

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 12, 2017 at 2:00 p.m.

1. [17-24607](#)-C-13 KATHLEEN DAWSON OBJECTION TO CONFIRMATION OF
DPC-1 W. Scott de Bie PLAN BY DAVID P. CUSICK
8-24-17 [[18](#)]

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

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 24, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to make play payments as debtor's plan does not provide for full payment of the claim of the Internal Revenue Service or the Franchise Tax Board.
- B. Debtor has not filed her 2016 tax return.

The debtor concedes that the plan is not confirmable as proposed. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2017. Forty-two days' notice is required. That requirement was met.

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). 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 court's decision is to deny the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that:

- A. Debtor is delinquent \$685.00 under the terms of the proposed modified plan.
- B. Debtor's proposed plan no longer provides for the priority claim of Rose Ferris.
- C. Debtor's previous plan provided for Roundpoint Mortgage in class 4, whereas the modified plan does not include this creditor.

Creditors Rose Young and Larry Young oppose the motion as well apparently on the basis that debtor filed this case in bad faith. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

3. [17-24429](#)-C-13 RAY LONTAYO
DPC-1 Robert McConnell

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
8-9-17 [[14](#)]

Final Ruling: No appearance at the September 12, 2017 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses the Chapter 13 Trustee's Objection to Confirmation of Plan.**

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

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

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is dismissed without prejudice.

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

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 17, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, U.S. Bank, N.A. opposes confirmation of the Plan on the basis that the plan proposes to pay the creditor \$21,000.00 whereas the creditor's claim shows that pre-petition arrearage due to the creditor is \$26,176.49.

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 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

5. [17-24434](#)-C-13 THOMAS WARD
DPC-1 Eric Schwab

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
8-9-17 [[17](#)]

Final Ruling: No appearance at the September 12, 2017 hearing is required.

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

Final Ruling: No appearance at the September 12, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 5, 2017. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of American Credit Acceptance, LLC, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2008 Chrysler Sebring. The Debtor seeks to value the property at a replacement value of \$5,900.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$9,312.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$5,900.00. *See 11 U.S.C. § 506(a)*. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor 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, LLC's secured by debtor's 2008 Chrysler Sebring, is determined to be a secured claim in the amount of \$5,900.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

7. [12-33251](#)-C-13 JOSEPH/CECIL COOMBES
JSO-2 Jeffrey Ogilvie

MOTION TO CONTINUE
ADMINISTRATION OF THE CASE
AND/OR MOTION TO WAIVE 11
U.S.C. 1328 FOR DEBTOR JOSEPH
BENJAMIN COOMBES
8-8-17 [[39](#)]

Tentative Ruling: The Motion for Continued Administration of the Case and/or Motion for a Waiver of Section 1328 Requirements has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 8, 2017. Twenty-eight days' notice is required. That requirement was met.

The Motion for Continued Administration of the Case and/or Motion for Waiver of Section 1328 Requirements has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-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 for Continued Administration of the Case and/or Motion for Waiver of Section 1328 Requirements is granted.

Debtor Cecil Marie Coombs brings this motion to waive requirements of § 1328 as to Joseph Benjamin Coombs, Sr. and to seek permission to continue administration of the case. Joseph Coombs was a co-debtor who deceased on November 21, 2015. Cecil Coombs has continued to make plan payments in accordance with the confirmed plan.

Trustee's Response

Trustee does not oppose the motion and asserts that the debtor has paid all payments under the plan and the case is closed as complete.

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 Waiver of Section 1328 Requirements

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.

Final Ruling: No appearance at the September 12, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2017. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. 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 Chapter 13 Plan filed by the 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 is granted, Debtors' Chapter 13 Plan filed on August 8, 2017 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the September 12, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 14, 2017. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Safe Credit Union, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2007 Toyota Sequoia. The Debtor seeks to value the property at a replacement value of \$5,685.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$6,901.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$5,685.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Safe Credit Union secured by debtor's 2007 Toyota Sequoia is determined to be a secured claim in the amount of \$5,685.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

Final Ruling: No appearance at the September 12, 2017 hearing is required.

Local Rule 9014-1(f)(1) - No opposition filed: The Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 14, 2017. Twenty eight days' notice is required. That requirement is met.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes Debtor's homestead exemption under § 704.730 for \$651,700 protecting debtor's interest in real property at 2100 Browning Court, Rocklin, California.

The amount of \$651,700 is greater than the maximum amount allowed under § 704.730. Additionally, foreclosure may have already occurred so the debtor may no longer have an ownership interest in the property.

The court finds that the homestead exemption exceeds the amount available under § 704.730. As a result the objection to exemption is sustained.

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

IT IS ORDERED that Objection to Exemption is sustained.

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

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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 29, 2017. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was not met.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Sell Property is denied.

The Bankruptcy Code permits the Chapter 13 Debtors ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows: 14533 Grinnell Court, Magalia, California.

The proposed purchaser of the Property is not named in the motion and the terms of the sale are different between the motion and the sale agreement.

The debtors assert that the sale of the property will allow them to pay all creditors in full from the proceeds.

The Trustee has pointed out several procedural deficiencies in the filing of the motion:

A. Debtors filed this motion on 15 days notice whereas FRBP 2002(a)(2) requires 21 days notice to interested parties for a motion for proposed sale of property of the estate. The debtors have not requested an Order Shortening Time.

B. Debtors have failed to file a declaration in support of the motion pursuant to LBR 9014-1(d)(7).

C. Debtors' motion fails to indicate the name of the buyer of the property, the name of the lender, and the name

of the title company.

D. The purchase agreement in the exhibits shows a purchase price for \$260,000 whereas the motion states that the purchase price is \$277,500.

E. The debtors assert that the sale of the property will result in full 100% distribution to creditors. However, the governmental claims bar date has not yet passed, and the Trustee wants to make sure that any funds would be paid to the Trustee so as to allow for further distribution if any governmental claims are filed after the sale but before the bar date.

As a result, the Motion will be denied without prejudice so as to allow the debtors to file a property noticed motion with all procedural deficiencies cured.

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 the Chapter 13 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 Motion is denied without prejudice.

Also #22

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2017. Forty-two days' notice is required. That requirement was met.

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). 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 court's decision is to deny the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that:

A. Debtor is proposing to change the treatment of the mortgage being paid by the Trustee to being paid by the debtor based on a pending trial loan modification. However, the mortgage is not provided for after the trial loan modification ends before a permanent loan modification begins or is denied, so the Trustee is not certain that the plan complies with applicable law.

B. Debtor lost his job in January of this year. He disclosed that he received a severance package and has \$7,000 remaining. Debtor does not disclose the amount of the severance package or how the monies have been spent. Schedule I discloses the debtor is receiving unemployment in the amount of \$1,950 per month. Debtor states in his declaration that he will have another job by March 2018 and will increase the plan payments but has not described any efforts to find employment. Additionally, debtor's amended Schedule J discloses his wife's car payment in the amount of \$600.

Debtor's Response

Debtor responds that the additional provisions attempted to make clear that the debtor would make adequate protection payments to Select Portfolio Servicing, Inc. in the amount of \$2,252.03, and there is no objection from the debtor to inclusion of language clarifying that the adequate protection payments continue past the October 1, 2017 date and are ongoing through the life of the plan. Debtor also has stated that he has a job and will stepup plan payments in January 2018 rather than March 2018.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The court is concerned with the debtor's response. Debtor claims to have already received a job and filed schedules indicating that the debtor has \$1,350 in net income. This is a 0% plan, but the debtor is requesting to not pledge all of his disposable income towards the plan until January 2018 and instead make plan payments in the amount of \$600 until that time.

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

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

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

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

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2017. Forty-two days' notice is required. That requirement was met.

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). 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 court's decision is to deny the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that:

A. The Plan does not comply with Local Rule 3015-1(d)(2) which requires the plan to be filed and served with the Motion to Confirm. The Motion does not refer to any filed modified plan but instead refers to one change - plan payments. The Trustee does not oppose this change, but a Motion to Modify requires that a proposed plan be filed along with the motion.

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

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

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

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

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

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

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 9, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtors' plan fails to provide for several secured debts.
- B. Plan fails to provide for all priority debts including the Internal Revenue Service's claim.
- C. The plan will complete in 84 months according to the Trustee's calculation because of the secured and priority claims that are not accounted for.

The United States Department of Agriculture, Farm Service Agency additionally opposes confirmation on the basis that the FSA's claim is fully secured and the plan does not meet the requirements of § 1325(a) as it does not provide for FSA's claim.

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

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

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

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

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

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

Tentative Ruling: The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2017. 28 days' notice is required. This requirement was met.

The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The court's decision is xxxxxxxxxxxxxxxx

Debtors object to the Notice of Mortgage Payment Change filed by Igloo Series II Trust on April 3, 2017. The debtor asserts that the Notice of Mortgage Claim be disallowed due to:

- A. Igloo's failure to file and serve upon debtor, debtor's attorney, and Chapter 13 trustee, a notice itemizing all fees, expenses and charges as required by Rule 3002.1.
- B. Igloo is now attempting to collect \$2,560.00 in "escrow shortage" despite acknowledging that Debtor has cured all pre-petition arrears and made all post petition monthly payments.
- C. Igloo has failed to provide any reasonable basis for the increase in escrow from \$390.33 per month to \$515.15 per month.

Creditor's Response

Creditor asserts that the escrow cushion is appropriate as the Creditor kept reserve funds in case the insurance and taxes are higher than expected, as turned out to be the case here. Creditor asserts that the debtor is attempting to impermissibly modify payments to the Creditor.

Debtors' Reply

Debtor asserts that the Creditor's response did not specifically respond to the debtor's allegations. Most

significantly, debtor points out that the Creditor did not explain its non-compliance with Bankruptcy Rule 3002.1(c). Furthermore, the additional \$179.35 per month increase is unexplained as well.

Debtor additionally requests \$7,634.80 in attorneys fees and costs.

Discussion

There appears to be genuine dispute regarding material facts in this matter. The court continued the matter to allow for discovery and supplemental briefs if necessary. The parties filed supplemental briefs.

Debtor’s Supplemental Motion in Support

Igloo is alleging an escrow shortage resulting from undisclosed fees, costs or charges. Igloo did not file or serve on parties a notice itemizing all fees, expenses, or charges incurred as required by Rule 3002.1(c). There is no prima facie presumption of validity for notice of payment changes filed under 3002.1(b) and (d). Igloo asserted that part of the fees came from a Forced Placed Insurance, yet the debtor asserts that the account had been impounded for taxes and insurance since at least 2012 and the debtor maintained insurance through State Farm since at least 2012.

In 2016, debtor paid Igloo \$6,979.86 and Igloo paid only \$4,857.34 for taxes and \$659.00 for homeowners insurance, and therefore debtor does not understand how a negative escrow could arise.

Creditor’s Supplemental Response

Creditor asserts that notice was not required under Rule 3002.1 because notice is required when there are fees, expenses, and charges incurred. Here, the increase was caused by an escrow event (loan matured in 2017) not fees, expenses, and charges. Therefore, Creditor met its burden under Rule 3002.1.

The escrow shortages have been waived and credited back to the account. This includes the forced placed insurance. Creditor asserts that the only issue remaining is attorneys fees as the underlying issues have been resolved.

A new escrow analysis will need to be run to determine what the new balance will be after the credit back to debtor’s account.

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

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

The Objection to Notice of Mortgage Payment 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 Notice of Mortgage Payment is **XXXXXXXXXXXXXXXXXX**

16. [17-22875](#)-C-13 TERRY PARKER AND TONYA AMENDED OBJECTION TO DEBTORS'
DPC-2 TYUS-PARKER CLAIM OF EXEMPTIONS
Peter Macaluso 7-26-17 [[51](#)]

Final Ruling: No appearance at the September 12, 2017 hearing is required.

Local Rule 9014-1(f)(1) - No opposition filed: The Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 26, 2017. Twenty eight days' notice is required. That requirement is met.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes Debtor's exemptions the basis that the debtor has not listed an amount of the exemption claimed on Schedule C, rather the debtor has checked the box "100% of fair market value, up to any applicable statutory limit" with respect to the debtor's Real Property and their 2015 Nissan Sentra.

Debtor claims an exemption of "100% of fair market value, up to any applicable statutory limit" in a property described as "Real Property" under § 704.730. The debtor appears to mean 1201 Canevari Drive, Roseville, CA, which was scheduled with a value of \$300,000.00 with the value they own as \$220,000.00. The Trustee is uncertain what amount debtors are claiming under § 704.730

Debtor does the same for a 2015 Nissan Sentra under § 704.010. The maximum amount to be claimed under that section is \$3,050.00, and where the debtors list the vehicle at \$3,280.00, the Trustee objects to any exemption amount over \$3,050.00.

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

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

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

IT IS ORDERED that Objection to Exemptions is sustained.

17. [13-20180](#)-C-13 UVALDO GOMEZ AND
DPC-2 JOSEPHINE PAGAN
Thomas Gillis

CONTINUED MOTION TO DETERMINE
FINAL CURE AND MORTGAGE PAYMENT
RULE 3002.1
6-27-17 [[74](#)]

Final Ruling: No appearance at the September 12, 2017 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Determine Final Cure and Mortgage Payment Rule 3002.1, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Determine Final Cure and Mortgage Payment Rule 3002.1, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Determine Final Cure and Mortgage Payment Rule 3002.1.**

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.

A Motion to Determine Final Cure and Mortgage Payment Rule 3002.1 having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Determine Final Cure and Mortgage Payment Rule 3002.1 is dismissed without prejudice.

18. [12-26789](#)-C-13 GERALD/ROBIN TOSTE
GT-2 Charles Kinney

MOTION TO RECOVER INTEREST ON
EXEMPT PROPERTY HELD BY EL
DORADO COUNTY SHERIFF
8-21-17 [[295](#)]

Thru #19

Tentative Ruling: The Motion to Recover Interest on Exempt Property Held by El Dorado County Sheriff was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 21, 2017. Fourteen days' notice is required.

The Motion to Recover Interest on Exempt Property Held by El Dorado County Sheriff was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The court's decision is to deny the Motion.

Debtors bring this motion for an order to recover the interest on exempt property (i.e. exempt wages) being held by the El Dorado County Sheriff after garnishment by creditors Smedberg et al. Debtor listed \$3,875.00 of funds being held by the El Dorado County Sheriff as exempt. Debtors assert that as the wages are exempt, interest on the wages should be exempt too.

Trustee's Response

Trustee responds that he is uncertain what legal authority the debtor is citing to as justifying the relief requested.

Debtors' Reply

Debtors reply that the El Dorado County Sheriff does not oppose the motion. The debtors list 2 sections in the bankruptcy code, one other section, and two sections from the CCCP. Although the debtors do not explicitly lay out why any of these sections are relevant, the gist seems to be that interest on exempt assets is exempt.

El Dorado County's Response

Despite debtors contention that the El Dorado County Sheriff does not oppose the motion, the Sheriff's

Department opposes the motion on the basis that the debtors have introduced no competent evidence to support the motion and that the service to the County of El Dorado is untimely. Debtors' tried to file this motion pursuant to LBR 9014-1(f)(1), however did not give 28 days' notice. The motion is still timely as a 9014-1(f)(2) motion. As a result, El Dorado did receive proper service.

The County explains that the debtors' contention that the Sheriff holds interest that accrued on exempt garnished wages is based upon an incorrect reading of the County's documents. In fact, the documents show that the \$638.94 "reflect two wage garnishment checks. . . used to make an adjustment to the interest on the debt" and that these funds are shown as deducted from the Interest on Principal of the debt.

Discussion

The court does not find that the debtors have introduced competent evidence to support granting of the motion. The debtors do not explain how garnished wages of \$3,875.00 could garner interest in the amount of \$638.94, nor have the debtors introduced evidence indicating that this \$638.94 is in fact the interest on the exempt wages. Debtors are adamant that they are allowed to receive the interest on exempt wages, however have failed to prove that the amount requested is in fact interest on exempt wages. As a result, the motion will be 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 Recover Interest on Exempt Property Held by El Dorado County Sheriff filed by the 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 Recover Interest on Exempt Property Held by El Dorado County Sheriff is denied.

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

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 21, 2017. Fourteen days' notice is required.

The Motion to Recover Money Withheld for the IRS by the Trustee was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The court's decision is to deny the Motion.

Debtors bring this motion requesting an order to recover money withheld by the Trustee for the IRS since nothing is owed by the debtors to the IRS because of a pending tax court case. The Trustee has indicated that \$5,554.54 has been withheld and paid to the IRS for priority claim #19 but there is no claim #19 on the claims docket.

Trustee's Response

Trustee responds that the debtors filed a plan calling for the IRS to be paid an estimated \$12,951.12. While the plan stated that the debt was disputed, no provisions exist in the plan to authorize the Trustee to withhold disbursements to the claim. Trustee asserts that the Trustee has no funds on hand and is not holding any funds. The amount debtors are trying to recover were disbursed to the IRS in 2016 as indicated in the Debtor Summary Report. These funds would have been paid to unsecured creditors had they not been paid to the IRS.

Debtors' Reply

Debtors assert that the Trustee admits to withholding at least \$11,562.50 on a disputed IRS claim. Debtors have a pending tax court case where, if debtors win, the IRS should be paid nothing, and debtors are unsure how to recover those funds if they win the tax court case.

Discussion

The debtors do not address the fact that the Trustee does not have funds in hand to pay the debtors. The fact that the debtors have a tax court case against the IRS is not reason to conclude that the IRS does not have a valid claim against the debtors. Furthermore, the debtors do not address the fact that even if the tax court finds that the IRS does not have a valid claim against the debtors, those funds would have been disbursed to unsecured creditors, not returned to the debtors. As a result, the motion will be 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 Recover Interest on Exempt Property Held by El Dorado County Sheriff filed by the 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 Recover Money Withheld for the IRS by the Trustee is denied.

Thru #21

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2017. Forty-two days' notice is required. That requirement was met.

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). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

- A. Plan will exceed 60 months as the plan does not appear to provide for Solano DCSS which filed a priority claim in the amount of \$20,683.29.
- B. Debtor appears to be delinquent in post petition payments to the State Board of Equalization and it does not appear that debtor can make the payments required.

The court continued the hearing in order to allow the debtor time to make the necessary changes and payments. The court notes that an objection to the claim of Solano County has been filed. No evidence of a cancelled check has been provided to the court. The court does not have evidence that the plan currently complies with §§ 1322 and 1325(a).

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

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

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

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

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

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 28, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement is met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim is continued to November 21, 2017 at 2:00 p.m.

Debtor ("Objector") requests that the court disallow the claim of Solano DCSS ("Creditor"), Proof of Claim No.5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured priority claim in the amount of \$20,683.29. Objector asserts that the claim is for spousal support, but the state court has told Mr. Stanley that he should be only paying child support, not spousal support at this time.

Creditor's Response

Solano DCSS responds to the motion stating that this underlying issue is being litigated and is set for hearing in Solano County on November 4, 2017. Solano requests that the court continue this hearing until the state court has litigated the issue.

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

Based on the evidence before the court, the court finds it is in the best interests of parties to continue this hearing to November 21, 2017 to allow the state court of Solano to litigate the underlying issue.

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

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

The Objection to Claim of Solano DCSS, Creditor filed in this case by the debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim is continued to November 21, 2017 at 2:00 p.m.

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

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 7, 2017. Fourteen days' notice is required. That requirement was met.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The court's decision is to grant the Motion to Dismiss and dismiss the case.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

- A. Debtor is \$3,900.00 delinquent in plan payments. The debtor has paid \$72,100.00 into the plan to date.
- B. Debtor filed a notice with the court indicating debtor's intention to commence loan modification trial period payments, however the plan specifically states in § 6.03 that "The Debtor shall not commence making payments under the terms of the loan modification until it has been approved by the court." No approval for loan modification has been filed.

The hearing on this Motion was continued to be heard in conjunction with the pending Motion to Confirm that Chapter 13 Plan in this case.

The court finds the Trustee's objections valid. As the debtor is delinquent and has not complied with all of the requirements under 11 U.S.C. § § 1322 and 1325, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.
