

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 11, 2019 at 2:00 p.m.

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 17.

1.	16-24274-C-13	JARED VARNEY	MOTION TO SELL
	MJD-4	Matthew J. DeCaminada	5-9-19 [53]

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

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, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Jared Matthew Varney, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 10713 Beclan Drive, Rancho Cordova, California 95670 ("Property").

The proposed purchaser of the Property is Timothy and Paula Zimmerman , and the terms of the sale are:

- A. The Buyer has agreed to a purchase price of \$275,000.00 with a closing date of twenty-one days or less after acceptance.
- B. The creditors with liens and security interest will be paid in full or simultaneously with the transfer of title or possession to the buyer.
- C. Secured lienholder JPMorgan Chase Bank, N.A. has a lien in the amount of \$185,018.00 which shall be paid in full through escrow and JPMorgan Chase Bank, N.A. shall retain its lien until the loan is paid in full.
- D. The two real estate agents who listed the Property will each receive a commission in the amount of \$8,250.00.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee David Cusick ("Trustee") filed response to the motion on May 16, 2019. Trustee stated the following:

- A. A pending application for broker's fees was set for hearing on May 21, 2019 and if not approved, the application for sale should be held until approved.
- B. A scrivener's error erroneously stated the Buyer's last name as "Johnson" instead of "Zimmerman."
- C. The Trustee's records show that \$7,150.12 remains to be paid to JPMorgan Chase in Class 1 of the plan. If a check swap is not implemented the monies remaining to be paid will increase the dividend of the unsecured creditors.
- D. The Trustee reminds Debtor that under the Homestead Exemption they must reinvest in another homestead within six months or those proceeds become non-exempt.
- E. The Trustee raises the concern that a modified plan will need to be filed if the property is sold.
- F. The Trustee reminds Debtor that the Debtor must notify the Court and Trustee immediately of any change in address.

DEBTOR'S RESPONSE

Jared Matthew Varney ("Debtor") filed a response on the May 31, 2019. Debtor stated the following :

- A. The pending application for broker's fees set for hearing on May 21, 2019 was approved.

- B. Debtor apologizes for the scrivener's error which erroneously stated the Buyer's last name as "Johnson" instead of "Zimmerman."
- C. The Debtor's Proposed Second Modified Plan (Dckt. 65) increases the minimum percentage provided to general unsecured claims for the \$7,150.12 should a check swap is not be implemented.
- D. Debtor and counsel have discussed the Homestead Exemption.
- E. Debtor has filed a modified plan with a hearing set for July 2, 2019.
- F. The Debtor has not yet moved from the subject property and has been reminded by his counsel of his responsibilities.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: XXXXXXXXXXXXXXXXXX.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

Movant has estimated that a three percent broker's commission from the sale of the Property will equal approximately \$8,250.00. (There are two Agents both receiving 3%, for a total of \$16,500) As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than three percent commission.

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

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

The Motion to Sell Property filed by Jared Matthew Varney, 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 Jared Matthew Varney, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Timothy and Paula Zimmerman or nominee ("Buyer"), the Property commonly known as 10713 Beclan Drive, Rancho Cordova, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$275,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 57, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and

assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

- D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than three percent of the actual purchase price upon consummation of the sale. The three percent commission shall be paid to Chapter 13 Debtor's broker, Allison James Estates & Homes.
- F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors and Office of the United States Trustee on May 7, 2019. By the court’s calculation, 35 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 denied.

Vishaal Virk (“Debtor”) seeks confirmation of the Modified Plan to include the previously disputed, secured claim of Ronny Dhaliwal. Dckt. 245 (Declaration). The Modified Plan proposes that payments of \$1,250.00 will begin March 2019 for 3 months and a lump sum of \$20,120.00, or an amount sufficient to complete the plan, be submitted on or before April 25, 2019 to complete the Plan and a 0% distribution to the general unsecured creditors. Dckt. 247 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on May 23, 2019. Dckt. 254.

The Chapter 13 Trustee is uncertain whether the Plan provides for payment of all required claims. Debtor has an unresolved lien avoidance action pending before the court. The Trustee flags for the court that Debtor and the Creditor, Ronny Dhaliwal, informed the court on November 9, 2015 that they resolved the matter by stipulation. No stipulation appears on the docket. Accordingly, the Trustee is unable to determine if Claim No. 10 is properly provided for in the plan.

The Chapter 13 Trustee also argues that the Plan is based upon a plan form that is no longer

effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

DISCUSSION:

The court notes that Debtor and Creditor Ronny Dhaliwal appeared before this court on June 4, 2019 in connection with a “renewed” Motion to Avoid Creditor’s Lien. At the June 4, 2019 hearing, the court instructed the parties to confer and determine if they can propose a stipulation that will resolve the original Motion to Value filed on June 3, 2015. Dckt. 113. The court notes that on June 5, 2019, Debtor filed with the court a Motion to Grant Order Pursuant to Oral Stipulation As Agreed on Record on November 9, 2015. Dckt. 275. Debtors Motion is set for hearing on June 25, 2019. It is not yet apparent to this court whether Debtor’s Motion will resolve the lien avoidance issue or not. Absent this resolution, the court, and Trustee, will be unable to determine if the proposed plan payments are sufficient to provide for all required claims.

The court also notes for Debtor that the plan form does not comply with plan form adopted by this court on December 1, 2017.

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

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

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

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

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

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.

Insufficient 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. The Proof of Service states under penalty of perjury that the documents were served on the aforementioned parties on June 11, 2019. Dckt. 113. However, Proof of Service was docketed on May 6, 2019. As June 11, 2019 is after the date on which the Proof of Service was docketed, it is not possible that the references to June 11, 2019 are accurate.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 Plan is denied.

Scott Brown and Melinda Brown (“Debtors”) seek confirmation of the Plan in order to pay secured creditor David C. Meyers the arrears in the amount of \$13,964.92. Dckt. 112 (Declaration). The Plan proposes payments of \$1,175.00 for 4 months and \$1,343.00 for 56 months. Dckt. 111 (Plan). 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 23, 2019. Dckt. 130. The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will not complete within the required sixty months. The Trustee calculates that the a plan will complete in 65 months. The Trustee notes that Debtors would need to increase their monthly dividend to Secured Creditor David C. Meyers to \$339.09.

SECURED CREDITOR OPPOSITION:

On May 24, 2019, David C. Meyers, Secured Creditor, filed an Opposition. Dckt. 132. Secured Creditor asserts that the Plan does not provide for full payment of its secured claim. Secured Creditor also question whether Debtors are properly providing for the payment of real property taxes, as

their Amended Schedules and Plan are inconsistent about whether Debtors are in fact paying property taxes through the Plan.

RULING:

Debtors are 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 65 months as the proposed Plan does not provide for all required payments to Secured Creditor David C. Meyers. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Plan does not comply with 11 U.S.C. §§ 1322, 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 Chapter 13 Plan filed by Scott Brown and Melinda Brown (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Thru #6

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 May 23, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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.~~

John Gajkowski ("Creditor") holding a secured claim opposes confirmation of the Plan. Creditor claims that Debtors have not accurately scheduled the value of their real property located at 7744 Locke Road, Vacaville, California by under valuing it at \$475,000.00. Creditor asserts that the value of the property should be worth in excess of \$725,000.00.

Creditor offers in support the fact that Debtor Brian Royer scheduled the property at \$725,000.00 in his prior bankruptcy proceeding filed in 2017. Case No. 17-24774, Dckt. 20, Schedules A/B. Accordingly, Creditor asserts that the full value of its claim is secured and should be paid through the plan. In order to pay the Secured Claim of \$255,677.73 in full, the Plan payments must be increased by at least another \$4,261.30. The current plan payment is \$1,500.00.

Creditor also raises other issues with Debtors' schedules asserting that Debtors have not accurately completed they schedules. Some of Creditors allegations include omitted income and that Debtors' 18 year old son, listed as a dependant, is in the military and does not live at home.

Creditor's objections are well-taken. The objecting Creditor, who holds a security interest in personal property, alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan. Creditor asserts it is entitled to a \$4,261.30 monthly payment because it estimates the value of the collateral at \$725,000.00. The Plan provides only for a \$1,500.00 monthly payment.

Creditor also claims that Debtor has filed this case in bad faith due to omissions and inaccuracies on the filed schedules. **At the hearing -----.**

~~-----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 John Gajkowski ("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 sustained, and the proposed Chapter 13 Plan is not confirmed.~~

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 21, 2019. By the court’s calculation, 21 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 hearing on the Objection to Confirmation of Plan is ~~XXXX~~.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Brian Royer and Sara Royer (collectively, “Debtors”), failed to appear at the First Meeting of Creditors held on May 16, 2019, due to illness. The Meeting was continued to June 6, 2019 at 1:00 p.m. The court notes that on June 6, 2019 Debtors and their counsel appeared at the Meeting of Creditors.
- B. Debtors appear not to have provided for a debt stemming from a judgement recorded in Solano County on February 16, 2018, in favor of one John Gajkowski, in the amount of \$385,038.54. Dckt. 28, p. 19. The debt does not appear as a secured claim in the Plan, nor is it listed on Schedule D. Schedule J lists no expense to provide payment for this claim. (Trustee notes Mr. Gajkowski is listed on Schedule F in the amount of \$255,677.73. Dckt. 11, p. 17.)

C. Trustee requests the Court continue this Objection to Confirmation to June 25, at 2:00 p.m., following the Continued First Meeting of Creditors set for June 6, 2019.

Trustee notes Debtors' first Plan payment of \$1,500.00 is due on May 25, 2019.

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtors failed to provide for as a secured claim in the Plan, and failed to list on Schedule D, a debt arising from a judgement entered against them in the amount of \$385,038.54, on February 16, 2018, in Solano County. No expense is listed on Schedule J to provide payment for this secured claim ("Secured Claim"). Consequently, without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). Debtor appeared at the continued First Meeting of Creditors.

The court also notes that the Creditor John Gajkowski also filed an Objection to the Plan and raised the issue of whether the Debtors have filed accurate Schedules.

~~At the hearing -----.~~

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

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

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

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

~~**IT IS ORDERED** that the hearing on the Objection to Confirmation of Plan is denied.~~

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 1, 2019. By the court's calculation, 41 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.

Deutsche Bank ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor's claim is secured only by a security interest the real property commonly known as 7720 Locke Road, Vacaville, CA 95688. Creditor estimates the Debtors' pre-petition arrearage totals \$3,142.97. However, the Plan indicates Debtors' are not in default and does not provide for payment of any arrears.

Creditor's objections are well-taken.

At the hearing Debtors addressed the claimed arrears ----

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has yet to file a timely proof of claim but it asserts \$3,142.97 in pre-petition arrearages. The Plan does not propose to cure those, or any, arrearages with respect to this Creditor. The Plan must provide for

payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

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

The Objection to the Chapter 13 Plan filed by Deutsche Bank (“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.

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 22, 2019. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Mary Doherty’s (“Debtor”) Plan will complete in approximately 246 months, as opposed to the proposed 60 months.
- B. The Plan does not provide for the secured portion of a claim filed by the IRS, in the amount of 22,660.04.
- C. Schedule I lists income from an “Inheritance” in the amount of \$940.00, which Debtor admitted at the First Meeting of Creditors is derived from the Louks Family Trust (the “Trust”). Dckt. 1, p. 35. Schedule B lists the Trust with a value of \$15,314.58 (Dckt. 1, p. 17) and as exempt on Schedule C in the same amount (Dckt. 1, p.21). Debtor has not provided the Trustee with a copy of the Trust, or evidence of its actual value. Additionally, the Debtor has not indicated how she would

supplement her income to cover the loss of income from the Trust once its balance is depleted.

- D. Debtor admitted at the First Meeting of Creditors that she did not know the actual value of the Trust. If the value of the Trust is more than the Schedule B lists (e.g. if the actual value is enough for her to receive \$940.00 per month for the life of the Plan) then the Trust may be worth far more than \$15,314.58.
- E. Debtor proposes unequal monthly dividends of “\$100.00 x 5; \$396.00 thereafter” to both Class 2A creditors. Dckt. 2, p. 4. Additionally, the monthly dividend average to one Class 2A creditors would take approximately 24 months longer to pay than the proposed 60 months.
- F. The Plan is formatted incorrectly (margins, indentation and font size).

Trustee also notes a Plan payment of \$880.00 will have come due on May 25, 2019.

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 Trustee, the Plan will complete in 246 months due to failure to provide for the secured claims of the IRS and a decrease in monthly income derived from an inheritance. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Additionally, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor’s Plan fails to provide for the secured claims of the IRS and a decrease in monthly income derived from an inheritance. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Trustee asserts that the Internal Revenue Service has a secured claim of \$22,660.04 and an unsecured claim of \$112,436.62. Claim No. 2-1. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Debtor’s plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that if the monthly income derived from Debtor’s Trust may be worth more than \$56,400.00. The court is unable to determine whether the Plan fails the Chapter 7 Liquidation Analysis.

At the hearing ----.

Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick (“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.

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, and Office of the United States Trustee on May 7, 2019. By the court’s calculation, 35 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.

Katrina Nopel (“Debtor”) seeks confirmation of the Amended Plan because Debtor incorrectly listed the name of the appointed Chapter 13 Trustee, and because Debtor was unable to make all plan payments due to unexpected expenses. Dckt. 63. The Amended Plan proposes to pay the allowed unsecured claims on a monthly basis in the amount of \$2,523.49 for 58 months. Dckt. 59. 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 23, 2019. Dckt. 65.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The required Plan payment is \$2,610.00. However, Debtor’s budget does not support a Plan payment in that amount. Debtor’s Schedule J indicates a net monthly income of \$2,524.82. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is feasible.

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of 58 months, but Debtor has offered no explanation why the duration of the plan has been reduced by two months.

DISCUSSION:

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes monthly plan payments of \$2,610.00 while only scheduling net monthly income of \$2,524.82. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

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 Katrina Nopel (“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.

**SUCCESSOR
TO THE DECEASED DEBTOR IN THE
BANKRUPTCY, MOTION CONTINUE
ADMINISTRATION OF THE CASE
UNDER CHAPTER 13, ETC.
5-13-19 [64]**

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 creditors, Chapter 13 Trustee, and Office of the U.S. Trustee on May 13, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Motion to Substitute 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 Substitute is granted.

Joint Debtor, Elaine Stella Phillips, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Roland Lee Phillips. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on May 12, 2017. Dckt. 1. On July 14, 2017, Debtor's Chapter 13 Plan was confirmed. Dckt. 27. On November 27, 2018, Debtor Roland Lee Phillips passed away. Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on May 13, 2019. Dckt. 68. Joint Debtor is the wife of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case “pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing

of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor’s 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Elaine Stella Phillips has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 68. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Elaine Stella Phillips, as the wife of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Roland Stella Phillips. The court grants the Motion to Substitute Party.

Lastly, the Motion suggests in passing that the court also issue an order granting Debtor Roland Lee Phillips a waiver of certification requirements for discharge pursuant to 11 U.S.C. § 1328 beyond the education requirement. This is improper under Local Bankruptcy Rule 1016-1 because it is not one of the reliefs permitted to be requested in a single Motion. Therefore, Debtor’s request for a waiver of the certification requirements for discharge for Debtor Roland Lee Phillips over an above the Education Certification is denied without prejudice.

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

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

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Elaine Stella Phillips is substituted as the successor-in-interest to Roland Lee Phillips and is allowed to

continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the requested waiver of 11 U.S.C. § 1328 Education Certification requirements for the deceased Debtor Roland Lee Phillips is granted, all other requests for wavier of requirements under 11 U.S.C. § 1328 are denied without prejudice.

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, parties requesting special notice, and Office of the United States Trustee on May 6, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Incur Debt is granted.

