

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 24, 2015 at 2:00 P.M.

1. [11-46902](#)-C-13 JAVIER PEREZ AND CLOTILDE CONTINUED MOTION TO MODIFY PLAN
TJW-3 SALINAS 9-1-15 [[73](#)]
Timothy Walsh

Tentative Ruling: The Motion to Confirm the 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). 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 September 1, 2015. Thirty-five 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The Trustee does not believe that the Schedule I filed 6/2//15 accurately reflects Debtors' income given that it is unlikely that Debtor Javier Perez is still receiving unemployment compensation since he lost his job over 46 months ago.
2. Debtors are delinquent \$280 in plan payments.
3. The motion does not cite applicable Bankruptcy Code provisions.

At the hearing, Debtor reported having obtained a new job and additional financial information which the Trustee believes could resolve his opposition. The court continued the hearing to allow for the filing of supplemental pleadings.

The docket reflects that as of November 19, 2015 Debtors have not filed supplemental pleadings.

As the Trustee's concerns highlight, the modified 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 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 to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Value 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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 9, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value 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 -----
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The Motion to Value secured claim of Santander Consumer USA, Inc., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2008 Ford Expedition The Debtor seeks to value the property at a replacement value of \$15,365.00 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 \$25,168.00. 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 \$15,365.00. 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 Santander Consumer USA, Inc. secured by a purchase-money loan recorded against a 2008 Ford Expedition is determined to be a secured claim in the amount of \$15,365.00, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$15,365.00.

Final Ruling: No appearance at the November 24, 2015 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 October 8, 2015. 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). 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 Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 8, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13

Trustee will submit the proposed order to the court.

4. [15-23915](#)-C-13 ELIZABETH ARMAS
TJW-3 Timothy Walsh

CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO BANK
N.A.
9-9-15 [[45](#)]

Also #5

Final Ruling: No appearance at the November 24, 2015 hearing 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).

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 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 September 9, 2015. Twenty-eight days' notice is required. That requirement was met.

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). 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 to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject personal property commonly known as 2011 Toyota Rav4. The Debtors seeks to value the property at a fair market value of \$15,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The Debtor bases the valuation, in part, upon NADA guidelines, which states the value for an "average trade in at \$14,000, an for a clean trade in \$14,925." The Kelly Blue Book (KBB) lists "Sell to Private Party Very Good Condition, \$14,379."

Wells Fargo Bank, N.A. filed a claim in the amount of \$19,184.32 secured by the subject property alleging that the secured portion of said

claim is \$18,475.

Creditor's Objection

Wells Fargo Bank, N.A., objects to Debtor's Motion to Value because the proposed valuation is substantially below the "clean retail" value given in NADA and is not based of KBB "retail value."

Creditor requests a continuance for at least 30 days to obtain its own verified appraisal of the subject property.

Creditor also objects to the court's consideration of Debtor's exhibits including "NADA guides Price Report" and "kbb.com" on the grounds that they are inadmissible hearsay.

Discussion

Given that the value of the subject property is in dispute, the court continued the matter to November 24, 2015 at 2:00 p.m. allow Creditor to obtain a verified appraisal of the subject property.

The docket reflects that as of November 19, 2015 Creditor has not filed an appraisal or supplemental pleadings.

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 filed by 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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a 2011 Toyota Rav4, is determined to be a secured claim in the amount of \$15,000, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$15,000.

5. [15-23915](#)-C-13 ELIZABETH ARMAS
TJW-4 Timothy Walsh

CONTINUED MOTION TO CONFIRM
PLAN
9-9-15 [[50](#)]

Final Ruling: No appearance at the November 24, 2015 hearing is required.

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 September 9, 2015. 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 Motion to Confirm the Amended Plan is granted.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The Plan relies on the pending motion to value the collateral of Wells Fargo Bank, N.A..

Creditor's Opposition

Wells Fargo Bank, N.A. objects to the \$15,000 value given the vehicle securing its claim based on a retail sales installment contract. Creditor also objects to the \$290 monthly adequate protection payments under the proposed Plan.

Discussion

The Plan no longer relies on a pending motion to value the collateral of Wells Fargo Bank, N.A. The court has granted the motion.

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

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

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

The Motion to Confirm the Chapter 13 Plan

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 9, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the November 24, 2015 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 October 9, 2015. 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). 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 Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 9, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13

Trustee will submit the proposed order to the court.

7. [15-27520](#)-C-13 CARLA JOHANSEN
CLJ-1 Pro Se

MOTION TO VACATE DISMISSAL OF
CASE
10-22-15 [[19](#)]

DEBTOR DISMISSED: 10/13/2015

Tentative Ruling: The Motion to Vacate Dismissal 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). 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, and Office of the United States Trustee on October 22, 2015. Twenty-eight days' notice is required.

The Motion to Vacate Dismissal 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). 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 Vacate Dismissal.

Debtor moves the court for an order to vacate the dismissal entered on October 13, 2015 due to excusable neglect and judicial economy.

Debtor filed a skeleton petition on September 25, 2015 to stop a pending foreclosure sale scheduled three days later. All missing paperwork was filed by October 16, 2015. Debtor first learned of dismissal when she was informed, on October 22, 2015, that the first meeting of creditors was cancelled.

Filing a new chapter 13 case—rather than vacating dismissal—is wasteful of judicial resources.

Trustee's Opposition

The Trustee request the court deny the motion due to Debtor no filing documents timely and having a chapter 13 plan that is unfeasible.

Debtor filed a skeleton petition on September 25, 2015. The deadline for remaining documents was October 9, 2015. Dkt. 3. Debtor did not file the plan until October 16, 2015 and schedules until October 18, 2015.

The Debtor has a total of three previous chapter 13 cases that were dismissed and one chapter 7 case that was discharged in 2012. (Nos. 09-45930, 10-22626, 12-21584, and 13-26783).

The Debtor's chapter 13 plan (Dkt. 18) has a monthly plan payment of \$1600 and calls for monthly payments to creditors totaling \$1673 not including Trustee compensation. No payments have been made.

Legal Standard

Rule 60(b)

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

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

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

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

Discussion

Debtor has failed to allege any facts that would amount to excusable neglect. Debtor has not addressed why she could not file the missing documents by October 9, 2015.

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

IT IS ORDERED that the Motion to Vacate Dismissal is denied.

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 June 22, 2015. 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.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan will complete in 74 months as opposed to the 60 months proposed, the maximum amount of time allowed under § 1322(d).

Creditor's Opposition

Creditor Harley-Davidson Credit Corp. opposes confirmation because the Plan does not provide Creditor's secured claim.

Discussion

As the Trustee's concern highlights, 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.

Also #10

Tentative Ruling: The Motion to Confirm the 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). 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 September 1, 2015. Thirty-five 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 grant the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The debtor's declaration fails to provide a specific, detailed reason for plan modification.
2. The declaration is not clear as to whether Debtor's income has changed since the Schedule I was last filed.

Debtor's Response

As the debtor stated that she "fell behind on payments significantly due to an illness and only received disability payments in January, February, and March of 2015."

The debtor acknowledges that when she is no longer ill, and set at a "doctor's recommended time base at work".

Debtor's Supplemental Declaration

In pertinent part, Debtor's declaration states:

I filed for bankruptcy in 2011 and was timely in payments to the Trustee, living paycheck to paycheck. I was barely surviving, but meeting my obligations for the period of 12/22/11 - 8/28/14.

In September 2013 my breaker box was ripped from my home. Though insurance covered parts, I was left out of pocket for food spoilage, time off of work, and partial electrician fees. I still met my payments.

The tires on my Chevy were bald and needed to be replaced. The battery and electrical system on my car had issues and would constantly die and leave me stranded. It affected my ability to get to work, to make the money needed to pay my creditors, and feed my family. The transmission needed to be replaced. I couldn't afford a new car, so my payments fell behind as I made all the repairs to keep my old car going.

The hot water heater exploded in August 2014.

My daughter's behavioral and mental issues had caused me to miss work. I became so overwhelmed that I had to seek treatment for major depression and was taken off work.

I was just returning to work, with another voluntary demotion, to try and get back on track with life and responsibilities and my only transportation to and from employment and school was inoperable. I couldn't afford a rental car, but I would lose my job if I couldn't get there.

I knew my credit was horrible with bankruptcy. I did not know that I had to have court approval to purchase a car - I truly thought no one would give me credit. A car dealership said I needed to call my lawyer to get approval. I reached out again and was finally able to reach someone at my attorney's office. I was told the price would need to be under \$15,000, if I could even get approved.

I was denied by many dealerships, but I needed a car to get to work and to get my daughter to school and appointments. One dealer actually approved me and I paid \$500.00 down and went to work the next day. I have not missed a single payment and intend to honor my responsibilities.

Trustee's Supplemental Response

The Trustee's opposition has been resolved as to item one. The Trustee does not withdraw his opposition as to whether Debtor can currently afford higher payments.

The original plan called for payments of \$572 per month. Debtor has purchased a vehicle at \$298 per month, which would reduce the plan payment amount to \$270 per month.

The most recently filed Schedule I reflects a \$160 expense for voluntary contributes to retirement plans.

The Trustee continues to oppose modification of the plan unless the plan payment remains at least \$298 per month for the remaining 12 months.

Debtor's Supplemental Reply

Debtor accepts the payments of \$298 for the remaining 12 months of the plan.

Discussion

As the Trustee's concerns have been resolved, the modified 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 Modified 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 September 1, 2015 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.

Tentative Ruling: The Motion to Incur Debt 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 September 1, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Incur Debt 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 to Incur Debt is granted.

The motion seeks permission to purchase a 2011 Mazda CX7, which the total purchase price is \$13,828.68, with 71 monthly payments of \$298.37 at 15.54% interest rate. The purchase was made to replace 2004 Chevy Trail Blazer.

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).

TRUSTEE'S OPPOSITION

Chapter 13 Trustee, David Cusick, opposes Debtor's motion. Debtor's Motion to Use Credit seeks approval to purchase the Vehicle nunc pro tunc, where the vehicle was purchased on November 20, 2014. Debtor's confirmed plan provides that Debtor shall not incur new debt aggregating \$1,000 with first obtaining court authorization.

First, Trustee asserts that Debtor does not qualify for nunc pro tunc relief. In the Ninth Circuit, a Debtor must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankruptcy estate significantly. *In re Harbin*, 486 F.3d 510, 522-23 (9th Cir. 2007).

Trustee points out that Debtor entered into this financing arrangement in November of 2014, and then subsequently filed a plan in December 2014, Dckt. 46, and another in May of 2015, Dckt. 65. Debtor filed a previous Motion to Incur Debt filed May 11, 2015, Dckt. 71, denied by the court. Debtor now provides that she misinterpreted her attorney's advice, and was under the impression that she did not need court approval on any purchase under \$15,000. Debtor did not explain this in the previously proposed plans of the previous Motion to Incur Debt.

Second, Trustee asserts that Debtor lacks credibility. The Motion to Modify, Dckt. 96, states that Debtor fell behind on plan payments because of reduced income, major home and car repairs, and family obligations. However Debtor does not specify the dates involved, the home repairs needed, what types of obligations occurred, or contain any verification of reduction in income. No supplemental evidence was provided.

DEBTOR'S RESPONSE

Debtor responds to Trustee's opposition, again reasserting that Debtor did not understand the advice of previous counsel, and that Debtor requires the vehicle for her transportation needs.

TRUSTEE'S REPLY

The Trustee no longer opposes the motion based on Debtor's supplemental declaration (Dkt. 125) and requests that the court grant the motion.

DISCUSSION

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

The Motion to Incur Debt 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 Debtor Tanya Barnard is authorized to incur debt pursuant to the

terms of the agreement, Exhibit B, Dckt. 104.

11. [15-27151](#)-C-13 TERESA ANTONIO
DPC-1 Stephen Murphy

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-29-15 [[15](#)]

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 October 29, 2015. Fourteen days' notice is required. That requirement was met.

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:

1. The plan does not provide for FTB debt, but the FTB has a secured tax lien in the amount of \$90,000.

It is unclear whether any portion of the FTB tax lien qualifies as nondishchargeable priority debt. The FTB has not filed a proof of claim. As the Trustee highlights, due to the ambiguity of the FTB debt, it is unclear whether the Debtor can afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6). The court has considered the Trustee's concerns and finds them legitimate. 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Extend Automatic Stay 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2015. 14 days' notice is required. This requirement was met.

The Motion to Extend the Automatic Stay 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.

The Motion to Extend the Automatic Stay is granted.

PREVIOUSLY

Debtor served and noticed this motion for hearing before the Honorable Michael McManus on October 5, 2015 at 1:30 p.m. On October 8, 2015, this case was transferred to Department C for hearing before the Honorable Christopher Klein.

At the October 20, 2015 hearing, the Motion to Extend the Automatic Stay was granted on an interim basis through 11:59 p.m. on December 4, 2015.

The final hearing on the Motion to be conducted at 2:00 p.m. on November 24, 2015. Debtor shall file and serve supplemental pleadings on or before November 6, 2015, and Replies, if any, filed and served on or before November 13, 2015.

MOTION

Robert Richard Claycamp ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-30438) was dismissed on May 11, 2015, after Debtor failed to procure motions to value collateral upon which his plan relied. See Order, Bankr. E.D. Cal. No. 14-30438, Dckt. 87, May 11, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

CREDITOR'S OPPOSITION

Creditor, First U.S. Community Credit Union, opposes the motion to extend stay. Creditor holds a second deed of trust on Debtor's real property commonly known as 550 West Broad Street, Nevada City, California. Creditor asserts the present bankruptcy case was not filed in good faith, and that Debtor has not provided clear and convincing evidence to rebut the presumption of bad faith. Creditor asserts Debtor has filed this second case in order to hinder or delay Creditor's efforts to pursue its collateral. Creditor asserts Debtor's first case was dismissed for Debtor's lack of prosecution and unreasonable delay prejudicial to creditors, that there has been no substantial change in Debtor's financial or personal affairs, and Debtor has not established any other reason to conclude that this case will be concluded with a confirmed plan that will be fully performed.

TRUSTEE RESPONSE

Chapter 13 Trustee states that he does not take a position on this motion.

DEBTOR'S RESPONSE

Debtor impresses upon the court the gravity of granting the extension of the stay, asserting that if the court does not extend the stay, Creditor will immediately move to foreclose the property. Debtor was unable to show, appearing pro se in the previous case, that the value of his home does not support the second mortgage and that Creditor should be treated as a general unsecured creditor. If Creditor is correct that the value of the home and values are increasing, a delay will have no negative effect on them.

Debtor's Supplemental Motion and Declaration

Debtor is inexperienced with interacting with the law and thus did not have the necessary familiarity to have produced the documents filed in his previous case and differentiate between proper and improper choice of counsel to represent him.

Debtor is technologically illiterate and thus had no feasible means of "self-education" regarding his case or choice of counsel.

Debtor does not recall signing any documents after October. Any documents filed after October may have copy/pasted signatures.

There have been state bar disciplinary actions against Debtor's formal counsel of record, Steven Lynes.

Creditor's Supplemental Motion and Declaration

Debtor did have the assistance of an attorney before, during, and after his first bankruptcy case ("First Case").

Debtor has filed a plan that is not confirmable. First U.S. has filed an objection to the Debtor's proposed plan, for the reasons discussed in its Opposition (the pending motion to value First U.S.'s collateral). Docket No. 62.

The chapter 13 Trustee, David P. Cusick ("Trustee"), also has filed an objection to confirmation of the Debtor's plan. Docket No. 58.

The hearing on the objections to the plan is set for November 17, 2015. In the event that the Court denies confirmation of the plan, the Court should deny this Motion, because the Court will have determined that the Debtor has not proposed a plan that is confirmable and that will be fully performed.

LEGAL STANDARD

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(c) and 1325(a) - but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

DISCUSSION

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor through his counsel provides that Debtor attempted his previous chapter 13 bankruptcy in pro per, and that his self-representation was a key contributing factor to Debtor's unknowing and unintentional failure to fulfill the duties of a Debtor in bankruptcy. His inability to procure an order valuing certain collateral led to the collapse of the feasibility of his plan.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay on an interim basis pending a final hearing.

Creditor First U.S. Community Credit Union opposes the motion on the basis that Debtor has filed a plan that is not confirmable as the plan relies on a motion to value.

The court has not yet determined whether Debtor's plan is confirmable. At the hearing on the objections to the plan set for November 17, 2015, the court continued the hearings to January 12, 2015 at 2:00 p.m. to allow for resolution of the motion to value, upon which the Plan relies.

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 Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

13. [12-34057](#)-C-13 GARY/TONI GRAGG
GDC-1 Guy Chism

MOTION TO APPROVE NOMINATION OF
DEBTORS' REPRESENTATIVE
10-23-15 [[68](#)]

Final Ruling: No appearance at the November 24, 2015 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, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2015. 28 days' notice is required. This requirement was met.

The Motion to Substitute 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 Substitute is granted.

Joint Debtor, Gary Dennis Gragg, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Toni Ann Gragg. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on July 31, 2012. On October 9, 2012, the Debtor's Chapter 13 Plan was confirmed. On August 16, 2015, Debtor Toni Ann Gragg passed away. The Joint Debtor asserts that he is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting 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. The Suggestion of Death was filed on the same date as the instant motion. Dckt. 71. Joint Debtor is the surviving spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that he will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the 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*, 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 provides "[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 representation. 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 [emphasis added],

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. 5 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...

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. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor Gary Dennis Gragg 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 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. 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, Gary Dennis Gragg, as the surviving spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Toni Ann Gragg. The court grants the Motion to Substitute Party.

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 Gary Dennis Gragg is substituted as the successor-in-interest to Toni Ann Gragg and is allowed to continue the administration

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

14. [15-27166](#)-C-13 VALERIE IVY
DPC-1 Eric Schwab

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-29-15 [[35](#)]

Also #15

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 October 29, 2015. