately protect Creditor's interest in a 2014 Toyota Camry, stating:

> "6. Secured Creditor further objects to the $254.45 monthly adequate protection payments offered it under Debtor's proposed Plan in that the value of Secured Creditor's security will depreciate at a much higher rate than that at which Secured Creditor will receive adequate protection payments under the Plan."

Objection ¶ 6, Dckt. 17.

No evidence is presented by Creditor that its vehicle, which is now almost five model years old, is so undesirable in the market place that it continues to substantially depreciate when it is four, five, six, and more model years old. While the court notes, as does the public in general, that in the first two to three years there is a significant depreciation in the value of a car purchased new from the sales price obtained by the car dealer, there is no information that this continues into years five, six, and thereafter. Creditor's contention of there being a substantial depreciation may be based on undisclosed industry information that will soon be cause for vehicles manufactured by this Creditor to rapidly lose value.

There being no evidence presented, the conclusion by the court is that no such rapid depreciation as alleged in the Objection (subject to the Federal Rule of Bankruptcy Procedure 9011 certifications) is actually occurring. Rather, this has been a baseless contention in the Objection. If such evidence existed, Creditor would have provided it with its Objection.

The court notes that an Amended Plan was filed on May 29, 2018, but it has not been set for a confirmation hearing. Dckt. 28. That plan proposes to increase the monthly dividend on Creditor's claim to $259.43. The court anticipates that the proposed increase will not elicit a similar objection from Creditor, unless supported by evidence.

Although the grounds for objecting are overruled, the Plan cannot be confirmed due to: (1) additional outstanding objections and (2) Debtor having filed a new plan, effectively withdrawing the present Plan from consideration.

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 Toyota Motor Credit Corporation ("Creditor") holding 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 is overruled.

2. 18-21900-E-13 DPC-1 — CHRISTINA/RICHARD DELGADO — Anh Nguyen — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 5-8-18 [22]

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 Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on May 8, 2018. 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 Chapter 13 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 Objection, 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 Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

David Cusick ("the Chapter 13 Trustee") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Christina Delgado and Richard Delgado ("Debtor") failed to file Motions to Value relied upon by the Plan.

B. Debtor has listed amounts for involuntary deductions and monthly disposable income that do not match the amounts in the Chapter 13 Trustee's review.

C. Debtor has discrepancies in the calculation of net income indicating that the disposable income provided in Schedule I is overstated.

The Chapter 13 Trustee's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Prestige Financial Services and Toyota Motor Credit. Debtor has failed to file a Motion to Value the Secured Claims of Prestige Financial Services and Toyota Motor Credit, however. Without the court valuing the claims, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Chapter 13 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 plan payments of $825.00 per month for twelve months and $969.00 per month for forty-eight months, with an eight percent dividend to unsecured claims that totals approximately $4,349.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $1,043.00 per month according to the Chapter 13 Trustee's calculation. Thus, the court may not approve the Plan.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Co-Debtor Christina Delgado's gross income on Schedule I does not include overtime reflected on her paystubs that were provided to the Chapter 13 Trustee. Co-Debtor Richard Delgado's paystubs reflect deductions from gross income averaging $1,025.10 per month, which are not accounted for on Schedule I. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("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.

3. 18-21900-E-13 PPR-1 | **CHRISTINA/RICHARD DELGADO** | **OBJECTION TO CONFIRMATION OF PLAN BY PRESTIGE FINANCIAL SERVICES, LLC**
Anh Nguyen | **4-18-18 [13]**

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 Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 18, 2018. By the court's calculation, 48 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 Chapter 13 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 Objection, 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 Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

Prestige Financial Services LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan states that Creditor does not have a purchase money security interest in Christina Delgado and Richard Delgado's ("Debtor") 2015 Toyota Camry ("Vehicle").

B. The Plan proposes to reduce the value of Vehicle, but 11 U.S.C.§ 506 does not allow valuation of vehicles purchased within 910 days of the petition date.

Creditor's objections are well-taken. The collateral for the debt consists of a motor vehicle acquired for the personal use of Debtor. Debtor acquired the Vehicle for "personal, family or household"

use as evidenced by the Contract wherein Debtor stated in the section titled "Primary Use for Which Purchased" that the Vehicle was for "personal, family or household" use. *See* Exhibit A, Dckt. 15. The lien on the Vehicle's title secures a purchase money loan incurred on November 16, 2017, which is fewer than 910 days prior to filing of the petition. *See In re Sparks*, 346 B.R. 767, 768 (Bankr. S.D. Ohio 2006).

Here, the debt meets the parameters of the hanging paragraph in Section 1325(a). Creditor has a purchase money security interest in the Vehicle, as evidenced by the signed purchase agreement. The provisions of 11 U.S.C. § 1325(a) prohibit valuation of vehicles purchased within 910 days of the petition date when the creditor holds a purchase money security interest. Because Debtor's Vehicle was purchased within 910 days of the petition date, the objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5).

The Plan does not comply with 11 U.S.C. §§ 1325(a)(1) and 1325(a)(6). 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 Prestige Financial Services LLC ("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 Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

4. **18-20929-E-13 TAG-2** | **SHARON SUMPTER** **Aubrey Jacobsen** | **MOTION TO EMPLOY JCL REALTY, INC. AS REALTOR(S) 5-21-18 [40]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 21, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 Employ is xxxxxxxxxxxxxxx.

Sharon Sumpter ("Debtor") seeks to employ Ted Greene of JCL Realty, Inc. ("Realtor") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Realtor to sell her real property commonly known as 230 Phelan Way, Vallejo, California ("Property").

Debtor argues that Realtor's appointment and retention is necessary in the administration of this estate because the proposed Chapter 13 Plan provides for a short-sale of the Property. Realtor will handle the listing of the Property on behalf of Debtor and ensure that sales are conducted in a manner that is compliant with applicable bankruptcy law. Realtor desires to assist Debtor in the sale for a commission of 6% of the purchase price of the real property.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the

trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 25, 2018. Dckt. 45. He notes that Debtor's attorney of record is Aubrey Jacobsen with the law firm of "Law Offices of Ted A. Greene, Inc." He also notes that the declaration of Ted Greene in support of the Motion discloses that Ted Greene owns that law firm. The Chapter 13 Trustee is not certain if a conflict of interest may exist as to the employment under 11 U.S.C. § 327.

DISCUSSION

Ted Greene, a realtor and real estate broker of JCL Realty, Inc, testifies that he has advised Debtor of his willingness to serve as realtor in selling her real property. Ted Greene also testifies that he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Though Mr. Greene has another 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.

While stating that Debtor intends to do a short sale, no explanation is provided as to the benefit to the bankruptcy estate, Chapter 13 Plan, Debtor, or creditors from such a short sale. When Chapter 7 Trustees present short sales, they show the court that not only will the they and the professionals (such as counsel and the realtor) be paid for liquidating the creditor's collateral, but also that the bankruptcy estate/creditors with unsecured claims will receive a benefit.

Debtor's proposed Chapter 13 Plan (Dckt. 34) does not appear to provide for a short sale. For secured claims, ¶ 7.03 of the proposed Chapter 13 Plan states:

> 7.03 Sec. 3.07 Sec. 3.08 Debtor is in the process of selling her real property located at 230 Phelan Avenue, Vacaville, CA 94590. DiTech holds the First Deed of Trust on the property, and Vallejo Sanitation and Flood Control has a utility lien against the real property. The plan provides for ongoing monthly adequate protection payments to DiTech in the amount of the regular ongoing monthly mortgage payment. No ongoing payments are made towards the mortgage arrears through the Chapter 13 Plan, as those arrears will be wholly

> cured upon the sale of the real property. The utility lien held by Vallejo Sanitation and Flood Control will also be wholly cured upon sale of the real property. Debtor will complete a sale of the real property within six (6) months of confirmation of this proposed plan. If the sale is not completed within six (6) months of plan confirmation, the claims of DiTech and Vallejo Sanitation and Flood Control shall shift to Class 3 claims and the automatic stay will be lifted.

A word search of the Plan reveals that there is no reference to a "short sale."

Interestingly, the Plan provides for payment of all of the general unsecured claims, with the exception of Debtor's daughter's student loan, in full. This does not appear to be a short sale case, but a 100% paid claim case.

At the hearing, Counsel for Debtor explained **xxxxxxxxxxxxxxxxxxxxxxxxx**

~~Taking into account all of the relevant factors in connection with the employment and compensation of Realtor, considering the declaration demonstrating that Realtor does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Ted Greene of JCL Realty, Inc. as Realtor for the Chapter 13 Estate to market and sell the Property on a 6% commission of the purchase price. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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 Sharon Sumpter ("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 Employ is granted, and Debtor is authorized to employ Ted Greene of JCL Realty, Inc., to market and sell the real property commonly known as 230 Phelan Way, Vallejo, California, in exchange for a commission of 6% of the purchase price.~~
>
> ~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

~~**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by Realtor in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.~~
~~Based on the evidence presented~~

5. **18-22531-E-13** **JOSEFINA MAKANA** **MOTION TO VALUE COLLATERAL OF**
MRL-1 **Mikalah Liviakis** **ONEMAIN FINANCIAL GROUP, LLC**
4-27-18 [8]

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, Creditor, and Office of the United States Trustee on April 27, 2018. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and 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 Collateral and Secured Claim of Onemain Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,000.00.

The Motion filed by Josefina Makana ("Debtor") to value the secured claim of Onemain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Volkswagen Jetta ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,000.00 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).

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on May 17, 2018. Dckt. 18. The Chapter 13 Trustee notes that Debtor's Plan includes Creditor's claim Class 2B, and Debtor lists the vehicle as a Non-Purchase Money Security Interest.

CREDITOR'S PROOF OF CLAIM

Creditor filed a Proof of Claim on May 22, 2018. Claim 2. Creditor states that the total claim is $9,153.56, including interest. Creditor also states that the value of the property and the amount of the claim that is secured is $5,000.00. Creditor also states the amount of the claim that is unsecured as $4,153.56.

DISCUSSION

Based on the foregoing, Creditor's secured claim is determined to be in the amount of $5,000.00. *See* 11 U.S.C. § 506(a). The remaining $4,153.56 is determined to be a general unsecured claim. 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 Collateral and Secured Claim filed by Josefina Makana ("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 Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2008 Volkswagen Jetta ("Vehicle") is determined to be a secured claim in the amount of $5,000.00, 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 $5,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

6. **18-21644-E-13** **ANGELO/LISA OLIVA** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Anh Nguyen** **PLAN BY DAVID P. CUSICK**
5-9-18 [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 Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 9, 2018. 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 Chapter 13 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 Objection, 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 Objection. 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. Angelo Oliva and Lisa Oliva's ("Debtor") Plan exceeds sixty months;

B. The Plan fails to provide for a secured claim;

C. The Plan fails to provide for non-exempt funds;

D. Debtor failed to provide business documents;

E. A claim appears to be described incorrectly in Class 4;

F. Debtor has failed to provide the Class 1 Checklist and Authorization form; and

G. Debtor failed to list two prior Chapter 13 cases.

The Chapter 13 Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in sixty-nine months due to the Plan and Schedule E/F listing different amounts in claims and due to a secured claim of $75,236.93 for the Internal Revenue Service ("IRS") not being provided for by the Plan. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Chapter 13 Trustee asserts that the IRS's claim has not been provided for by the Plan. 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 Chapter 13 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 rehabilitation 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 IRS'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 Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor listed a claim on Schedule B in the amount of $80,000.00 for unpaid wages and wrongful termination, but on Schedule C, Debtor exempts only $3,975.00, leaving $76,025.00 as a non-exempt asset. That would fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are not entitled to $$76,025.00 in non-exempt assets.

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements,
D. Six months of bank account statements, and
E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Chapter 13 Trustee argues that Debtor has listed a claim in Class 4 incorrectly. Chrysler Capital ("Creditor") is listed as a "Partial interest" with Debtor's daughter making all of the payments on the securing vehicle. Creditor filed Proof of Claim No. 2-1 indicating that co-debtor Angelo Oliva bought the vehicle, which further indicates that his interest—for purposes of this bankruptcy case—is more than partial. The Chapter 13 Trustee argues that he has not been provided with any evidence that Debtor's daughter has been or will continue to make payments on Creditor's claim. Without Debtor providing evidence, the court is unable to determine that Debtor can comply with the Plan. 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee argues that Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms. Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms to the Chapter 13 Trustee. Debtor has not provided these forms. Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Chapter 13 Trustee reports that Debtor failed to disclose two prior bankruptcy cases (Case No. 10-28610, filed on April 3, 2010, and Case No. 10-28612, filed on April 3, 2010) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor reported three cases (Case Nos. 13-23391, 13-32875, and 15-24310), but they did not report the two earlier cases.

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 David Cusick ("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.

7. 18-21749-E-13 DPC-1 | **CHRISANDRA FLORES** **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-2-18 [14]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 2, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. 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. Chrisandra Flores's ("Debtor") Plan is not her best effort because there appears to be additional disposable income, and

B. The Plan is not filed in good faith because it includes unnecessary expenses.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 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 Chapter 13 Trustee argues that Debtor is above median income but has not proposed using net excess income of $459.59 to pay a larger dividend to general unsecured claims. Additionally, the Chapter 13 Trustee recalculated deductions and disposable income listed on Official Form 122C-2, and he calculates that disposable income should be $1,010.26 per month. As another ground, the Chapter 13 Trustee notes that Debtor has not reported tax refunds that she may receive during the plan term, which could be used for plan payments. For 2017 alone, Debtor's tax return shows refunds of $1,823.00 from the Internal Revenue Service and $2,152.00 from the Franchise Tax Board. Debtor has not proposed to fund the Plan with all disposable income, and thus, the court cannot confirm the Plan.

The Chapter 13 Trustee argues that the Plan has not been filed in good faith, in large part because Schedule J includes $700.00 per month in college and living expenses for Debtor's son. The Chapter 13 Trustee argues that such an expense may not be reasonable and necessary when the funds could be used for the Plan because Debtor is above median income. Absent explanation from Debtor as to how the proposed expense is necessary, the court does not believe that Debtor's proposed use of funds is in good faith. That is reason to deny confirmation. *See* 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 David Cusick ("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.

8. **18-20779-E-13** **DAMON TURNER** **MOTION TO CONFIRM PLAN**
SDH-2 **Scott Hughes** **4-19-18 [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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2018. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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.

Damon Turner ("Debtor") seeks confirmation of the Amended Plan to resolve the objections of the first Plan filed by creditor Bank of America, N.A. Debtor is also increasing the plan payments and amending Schedules I and J to show that the new Plan is fair and reasonable. Dckt. 32 (Declaration). The First Amended Plan reflects a plan payment of $3,640.00. Dckt. 33. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 9, 2018. Dckt. 48. The Chapter 13 Trustee asserts that Debtor is $3,615.55 delinquent in plan payments, which represents one month of the $3,640.00 plan payment. Before the hearing, another plan payment of $3,640.00 will be due, bringing the total due to $7,255.55. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

DEBTOR'S RESPONSE

Debtor filed a Response on May 29, 2018. Dckt. 54. Debtor states that he was confused about when the first payment was due and has been catching up. Debtor states that he expects to cure delinquency before the hearing.

RULING

Unfortunately for Debtor a promise to cure the delinquency is not evidence that the Plan complies with the Code or that Debtor can comply with the Plan. In fact, delinquency indicates the opposite. 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 Damon Turner ("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.

9. **18-21680-E-13** **RICKEY/CHRISELLE FONG** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Peter Macaluso** **PLAN BY DAVID P. CUSICK**
5-3-18 [13]

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 Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 3, 2018. By the court's calculation, 33 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 Chapter 13 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 Objection, 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 Objection. 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. Rickey Fong and Chriselle Fong ("Debtor") have not proposed all of their disposable income;

B. The Plan is not proposed in good faith;

C. The Plan is not feasible; and

D. The Plan contains a nonstandard provision.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 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 Chapter 13 Trustee notes that Form 122C-2 shows disposable income of ($1,285.21). He recalculated based upon objections he has and upon conflicts within documents and found that disposable income should be listed as $2,434.89 per month. Without more explanation, it appears that Debtor has not proposed all disposable income into the Plan.

The Chapter 13 Trustee argues that the Plan was not proposed in good faith under 11 U.S.C. § 1325(a)(3). First, Debtor acquired two loans drawn against retirement from co-debtor Chriselle Fong's employer that had a combined balance of $3,200.71. The Chapter 13 Trustee calculates that the loans will be repaid within month five of the Plan without increasing plan payments accordingly. Additionally, at the Meeting of Creditors, Debtor admitted that a new retirement loan had been acquired, and it has a current balance of $27,466.82, schedule to mature on January 22, 2022, also during the plan term without adjusting plan payments.

Second against good faith, Debtor admitted that health insurance deductions on Schedule J are actually automatic deductions from payroll, indicating that Debtor has additional income of $500.00 to contribute to the Plan. Third, Debtor's transportation expenses have been listed as $1,613.00 without justification for being so high. Fourth, Debtor's listed household expenses exceed what is allowed in the National Allowable Living Expenses. Fifth, Debtor has not explained why it is reasonable to spend $1,000.00 per month for a child's living expenses while in college.

The Chapter 13 Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). On the face of the pleadings, Debtor proposes monthly plan payments of $425.00 against disposable income of $380.00, an impossible proposal for a valid plan. Additionally, Debtor admitted at the Meeting of Creditors that co-debtor Chriselle Fong has been using funds to gamble since this case was filed. The Chapter 13 Trustee's review of Debtor's bank statements shows an average of $28,534.00 being spent per month at casinos during the six months before this case. Tax returns from 2016 and 2017 show gambling winnings that have not been reported as disposable income in this case. Finally, there may be as many as nineteen additional debts incurred within six months of the filing date that have not been reported on Schedule E/F. Thus, the Plan may not be confirmed.

The Chapter 13 Trustee also notes that Debtor has proposed a nonstandard plan provision by listing in Section 3.14 a dividend to general unsecured claims of "14 (no less than $7,900) %."). The Plan should not have included the additional language about what dollar amount is anticipated.

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 David Cusick ("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.

10. 18-21993-E-13 DPC-1 | **MICHAEL HATCHER** **James Keenan** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-9-18 [12]**

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 Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 9, 2018. 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 Chapter 13 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 Objection, 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 Objection. 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 Michael Hatcher ("Debtor") failed to appear and be examined at the First Meeting of Creditors held on May 3, 2018.

The Continued Meeting of Creditors was held on May 24, 2018, and the Chapter 13 Trustee's Report indicates Debtor failed to appear. Dckt. 17. The Meeting has been continued to June 21, 2018.

The Chapter 13 Trustee's objection is well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("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. 16-21099-E-13 KWAJHALIEN DORN-DAVIS MOTION TO MODIFY PLAN
MAC-7 Marc Carpenter 4-20-18 [98]

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

Local Rule 9014-1(f)(1) Motion—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 April 20, 2018. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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~~.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Kwajhalien Dorn-Davis ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on May 17, 2018. Dckt. 105. The Chapter 13 Trustee notes that there are conflicting percentages for the dividend to general unsecured claims. The Plan lists 21%, and the Motion states 20%, but the Chapter 13 Trustee calculates that the Plan will pay approximately 53% as the dividend.

The Chapter 13 Trustee notes that Class 4 may need clarification, too. In the confirmed Plan currently, Financial Partners is listed for a 2010 Lexus, and Nationstar Mortgage, LLC, is listed for Debtor's residence. The proposed Modified Plan does not include those claims, but they are listed on the latest Schedule J filed on the same day as the Motion and Modified Plan. *See* Dckt. 103.

At the hearing, Debtor reported that those claims were not listed because **xxxxxxxxxxx**.

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 Kwajhalien Dorn-Davis ("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 Debtor's Modified Chapter 13 Plan filed on April 20, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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~~.

12. **17-25221-E-13** **TOMMIE RICHARDSON** **OBJECTION TO CLAIM OF SENECA LEANDRO VIEW LLC, CLAIM NUMBER 7**
PGM-3 **Peter Macaluso** **4-13-18 [87]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 13, 2018. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 7 of Seneca Leandro View LLC is continued to 10:30 a.m. on June 14, 2018, for a Scheduling Conference.

Tommie Richardson, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Seneca Leandro View LLC ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $195,000.00. Objector asserts that there is no evidence to support the claim, especially not for Objector being liable for a property being foreclosed upon while also in escrow. Objector admits to receiving $15,000 from Creditor, but Objector asserts that there is no basis for liability for any higher amount.

The Objection itself states with particularity the following grounds upon which it is based and why the claim should not be allowed:

A. No documentation for a security interest is included with the Proof of Claim.

B. There is no "Declaration" providing testimony to authenticate the exhibits attached to the Proof of Claim. FN.1.

FN. 1. This is a curious "grounds," in that proofs of claim are not pleadings for which declarations, points and authorities, and briefs are filed in support. Everyday documentation underlying the claim, such as notes and deeds of trust, are filed with proofs of claim, without "declarations" or other supporting pleadings. Objector has not provided a points and authorities in support of the Objection for the legal proposition that attachments to proofs of claim must be authenticated as provided in Federal Rule of Evidence 901 et seq.

C. There is no recorded lien attached to the Proof of Claim.

D. There is no "evidence" of the amount asserted to be owed by Debtor. FN.2.

FN. 2. *See* FN.1.

E. There are no equitable liens on the funds held by the foreclosure trustee.

F. The first objection is that "admissible evidence" is not attached to Proof of Claim No. 7.

G. The second objection is that Creditor has not presented admissible evidence to support Proof of Claim No. 7. FN.3.

FN. 3. Debtor directs the court to *Atwood v. Chase Manhattan Mortgage, Co. (In re Atwood)*, 293 B.R. 277, 233 (B.A.P. 9th Cir. 2003), for the proposition that Creditor cannot rely on the prima facie presumption of validity of the claim when the objecting debtor has presented evidence countering the prima facie effect. However, in making this argument, Objector asserts that since evidence is not authenticated with the Proof of Claim, the Proof of Claim must fail. This ignores the well-established law in this case and appears to cut out the burden that "[o]bjector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502–22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Id.* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173–74 (3d Cir. 1992). Here, Objector cannot merely argue "I don't agree so you lose" in countering the *prima facie* presumption.

H. Objector argues that the prima facie presumption is dependent upon Creditor first presenting evidence of reasonableness, without any evidence offered by Objector to rebut the presumption.

Objector has provided his Declaration in Opposition. Dckt. 89. In it, Objector testifies that with respect to the Proof of Claim:

A. In December 2016, Objected entered into the Purchase and Sale Agreement with Creditor.

B. He identifies the "Liaison" between Creditor and Objector, and several people were "responsible" for the escrow. Objector does not provide testimony as to what the "Liaison" and people "responsible" for the escrow were supposed to do in connection with the Purchase and Sale Agreement.

C. Objector testifies that he was told by one of the "responsible" persons that another person "would be handling the paperwork" for the sale. No declaration by such "responsible" person to whom the statement is attributed is provided.

D. Objector testifies that some of the liens being reported on the property were "questionable." He does not state why he believed they were "questionable." Objector further testifies that he investigated and told the person handling the "paperwork" what liens should be paid.

E. On January 26, 2017, escrow was opened. On February 24, 2017, Creditor advanced $15,000 for payment through escrow for the sale of the property.

F. On March 7, 2017, a notice of default and election to sell was filed.

G. Objector concludes that "I did everything said by escrow, and do not owe anything to the creditor as the failure to complete escrow was not my fault, but that of First American Title Company, ..."

The above is the sum total of the evidence presented to rebut the prima facie effect of the Proof of Claim.

CREDITOR'S RESPONSE

Creditor filed a Response on May 22, 2018. Dckt. 103. Creditor argues that it and Objector entered into a purchase agreement for real property on December 27, 2016. Creditor argues that Objector did not disclose being in default on a second deed of trust on the property, leading to a Notice of Default being issued on March 2, 2017, which was also not disclosed to Creditor. Creditor states that it was not informed of a Notice of Trustee's Sale recorded on June 9, 2017, before the property was sold on July 6, 2017.

Creditor argues that escrow had not closed on its purchase agreement because Objector had not required one tenant on the property to vacate the premises. That tenant is identified as Objector's sister.

Creditor argues that it was ready to purchase at any time while the sale was pending and would have waived the requirement for the tenant to be removed if it had known about the pending foreclosure.

With respect to damages, Creditor first asserts that this property was listed on Debtor's Schedule A under penalty of perjury as having a value of $1,000,000 by Objector. Further, the property had been appraised (Creditor's appraiser) to have a value of $940,000 as of July 6, 2017. Using the $940,000 value and the $760,000 contract price, Creditor computes the damages to be $195,000 (which includes the $15,000 advanced by Creditor through escrow). Creditor argues that Objector breached the purchase agreement and now owes Creditor at least $195,000.00, as reflected in Proof of Claim 7-3 filed as an unsecured claim.

As legal grounds, Creditor asserts that its breach of contract claim against Objector is determined by California law, and Creditor points to California Civil Code §§ 3300 and 3306 to determine how contract breach damages are calculated.

DISCUSSION

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

Unless otherwise covered by the Bankruptcy Code, state law applies to determine the existence and validity of a claim. *Cossu v. Jefferson Pilot Securities Corp. (In re Cossu)*, 410 F.3d 591, 595 (9th Cir. 2005) ("The validity of a creditor's claim is determined by the rules of state law . . . ."). Furthermore, if all of the events for a breach of contract claim occurred pre-petition, even though liability has not yet been affixed, then the claim is not contingent upon a future determination of liability. *In re Keenan*, 201 B.R. 263 (Bankr. S.D. Cal. 1996).

The court has reviewed the purchase agreement that Creditor attached as Exhibit 1. Dckt. 107. Creditor directs the court to Paragraphs 9(G) & 10. Dckt. 103 at 2. Paragraph 9(G) states in its entirety:

> SELLER REPRESENTATION: Seller represents that Seller has no actual knowledge: (i) of any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property or the right to use and occupy it; (ii) of any unsatisfied mechanic's or materialman lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy. If Seller receives any such notice prior to Close Of Escrow, Seller shall immediately notify Buyer.

Exhibit 1, Dckt. 107 at 6.

Paragraph 10 states in its entirety:

> SUBSEQUENT DISCLOSURES: In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure of notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.

Id.

The Purchase Agreement defines "Buyer" as Seneca Leandro View, LLC, and "Seller" as Tommie Richardson. "Close Of Escrow" is stated to mean "2/28/17 or sooner." *Id.* at 3. The original Purchase Agreement was signed by Creditor/Buyer on November 29, 2016, and by Objector/Seller on December 27, 2016. *Id.* at 11.

No declaration is provided by Creditor or Creditor's Managing Member responsible and with personal knowledge of this transaction. No testimony is provided as to Creditor having the money in place to perform the contract, the cost of such money (points, fees), or the ability to complete the purchase.

A declaration is provided by Steven Geller, the appraiser providing his testimony as to value of the Property as of July 6, 2017. Dckt. 104. His appraisal report is stated to be provided as Exhibit 2 to the Declaration. Dckt. 105.

Setting Scheduling Conference

Creditor has provided the court with a brief citation to California Civil Code §§ 3300 and 3306 as the legal authorities for the court to determine what the contract between the parties was, if the contract existed who breached it, and the damages to the breaching party. Creditor asserts that it is per se the aggrieved party and its damages are the difference between the gross value of the property as set by its appraiser and the liens.

Creditor has not provided the court with any evidence of its efforts to perform the contract, that it could perform the contract, or what it did in connection with reviewing the title report and acting with respect to the reported liens against the property. This contract is purported to have arisen in December 2016 when it was signed by Objector. Creditor offers no explanation of what it was doing to perform its part of the contract in:

January 2017,

February 2017,

March 2017,

April 2017,

May 2017,

June 2017, and

July 2017,

to assert its alleged rights under the Purchase and Sale Agreement. The Agreement states that it was to close on or before February 28, 2017. Exhibit 1, Dckt. 107 at 3. Though February 28, 2017, came and went, there is no evidence of Creditor doing anything for the rights it now so stridently demands should be enforced.

Objector's pleading (Dckt. 87) does not provide any California law or treatise materials as to how this court makes a determination as to what the contract was, how to determine if it was breached, and how to correctly compute damages. The "legal basis" for the contention that only $15,000 could be owed as damages is—Objector says so.

Though the court could research the law, develop the arguments that it believes the respective parties could present, organize the legal analysis, and prosecute this Contested Matter for the respective parties, the court declines such assignment of work. It is clear that the court needs to set a scheduling conference and from there a discovery schedule for this Contested Matter. The parties need to assemble their evidence, which supports their state law legal arguments for whether there is an enforceable contract, and if so, what damages may flow therefrom.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Seneca Leandro View LLC ("Creditor"), filed in this case by Tommie Richardson, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that a Scheduling Conference for the Objection to Proof of Claim Number 7-3 of Seneca Leandro View LLC shall be conducted at 10:30 a.m. on June 14, 2018.
>
> **IT IS FURTHER ORDERED** that Objector and Creditor shall file and serve (electronically) on the other party's counsel their respective Scheduling Conference Reports on or before noon on June 11, 2018. In the Scheduling Conference Reports, each party shall identify, in addition to any other item that they deem relevant:
>
> 1. The applicable California laws (statutory, regulatory, case) upon which they rely for their respective positions. That includes any

treatises or other secondary sources providing an analysis for the application of such laws.

2. The witnesses and documentary evidence they have identified at this time in support of their respective positions.

13. 17-20220-E-7 HLG-8 | **WILLIAM/FAYE THOMAS** **Kristy Hernandez** | **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH GLEN VAN DYKE** **5-4-18 [111]**

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on May 4, 2018. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has not been properly 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 for Approval of Compromise is continued to 10:30 a.m. on June 24, 2018, for a hearing with the Chapter 7 Trustee, the case having been converted to one under Chapter 7. Notice of Conversion, Dckt. 135 filed March 24, 2018.

William Thomas and Faye Thomas, Chapter 13 Debtor, ("Movant") (FN.1) requests that the court approve a settlement between Movant and Affiliated Professional Services, Inc., ("APS") on one side and Glen Allen Van Dyke, individually and doing business as Van Dyke Law Group, Salinger Van Dyke, a California general partnership, Dale Washington, Stuart Gregory, Mark G. Hildebrand, James C. Gordon,

John M. Janacek, Veronica Janacek, William S. Douglas, Karen D. Douglas, Edward E. Sullivan, Robin L. Sullivan, Carol A. Martin, and Alex N. Ray ("Settlor"). The claims and disputes to be resolved by the proposed settlement arise from litigation in Superior Court in El Dorado County, entitled *Affiliated Professional Services, Inc. v. Glen Van Dyke et al.*

FN.1. In this ruling, the court refers to Debtor as "Movant" because it was Debtor who brought the Motion while serving in his fiduciary capacity over property of the bankruptcy estate and under the Plan. With the case being converted to Chapter 7, the Chapter 7 Trustee has replaced Debtor in that fiduciary capacity for property of the bankruptcy estate. Going forward, it is the Chapter 7 Trustee who succeeds to the role of "movant" for future hearings.

On May 24, 2018, Debtor converted this case to one under Chapter 7. Dckt. 135. Hank Spacone has been appointed as the Interim Chapter 7 Trustee. Appointment, Dckt. 136. All property of the bankruptcy estate, including 100% of the shares of stock in Affiliated Professional Services, Inc., are under th exclusive control of the Chapter 7 Trustee. Schedule B, Dckt. 1 at 15; 11 U.S.C. §§ 541, 506.

Review of Litigation and Claims Settled

The Motion alleges that Debtor operated Debtor's business Affiliated Professional Services, Inc. ("APS"). Motion ¶ 1, Dckt. 111. APS filed state court litigation against Glen Van Dyke and other defendants. One of the state court defendants filed a counter claim against APS and named Debtor William Thomas personally as another defendant in the cross-complaint.

The Motion further alleges that the state court action was dismissed in August 2017 based on a written settlement agreement that "the parties" executed. The settlement agreement is stated to include a non-disclosure provision. It also included non-monetary cross-dismissals of all claims asserted.

Debtor seeks in the Motion approval of the 2017 settlement. This bankruptcy case having been filed in 2017, appears that any settlement, at least as to rights, interests, and claims against Debtor or which are property of the bankruptcy, must first be approved by the bankruptcy court. 11 U.S.C. § 541; FED. R. BANKR. P. 9019.

The Motion offers no explanation of the various claims and cross claims that are the subject of the cross-releases. The Motion does not explain how the interests and rights of APS, for which the bankruptcy estate is the sole shareholder (whether Debtor was exercising the fiduciary duties over property of the bankruptcy estate or now the Chapter 7 Trustee) were given up as part of obtaining releases against APS and Debtor personally for claims that must be adjudicated in this court.

Proof of Claim No. 9 was filed by Dale Washington on May 15, 2017. The Claim is for $129,000 and is for "Services Performed." Attachment 1 is a copy of the State Court Cross-Complaint against APS and Debtor William Thomas. The allegations in the Cross-Complaint include:

A. APS is the alter ego of Thomas.

B. Thomas used APS and its assets to pay Thomas's personal expenses.

C. Thomas was hired as an expert witness by Washington.

D. Thomas did not properly bill for the services provided.

E. Many contentions concerning the conduct of Prestholt.

F. Improper use of private information by Prestholt and Thomas.

G. Cause of Action for Fraud, based on Thomas/APS's billing practices.

H. Cause of Action under California Business and Professions Code §§ 17300 et seq. based on Thomas/APS's billing practices.

I. Cause of Action for Breach of Contract against Thomas/APS.

J. Cause of Action for Civil Extortion against Thomas/APS.

Gale Van Dyke filed Proof of Claim No. 10 in the amount of $129,000, which is based on "Services Performed." Attachment 1 to Proof of Claim No. 10 is Van Dyke's Cross-Complaint against APS. It asserts three causes of Action: (1) Fraud, (2) Breach of California Business and Professions Code §§ 17200 et seq., and (3) Intentional Breach of Contract. These appear to be based on the same grounds as asserted by Washington in Proof of Claim No. 9.

Proof of Claim No. 11 was filed by Van Dyke Law Group in the amount of $155,725.93, which is based on "Services Rendered." The Proof of Claim form is not signed and is purported to be filed by Creditor's attorney. Proof of Claim No. 11, p. 3.

INSUFFICIENT NOTICE OF MOTION

Movant provided thirty-two days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(3) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Movant has provided three fewer days than the minimum.

The court continues the hearing to allow the Chapter 7 Trustee who has taken over the estate. This continuance resolves the insufficient notice given by Debtor as the predecessor fiduciary of the bankruptcy estate.

Movant and Settlor have resolved their litigation, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 115):

A. APS and Glen Allen Van Dyke shall file a notice of conditional settlement of state court action in Superior Court within five days of executing the settlement agreement;

B. Glen Allen Van Dyke and Dale Washington shall execute and file with the bankruptcy court withdrawals of their proofs of claim;

C. William Thomas shall provide written notice to the bankruptcy court that objections to the claims of Glen Allen Van Dyke and Dale Washington have been resolved;

D. APS shall provide written notice to the bankruptcy court that its motion for relief has been resolved;

E. Within five days of executing the settlement agreement, APS, Glen Allen Van Dyke, and Dale Washington shall execute requests for dismissal of the state court action in its entirety with prejudice; and

F. Movant and Settlor each grant the other a general release of claim.

CREDITOR'S OPPOSITION

Robert Putnam ("Creditor") filed an Opposition on May 14, 2018. Dckt. 123. Creditor argues that he filed a secured lien on any settlement or judgment issued in the state court action, but under the proposed settlement, he will not receive any payment on his claim.

Creditor argues that Movant has "used a property right worth hundreds of thousands of dollars to APS for his own personal benefit." *Id.* at 4. Creditor argues that all of Movant's creditors have lost an opportunity to recover against any of their claims. *Id.*

Creditor alleges that the proposed settlement "is the product of fraud and collusion warranting further investigation in that all parties to the settlement agreement knew or should have known that approval of the settlement was required by" the bankruptcy court before proceeding to dismiss the state court action. *Id.* at 5.

Creditor states that he requested to be included in settlement negotiations in state court but was deliberately excluded. Creditor argues that Movant cannot show how the settlement is fair and equitable, going so far as to argue that the factors considered by the court favor not approving the settlement.

Creditor argues that litigation would have been successful in state court, should not have been expensive, would not have involved difficulty collecting against a judgment, would not have been inconvenient to try (because Creditor offered to try the case for the parties), and does not benefit creditors in this case because the settlement involves no money.

Creditor filed an Amendment to the Opposition on May 21, 2018, to remove a request that the bankruptcy case be dismissed and replace it with a request that the Motion be denied. Dckt. 131.

MOVANT'S REPLY

Movant filed a Reply on May 29, 2018. Dckt. 141. Movant argues that APS was entitled to rely on the advice of its state court counsel at the time it decided to settle the lawsuit and that Creditor has no ground to assert that there should have been money involved because he was not the attorney of record at the time of settling.

Movant refutes allegations of collusion by arguing that "[t]here are no facts that support [Creditor's] accusations." *Id.* at 2. Instead, Movant argues that the Chapter 13 Trustee in this case was provided with detailed financial records that do not hint at hidden assets or irregularities in line with a scheme.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant (Debtor who has now been replaced by the Chapter 7 Trustee) argues that the four factors have been met without addressing each one specifically. Instead, Movant relies upon Paragraph 11 of the Declaration of Anthony Fritz. That section of the Declaration sets forth seven grounds for why the settlement is in Movant's best interest.

First, he argues that given more than $420,000.00 in proofs of claim filed, any proceeds from the state court action would have been cannibalized, in addition to projected considerable attorney's fees for litigation. Mr. Fritz questioned whether Movant or the Chapter 13 Trustee would receive any net financial benefit from litigation.

Second, Mr. Fritz was concerned that APS would not be paid for expert services provided in a prior lawsuit given a related appellate court decision. Third, Mr. Fritz was concerned that there as no record of an agreement signed by Dale Washington to pay APS for its services.

Fourth, Mr. Fritz anticipated meritorious defenses from Glen Allen Van Dyke and Dale Washington based on his review of California precedent. Fifth, Mr. Fritz was concerned that naming Glen Allen Van Dyke's homeowner clients would expose APS and Movant to litigation for malicious prosecution, which would include a significant risk of liability.

Sixth, the state court complaint was subject to mandatory dismissal if not brought to trial by September 2017, and as of July 2017, it had not been set for trial. While Mr. Fritz had drafted a motion to extend the period in state court to set the matter for trial, he was concerned that the parties would not reach trial under the extended period that the court would set. Seventh, based on prior discussions and proposed settlements with Settlor, Mr. Fritz concluded that Settlor would not be willing to pay any amount to settle the state court action, let alone an amount large enough to pay APS's debts.

Continuance for Successor Real Party
In Interest to Investigate and Advise the
Court of the Position of Chapter 7 Trustee

The court has not received any pleadings from the Chapter 7 Trustee. That is not surprising in light of Debtor converting this case to one under Chapter 7 about a week prior to the June 5, 2018 hearing on this Motion.

The court continues the hearing for the Chapter 7 Trustee to review and investigate the settlement, the claims, and the conduct of the officers of the corporation in settling the rights of the corporation and obtaining releases for APS and Debtor (who was not a plaintiff in the state court action).

The court notes that while Debtor and the creditors may "agree" to keep the settlement confidential, they cannot expect the court to approve a settlement blindfolded. On its face, it appears that there is significant value to the APS/Thomas claim because the settling creditors are agreeing to walk away from around $150,000 in claims. Alternatively, it may well be that there is a determination that this is a bad situation, which further litigation may make worse, with Debtor having no ability to pay any amounts. However, the court has no idea given that the settling parties say very little about the respective rights and claims to be settled.

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 to Approve Compromise filed by William Thomas and Faye Thomas, Chapter 13 Debtor, ("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 hearing on the Motion for Approval of Compromise is continued to 10:30 a.m. on June 24, 2018 (a Chapter 7 law and motion date) to allow the Chapter 7 Trustee to review the pleadings, investigate the claims being released, and the estate rights as shareholder of Affiliated Professional Services, Inc. ("APS").

14. 18-21418-E-13 SDH-1 | **VELMA WALL** / **Scott Hughes** | **CONTINUED MOTION TO IMPOSE AUTOMATIC STAY AND/OR MOTION TO EXTEND AUTOMATIC STAY** **3-13-18 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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.

Velma Wall ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 15-28553 and 17-23131) were dismissed on April 12, 2017, and February 25, 2018, respectively. *See* Order, Bankr. E.D. Cal. No. 15-28553, Dckt. 51, April 12, 2017; Order, Bankr. E.D. Cal. No. 17-23131, Dckt. 58, February 25,

2018. 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.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because she fell behind on plan payments after having medical issues that put her in the hospital a couple of times during the last year. Dckt. 10. She also states that her income is irregular because currently there are thirteen tenants living at her residence, and people move in and out. *Id.*

Debtor pleads that the current case will work because she has decided to sell the residence and not deal with tenants anymore and because she now receives IHSS income for caring for three disabled sons. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 16, 2018. Dckt. 14. The Chapter 13 Trustee is not certain that there has been a favorable change in Debtor's circumstances. He notes that her household size has increased from four to twelve persons since the prior case. *Compare* Case No. 17-23131, Dckt. 1 at 35, *with* Case No. 18-21418, Dckt. 1 at 44. He also notes that her income from IHSS is $5,162.00 and from Social Security is $3,064.00—which are the same amounts as in the prior case. The increase in this case is from projected rents of $2,000.00, which is a $1,200.00 increase. The Chapter 13 Trustee notes that the proposed plan calls for sale or surrender of Debtor's residence within one year.

MARCH 27, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on June 5, 2018, for a final hearing. Dckt. 20. The court imposed the automatic stay on an interim basis through 5:00 p.m. on June 5, 2018. Dckt. 26.

DISCUSSION

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 failed to make plan payments (No. 15-28553 & 17-23131). Debtor has testified that over the last year she was hospitalized a couple of times that caused her additional expenses that affected her ability to make plan payments. Dckt. 10. Debtor's Declaration also indicates that a main source of her difficulties has been in managing tenants at her residence. She proposes to overcome those obstacles now by selling the residence.

Review of Debtor's Schedules

On Schedule A/B (Dckt. 1 at 11–15), Debtor states under penalty of perjury having the following assets and values:

A.	Personal Residence	$510,000
B.	2009 Vehicle, 170,000 miles	$ 2,300
C.	Household Goods and Furnishings	$ 2,500
D.	Clothing	$ 450
E.	Credit Union Account	$ 500

On Schedule D, Debtor lists Pennymac as having two claims secured by her real property. The claim secured by the two liens is stated to be $465,903. *Id.* at 18. Debtor also lists pre-petition secured homeowners association fees of $1,540.00 that are a claim in this case. *Id.*

Moving to Schedule I, Debtor states that her occupation is "IHSS Caregiver," with monthly gross wages of $5,162.00. *Id.* at 30. Debtor also lists ($1,300) in estimated income taxes and additional net income of $2,000.00 from rent/business, $3,084.00 in Social Security, and $585.61 in pension in come. *Id.* at 31. Debtor states having monthly gross income of $10,861.00, for which she states that her income taxes (federal and state) are only $1,300.00 per month.

On Schedule J (*Id.* at 32–33), Debtor states that her household consists of five persons, Debtor and four disabled adult sons. Excluding any mortgage payments, property taxes, or insurance, Debtor states that her necessary and reasonable expenses consist of:

A.	Home Maintenance	($ 300)
B.	Electricity, Heat, Gas	($ 551)
C.	Water, Sewer, Garbage	($ 102)
D.	Cable	($ 252)
E.	Telephones, Internet, Garbage	($ 248)
F.	Food and Housekeeping Supplies	($1,435)
G.	Clothing, Cleaning, Laundry	($ 300)
F.	Personal Care Products	($ 150)
G.	Medical and Dental Expenses	($ 400)
H.	Transportation	($ 500)
I.	Entertainment	($ 300)
J.	Health Insurance	($ 163)
K.	Vehicle Insurance	($ 380)
L.	Special Needs Expenses	($ 700)

Debtor totals these expenses to be ($5,781.00), leaving her with net monthly income of $3,750.00.

Conflicting with Schedule I stating that Debtor has at least $130,332 in monthly gross income, are the disclosures on her Statement of Financial Affairs. Debtor states that in 2017 her gross income from all sources was only $30,756, and for 2016, her gross income was only $17,147.00. *Id.* at 35–36.

In Debtor's prior two cases, she was represented by the same counsel as in this case. In Case No. 17-23131 ("Second Case"), Debtor stated under penalty of perjury on Schedule I that her gross income was $9,661.61 per month. 17-23131; Schedule I, Dckt. 1 at 29. On her Statement of Financial Affairs in the Second Case, Debtor stated that she had $19,842 in gross income for the first four months of 2017. *Id.* at 37–38. That averages only $4,960 per month in gross income.

In the current case, Debtor states that her total gross income for 2017 was only $30,756, which means that Debtor had income of only $10,106 for the last eight months of 2017.

In the Second Case, Debtor states that her income for 2016 was $36,589. *Id.* That conflicts with her current statement under penalty of perjury on her Statement of Financial Affairs that she had only $17,147 in gross income in 2016.

Review of Debtor's Plan

Debtor has filed a Chapter 13 Plan in this case. Dckt. 5. Under the terms of the Plan, Debtor will make $3,700.00 per month plan payments to the Chapter 13 Trustee. That matches up to what Debtor now states her net income is each month on Schedule J. The Plan term is sixty months. The Additional Provisions state that the $3,700 per month payments will only be for twelve months, or until Debtor sells her residence. Once the property sells, the plan payments will decrease to only $100.00 per month.

For the Pennymac secured claim, Debtor is to make a $3,503.51 post-petition current monthly payment and then an $800.00 arrearage payment. However, for the first three months of the Plan, the arrearage payment will not be made, it be subordinated to payment of the unsecured administrative expense of Debtor's counsel's attorney's fees. Plan, Additional Provisions, *Id.* at 7. The Plan then provides for paying a 10% dividend for creditors holding $24,301.33 in general unsecured claims.

With $3,750.00 per month in projected disposable income as computed by Debtor on Schedule J, the court cannot understand how there will be only a 10% dividend to creditors holding general unsecured claims.

Decision

In her Declaration, Debtor states that there are thirteen people living in her residence. Though appearing to operate a boarding house, Debtor has no expenses for such commercial operation. Debtor appears to have no liability insurance to protect herself and her boarders. Debtor further testifies that she has discovered that the house needs repairs, including the fixing of broken water pipes. Debtor provides no testimony of what such repairs would cost or the other expenses of operating a boarding house.

If one assumes that Debtor's house has a value of $510,000, and the court uses the secured claims as listed on Schedule D, a projection of the value derived for the bankruptcy estate could be computed as follows:

FMV.....$510,000
Costs of Sale (est. 8%).....($ 40,800)
Pennymac Claims.....($455,903)
HOA Claims.....($ 1,540)

Net Sales Proceeds.....$11,757

However, from the $11,757 in possible net sales proceeds, all of the repair costs must be deducted, as well as other repairs and escrow contingencies. Effectively, Debtor is only serving as the forced sales agent of the creditors with secured claims—if Debtor actually tries to sell the property.

This bankruptcy case was filed on March 12, 2018. In the two weeks that passed after filing, though Debtor could get this motion on file, Debtor has not sought to employ a real estate broker to sell the property. Given that the spring and summer months are perceived better times to market residential property, a debtor seeking to incorporate a sale in a plan would already have a broker employed and working on a sale strategy.

A review of the Docket shows that on April 6, 2018, the court entered an order authorizing the employment of a Realtor. Order, Dckt. 25.

As stated in the Civil Minutes, the court denied confirmation of Debtor's proposed Plan based on the Objection of the Chapter 13 Trustee that Debtor (as Debtor admitted at the First Meeting of Creditors) has not provided for all of her income in computing the Plan payment previously proposed. Civil Minutes and Order; Dckts. 31, 40.

On May 29, 2018, Debtor filed her proposed Amended Plan. Dckt. 36. The terms of that plan are summarized as follows:

A. Monthly Plan Payment.....$4,150

B. Plan Term.....60 Months

C. Sale of Property Under Plan.....None

D. Secured Claim Treatment

PennyMac.....$2,503.51 Current and $800 Arrearage ($48,000)

ATC/HOA Dues.....$ 40.00 Current and $25 Arrearage ($40)

E. General Unsecured Claims

$24,301.35 Stated Unsecured Claims.....100% Dividend

Debtor has filed Amended Schedules I and J. Dckt. 38. Debtor states that she received $5,162.00 in IHSS care giver income, $2,025 in Social Security income, $597.35 in retirement income, and $2,000 rental income from boarders. After an ($1,300) allocation for taxes, Debtor reports having $8,484 in monthly net income.

On Amended Schedule J, Debtor lists having $4,334 in expenses. It is not clear whether this includes all of the necessary expenses, including landlord insurance, for operating a boarding house or room rental commercial operation. However, that issue can be addressed by the Chapter 13 Trustee in the confirmation process.

Unfortunately, the Motion to Confirm the Amended Plan fails to state grounds with particularity upon which the court could confirm the Plan. *See* FED. R. BANKR. P. 9013. The court has addressed this basic pleading requirement a number of times over the past six years, and it is not an unknown requirement to the attorneys in this District.

In substance, the present Motion states with particularity: (1) the changes from the prior plan and (2) Debtor's conclusion that the Plan complies with the Bankruptcy Code. While this fails to state the grounds required to be met under 11 U.S.C. §§ 1325 and 1322 for confirmation, Debtor's counsel shall be allowed to remedy that by filing a Supplement to the Motion that shall state with particularity the required grounds. He shall file that supplement at least ten days before the July 17, 2018 hearing on said Motion.

Debtor, with the assistance of her counsel, is showing an effort to prosecute this case and avoid the defaults that resulted in the prior cases being filed.

Based on the present Motion, the information under penalty of perjury in the Schedules and Statement of Financial Affairs, the conflicting information under penalty of perjury in the First and Second cases, and the Plan in this case, the court finds that Debtor has rebutted the presumption of bad faith.

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by Velma Wall ("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, previously imposed on an interim basis, is permanently imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all parties and purposes, until terminated by operation of law or further order of the court.

FINAL RULINGS

15. 18-22532-E-13 MRL-1 | **ROGER/BRANDY HAYES** **Mikalah Liviakis** | **MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC 4-27-18 [8]**

Final Ruling: No appearance at the June 5, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 27, 2018. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and 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).

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 Value Collateral and Secured Claim of Ford Motor Credit Company, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $15,800.

The Motion filed by Roger Hayes and Brandy Hayes ("Debtor") to value the secured claim of Ford Motor Credit Company, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Ford Escape, VIN ending in 3797 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $14,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on May 17, 2018. Dckt. 18. The Chapter 13 Trustee notes that Debtor provides no other information about the Vehicle as it relates to

the style, condition, options, or needed repairs. He also notes that the Plan and Schedules include Creditor's claim.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on May 18, 2018. Dckt. 21. Creditor asserts that the Vehicle should be valued at no less than $17,100.00 based upon a NADA Valuation Report. *See* Exhibit C, Dckt. 23. Creditor also notes that Debtor fails to provide evidence in support.

DISCUSSION

On June 4, 2018, the Parties filed a stipulation resolving this dispute and agreed to a value of $15,800.00 for the secured claim, as well as agreeing that this matter may be removed from the calendar. Dckt. 25.

The lien on the Vehicle's title secures a purchase-money loan incurred on September 1, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,926.77. 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 $15,800.00, the value of the collateral as stated in the NADA Valuation Report. *See* 11 U.S.C. § 506(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Roger Hayes and Brandy Hayes ("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 Ford Motor Credit Company, LLC ("Creditor") secured by an asset described as 2016 Ford Escape ("Vehicle") is determined to be a secured claim in the amount of $15,800.00, 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 $15,800.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

16. 18-21672-E-13 AP-1 — JOSE/JEANNETTE PAGTALUNAN — Scott Hughes — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. — 5-3-18 [26]

Final Ruling: No appearance at the June 5, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 3, 2018. By the court's calculation, 33 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 Chapter 13 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 Objection 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 Objection. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot.

Bank of America, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan does not have a reasonable likelihood of success and does not propose to maintain ongoing payments.

B. The Plan fails to provide for ongoing post-petition payments.

Subsequent to the filing of this Objection, Jose Pagtalunan and Jeannette Pagtalunan ("Debtor") filed an Amended Plan and corresponding Motion to Confirm on May 31, 2018. Dckt. 31, 34. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, 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 Bank of America, N.A. ("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 Objection to Confirmation of the Plan is overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

17. 18-21672-E-13 CCH-1 — JOSE/JEANNETTE PAGTALUNAN — Scott Hughes — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. — 4-30-18 [14]

Final Ruling: No appearance at the June 5, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 30, 2018. By the court's calculation, 36 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 Chapter 13 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 Objection 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 Objection. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot.

Bank of America, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Jose Pagtalunan and Jeannette Pagtalunan's ("Debtor") Plan understates the pre-petition arrearage owed to Creditor.

B. Debtor's Plan does not propose to make any payments on the pre-petition arrears until the Property is sold or until one year from the date the case was filed, which is an unreasonable delay.

C. Debtor's disposable income is not sufficient to support the proposed Plan payments.

Subsequent to the filing of this Objection, Jose Pagtalunan and Jeannette Pagtalunan ("Debtor") filed an Amended Plan and corresponding Motion to Confirm on May 31, 2018. Dckt. 31, 34. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, 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 Bank of America, N.A. ("Creditor") holding 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, and the proposed Chapter 13 Plan is not confirmed.

18. 18-21672-E-13 DPC-1 — JOSE/JEANNETTE PAGTALUNAN — Scott Hughes — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 5-2-18 [21]

Final Ruling: No appearance at the June 5, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 2, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 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 Objection 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 Objection. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

A. Jose Pagtalunan and Jeannette Pagtalunan's ("Debtor") Plan is infeasible because it contains conflicting terms;

B. The Plan relies upon an unspecific future sale of property;

C. The Plan misstates how the Internal Revenue Service's claim is secured;

D. The Plan relies upon a loan modification that has not been presented to the court for approval;

E. Debtor cannot afford a plan payment increase in month thirteen; and

F. The Plan has not been proposed in good faith.

Subsequent to the filing of this Objection, Jose Pagtalunan and Jeannette Pagtalunan ("Debtor") filed an Amended Plan and corresponding Motion to Confirm on May 31, 2018. Dckt. 31, 34. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, 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 David Cusick ("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 overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

19. 13-36233-E-13 BHS-2 | **MARK/EVELINA PANANGANAN** Barry Spitzer | **MOTION TO APPROVE LOAN MODIFICATION** 4-30-18 [84]

Final Ruling: No appearance at the June 5, 2018 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 April 30, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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).

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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Mark Pananganan and Evelina Pananganan ("Debtor") seeks court approval for Debtor to incur post-petition credit. JPMorgan Chase Bank, N.A., ("Creditor") has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $2,762.50 per month to $2,598.75 per month from December 1, 2017, through October 1, 2022, at 3.375% interest. Beginning December 1, 2022, the principal and interest payment increases to $2,051.83 (plus escrow, which is currently set at $684.68) at 3.875% interest through November 1, 2057.

The Motion is supported by Debtor's Declaration. Dckt. 86. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides Debtor's assertion of ability to pay this claim on the modified terms.

Identification of Correct Creditor

What has not been made clear to the court is whether Creditor's claim has been provided for in this case. The confirmed Amended Plan does not include any claim in Class 1, and Class 4 includes only one claim described as "Wells Fargo Bank - Residence." Dckt. 54. That plan was filed on April 8, 2014, and was confirmed on June 18, 2014. Dckt. 79.

At the confirmation hearing for the Amended Plan, there was discussion about how the Amended Plan relied upon the court granting a motion to value Creditor's claim secured by a second deed of trust. Dckt. 70. The court granted that motion to value on June 3, 2014, and the court's minutes reflect Creditor's claim secured by a first deed of trust that appears to be the subject of the current Motion. *See* Dckt. 73. At the motion to value hearing, the court noted that Creditor's senior lien was secured with a balance of approximately $503,702.14. *Id.*

Creditor filed Proof of Claim No. 5-1 on May 7, 2014, in the amount of $505,136.37, fully secured by Debtor's real property located at 5112 Twin Lakes Ct, Fairfield, California ("Property"). That claim was amended on February 22, 2018, showing a secured claim of $503,794.97.

The confirmed Amended Plan shows a monthly payment of $1,881.00 in Class 4. Dckt. 54. A Notice of Mortgage Payment Change was filed by Creditor on February 6, 2015, which shows that current and continuing principal and interest payments were $1,888.83.

No party has argued that Wells Fargo Bank initially held the first deed of trust before transferring it to Creditor, and there is no document in the court's record indicating such a transfer. In fact, Creditor's attachments to Proof of Claim No. 5 show the original lending documents and deed of trust issued with Creditor's name on them as the original lender. The record indicates that Creditor may have been provided for by Class 4 of the confirmed Amended Plan.

Possible Payments Made Without Court Authorization

More troublesome than identifying the correct party's claim in the Amended Plan and pleadings, though, is that the proposed loan modification is listed to begin on December 1, 2017. Exhibit A, Dckt. 87 at 2. Debtor has not provided any information about whether trial payments were made before the proposed modification. Additionally, Debtor has not explained why a loan modification that was signed in December 2017 is only now being presented for court approval.

The present Motion does not seek retroactive authorization to enter into the post-petition financing for the loan modification. The Modification Agreement was signed by Debtor on January 26, 2018. Dckt. 87 at 6. JPMorgan Chase Bank, N.A. did not sign it until February 8, 2018. *Id.* at 8. It appears that the Modification Agreement itself is to have retroactive application.

Granting of Motion

The present motion suffers from several challenges, but they have to be considered in light of the case as a whole. The court notes that Debtor's current counsel substituted in on December 5, 2017,

following the death of Debtor's prior counsel. JPMorgan Chase Bank, N.A. filed its two secured proofs of claim in this case back in 2014. The parties have relied upon those in performing the confirmed plan. The use of the incorrect creditor name, Wells Fargo Bank in the Plan, Dckt. 54 at 4, does not appear to have prejudiced anyone.

The Motion is granted, and Debtor authorized to enter into the loan modification.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Mark Pananganan and Evelina Pananganan ("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 Mark Pananganan and Evelina Pananganan, the Chapter 13 Debtor, are authorized to enter into the Loan Modification Agreement filed as Exhibit A (Dckt. 87) with JPMorgan Chase Bank, N.A., and obtain the post-petition financing on the terms and conditions stated therein.