The Motion to Approve Loan Modification filed by Erika Tiner and Jeremy Tiner (“Debtors”) seek court approval for Debtor to incur post-petition credit. American Pacific Mortgage Company (“Future Creditor”), whose potential claim would be provided for in the Plan in Class 4, as the agreement seeks to consolidate the claims of Ditech Financial, LLC and Select Portfolio Servicing, Inc., and these creditors are provided for in Class 4. Future Creditor has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$2,783.41 per month to \$2,145.00 per month. The modification will capitalize the pre-petition arrears and provide an interest rate of 4.25% over the next 30 years.

The Motion is supported by the Declaration of Erika Susan Tiner. Dckt. 40. The Declaration affirms Debtor’s desire to obtain the post-petition financing and provides evidence of Debtor’s ability to pay this claim on the modified terms.

CHAPTER 13 TRUSTEE RESPONSE:

On May 16, 2019 the Chapter 13 Trustee filed a response noting that it does not otherwise oppose the motion but flags for the court that the proposed refinance is really a consolidation of two

existing loans. The combined payments for the existing loans, which are provided for in Class 4, are \$2,783.41 and the new consolidated loan will be \$2,145.00 for years 1 to 11 and \$1,941.00 for years 12 to 30.

DISCUSSION:

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve Loan Modification filed by Erika Tiner and Jeremy Tiner ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Erika Tiner and Jeremy Tiner ("Debtors") to consolidate the terms of the loans with Ditech Financial, LLC and Select Portfolio Servicing, Inc. And enter into a loan with American Pacific Mortgage Company ("Future Creditor"), which is secured by the real property commonly known as 8233 Prime Way Citrus Heights, California, on such terms as stated in the Agreement filed as Exhibit A in support of the Motion (Dckt. 41).

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, parties requesting special notice, and Office of the United States Trustee on May 6, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is denied.

Masoud Adibmajlesi ("Debtor") seeks permission to purchase a 2016 Ford Fiesta ("Vehicle"), with a total purchase price of \$8,497.76, with a \$750.00 down payment, and monthly payments of \$286.00 to Westlake Financial Services over three years with a 19.49% interest rate. Debtor states that he wishes to purchase this vehicle because the 2016 Honda Accord that Debtor was leasing at the outset of his bankruptcy will expire and July 3, 2019. Debtor states that the lease will not be extended and the terms to purchase the vehicle are not feasible. Accordingly, Debtor is seeking to purchase a more affordable vehicle.

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

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—19.49%. By trying to extract 19.49% interest from Debtor the proposed lender is showing that (1) it has concluded Debtor cannot make the payment and a default will be forthcoming or (2) this least sophisticated consumer and Debtor’s counsel can be bamboozled into paying triple the current rate for risky car loans.

It must be remembered that a lender to a Chapter 13 debtor is in a much better situation than a lender in the “real world” making a consumer loan to a consumer with limited income. The bankruptcy plan insures that Debtor has the money to make the monthly payments. Creditors are held at bay and cannot compete with the new lender for Debtor’s post-petition income.

In this case, Debtor has monthly gross wage income of \$10,416, an amount grossly larger than the “normal” Chapter 13 debtor’s income. Schedule I, Dckt. 8 at 20. Given such high income and there being a confirmed plan, the demand for 19.94% interest may be sign from the lender that Debtor’s plan is unrealistic and his residence expense of (\$4,656.74); which consists of mortgage payment, secured debt payment, property taxes, insurance and maintenance; that is 60% of the monthly take-home income shown by Debtor on Schedules I and J is determined to be patently unsustainable. Schedules I and J, Dckt. 8; Plan, Dckt. 2.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Masoud Adibmajlesi (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

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 14, 2019. 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.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Michael Petkus (“Debtor”) has not provided a business detailed budget statement, and failed to adequately provide for tax-related expenses. Debtor additionally failed to provide for the claims of the IRS as secured, despite the six tax liens shown in the Proof of Claim. (2-2), filed May 14, 2019.
- B. Debtor failed to provide requested information regarding the Debtor’s business, including Business Questionnaire, two years of tax returns, six months of profit and loss statements, proof of license and insurance or written statement no such documentation exists.
- C. Debtor lists four automobiles in Class 4. Debtor’s Plan

maintains the debts arising from these vehicles mature after the length of the Plan. Debtor admitted at the First Meeting of creditors held on May 9, 2019 that three of the vehicles will be paid in full in approximately three years.

- D. With unsecured claims of \$439,806.21, it appears Debtor is over the unsecured debt limit. Income disclosed in the Schedules filed with the bankruptcy Court do not appear to account for all income actually received by Debtor.

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan fails to adequately provide for tax expenses, which calls into question Debtor's ability to make payments as proposed under the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Also, Trustee asserts that the Internal Revenue Service has a claim for \$18,104.74 in priority unsecured debt. Proof of Claim 2-2, filed on May 14, 2019. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Debtor has failed to timely provide 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 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200."

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

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

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

Debtor claims to be below median income (Dckt. 1, p. 39) but claims \$0.00 net income for the last six months. This conflicts with the Statement of Financial Affairs, which shows \$15,000.00 gross income year-to-date. Dckt. 1, p. 29. Thus, the court may not approve the Plan.

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick (“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.

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, parties requesting special notice, and Office of the United States Trustee on April 25, 2019. By the court's calculation, 47 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Loan Modification is granted.

The Motion to Approve Trial Loan Modification filed by Octavio Gonzalez Saenz and Diana Carolina Saenz ("Debtor") seeks court approval for Debtor to incur post-petition credit. Penny Mac Loan Servicing ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$2,420.00 per month to \$1,987.12 per month. The modification will capitalize the pre-petition arrears. Debtor did not provide specific testimony or evidence to inform the court what the change in interest rate for the trial loan modification.

The Motion is supported by the Declaration of Octavio Saenz and Diana Saenz. Dckt. 56. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties

in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

Request for Bifurcation of Payments to the Trustee

The motion also requests that the Court allow for the Debtor to pay the Creditor directly.

The direct payment during the trial loan modification is commonly permitted during the trial loan modification period. First, it allows the Debtor to demonstrate that Debtor will make the payments. Secondly, this does not require the Trustee in this case, and may other cases, establish special trial loan modification dates.

Though authorized to be paid directly by the Debtor, these are distributions being made by the Trustee under the Chapter 13 Plan that are included in determining the Trustee's compensation.

The court notes that the Trustee does not Oppose the bifurcation of payments, however, requests that this only be approved for six months starting with the May 2019 payments. The Trustee requests that any bifurcation beyond that be requested through the modification of the Plan. Dckt. 59.

At the hearing -----.

~~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 Octavio Gonzalez Saenz and Diana Carolina Saenz ("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 court authorizes Octavio Gonzalez Saenz and Diana Carolina Saenz to amend the terms of the loan with PennyMac Loan Servicing LLC ("Creditor"), which is secured by the real property commonly known as 6761 Alamar Way, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 57).~~

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

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 22, 2019. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan may not be feasible. Debtor’s stated income is \$2,424.00 and is purportedly derived from multiple sources. Debtor lists \$914.00 from his non-filing spouse’s social security income, and \$500.00 from family. No declaration has been filed by the non-filing spouse or family members attesting to their willingness to contribute. Debtor’s testimony at the Meeting of Creditors calls into question whether the sources of income listed will be available over the life of the Plan.
- B. Debtor’s first Plan payment will be due prior to this hearing.

DISCUSSION

Creditor’s objections are well-taken. Debtor may not be able to make plan payments or

comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor lists several sources of income to support the Proposed Plan but has not sufficiently shown the willingness of the non-filing spouse or family members. 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 The Chapter 13 Trustee, David Cusick ("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.

Thru #16

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

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

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 April 9, 2019. By the court's calculation, 21 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.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor and Debtor's non-filing spouse each own and operate a business. The Trustee asserts that Debtor has not provided required business documents to allow the Trustee to determine the accuracy and reasonableness of the business income expenses.
- B. Debtor does not appear to be able to make the payments based on the filed Schedules I and J. Debtor has not provided a Business Budget or a break down of the business expenses. Additionally, the Trustee states that based on statements made at the Meeting of Creditors a \$500 expenses for child support is actually a source of income. The Schedules have not been correct.
- C. Debtor's plan does not pay the general unsecured creditors what they would receive in hypothetical Chapter 7.

DISCUSSION

Trustee's objections are well-taken. Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment. Additionally, Debtor has supplied insufficient information relating to the assets to assist Trustee in determining the value of the assets. Debtor fails to report information pertaining to a rental property and interest in non-Debtor's business.

At the April 30, 2019 hearing, the Trustee reported that the Debtor has not provided a detailed business budget and Debtor has now defaulted on the April 2019 payment. However, the Trustee concurred in the request for continuance.

Nothing further has been filed. Debtor has not documented that the required business information has been provided. No evidence has been filed supporting the additional sources of income.

At the continued hearing on June 11, 2019 -----

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("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.

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 May 24, 2019. By the court’s calculation, 18 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.

Bosco Credit LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor lists the value of real property commonly known as 3917 Clay Bank Road, Fairfield, California as \$465,000.00 on Schedule A/B, with a senior lien of \$479,986.00. Creditor believes the actual value of the property to be \$571,900.00. A higher value would bar Debtor from stripping Creditor’s secured lien. Creditor has a pending Motion to Reconsider Debtor’s Motion to Value the property. The court notes the hearing on reconsideration is currently set of July 30, 2019.
- B. Debtor’s Plan does not reflect the pre-petition arrears owed to Creditor.
- C. Schedule I reflects Debtor’s income as \$12,500.77. Schedule J reflects Debtor’s expenses as \$12,200.77. Debtor would need to increase monthly payments by \$1,531.90 per month in order to provide for its stated claim.

DISCUSSION

Creditor's objections are well-taken. However, the court notes that the value of the debtor's real property and the validity of Creditor's claim are presently being litigated before this court. The court entered Creditor's default and entered an Order Valuing the subject property at \$465,000.00 on March 11, 2019. Dckt. 27. The court recognizes that the Creditor has requested that the court reconsider its Order. The court requested an evidentiary hearing on July 30, 2019 (Dckt. 100) in order to hear additional testimony to aid in its decision on whether to reconsider its March 11, 2019 Order. The court also notes that Debtor has also filed an Objection to Creditor's claim (Dckt. 63), the merits of which have not yet been addressed by this court.

At the hearing -----

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 Bosco Credit LLC ("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 sustained, and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

17. [19-23010-C-13](#) **GLADYS HORN** **MOTION TO VALUE COLLATERAL OF**
[MRL-1](#) **Mikalah R. Liviakis** **BMW FINANCIAL SERVICES, N.A., LLC**
5-11-19 [8]

Final Ruling: No appearance at the June 11, 2019 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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 13, 2019. By the court's calculation, 29 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of BMW Financial Services, NA, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$12,000.00.

The Motion filed by Gladys Anne Petty, a.k.a. Gladys Horn, ("Debtor") to value the secured claim of BMW Financial Services, NA, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2014 BMW 328i ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$12,000.00 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).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,730. Declaration, Dckt. 10. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$17,730, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy

Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Gladys Anne Petty (“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 BMW Financial Services, NA, LLC (“Creditor”) secured by an asset described as 2014 BMW 328i (“Vehicle”) is determined to be a secured claim in the amount of \$12,000.00, 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 \$12,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

18. [18-20570-C-13](#) MATTHEW KENNEDY
[18-2057](#) DBJ-2

MOTION TO VACATE DISMISSAL OF
CASE PASSALAUQUA ET AL V.
KENNEDY
5-6-19 [43]

ADVERSARY PROCEEDING CLOSED:
02/04/2019 AND DISMISSED:
01/15/2019

Final Ruling: No appearance at the June 11, 2019 hearing is required.

The Motion to Vacate Dismissal is dismissed without prejudice.

Dennis A Passalaqua and Patricia A. Passalaqua (“Plaintiff”) having filed a “Withdrawal of Motion”, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on June 11, 2019, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion the Plaintiff having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Matthew L. Kennedy (“Debtor”); the *Ex Parte* Motion is granted, the Plaintiff’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Vacate Dismissal filed by Dennis A Passalaqua and Patricia A. Passalaqua (“Plaintiff”) having been presented to the court, Plaintiff having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 48, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the June 11, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 3, 2019. By the court’s calculation, 39 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Kwanay Boughton (“Debtor”) has filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on May 28, 2019. Dckt. 49. 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 Kwanay Boughton (“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 May 3, 2019, 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.

Final Ruling: No appearance at the June 11, 2019 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 9, 2019. By the court’s calculation, 63 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. John Robert Xovox Swensson (“Debtor”) has provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on May 23, 2019. Dckt. 80. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by John Robert Xovox Swensson (“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 Chapter 13 Plan filed on April 9, 2019, 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.

Thru #22

Final Ruling: No appearance required at the June 4, 2019 as Debtor has filed a statement of Non-Opposition with the court.

Local Rule 9014-1(f)(2) Objection— No 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 21, 2019. By the court's calculation, 21 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.

The Objection to Confirmation of Plan is sustained.

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

A. The Debtor's Schedule I fails to list any business income or provide the Trustee with necessary Business Documents.

On June 4, 2019, Debtor filed a statement of Non-Opposition stating that Debtor will file a new Plan. Dckt. 24

Trustee's objections are well-taken Debtor has failed to timely provide 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 Trustee. 11 U.S.C. § 521(a)(3).

Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick (“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.

Final Ruling: No appearance required at the June 4, 2019 as Debtor has filed a statement of Non-Opposition with the court.

Local Rule 9014-1(f)(2) Objection—No 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 May 22, 2019. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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. Here, as no a Non-Opposition was filed by the Debtor in response the Trustee’s Objection to Confirmation, no hearing is required.

The Objection to Confirmation of Plan is sustained.

U.S. Bank National Association, by and through its authorized servicing agent Ocwen Loan Servicing, LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s plan fails to promptly cure the entire outstanding balance of Creditor’s arrearage claim.

Creditor’s objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor has filed a timely proof of claim in which it asserts \$2,882.10 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

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

hearing.

The Objection to the Chapter 13 Plan filed by U.S. Bank National Association, by and through its authorized servicing agent Ocwen Loan Servicing, LLC (“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 sustained, and the proposed Chapter 13 Plan is not confirmed.

Thru #24

Final Ruling: No appearance at the June 11, 2019, 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 Creditor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 13, 2019. By the court’s calculation, 29 days’ notice was provided. 14 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Value Collateral and Secured Claim of 2013 Volkswagen Passat (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$5,000.00.

The Motion filed by Hazeem F. Sikta (“Debtor”) to value the secured claim of American Credit Acceptance (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 20. Debtor is the owner of a 2013 Volkswagen Passat (“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 RESPONSE:

On May 23, 2019, the Chapter 13 Trustee filed a response stating the Trustee does not oppose the Motion. Dckt. 25.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on August 8, 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 \$14,405.37. Declaration, Dckt. 20. 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 \$5,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Hazeem F. Sikta ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of American Credit Acceptance ("Creditor") secured by an asset described as 2013 Volkswagen Passat ("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.

Final Ruling: No appearance required at the June 4, 2019 as the Trustee's Objection appears to have been resolved.

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 7, 2019. By the court's calculation, 35 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.

The Objection to Confirmation of Plan is overruled.

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

- A. The Debtor proposes a value of Creditor American Credit Accept's secured claim at \$5,000.00 but has failed to file a Motion to Value Collateral.

DEBTOR'S RESPONSE:

Debtor responds that a Motion to Value has been filed and is set for hearing on June 11, 2019. Dckt. 18.

DISCUSSION

Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of American Credit Accept. Debtor has filed a Motion to Value the Secured Claim of American Credit Accept, however, without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The court also notes that Debtor's Motion is presently treated as a final ruling granting the Motion to Value.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick (“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, and Debtor’s Chapter 13 Plan filed on April 1, 2019, 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.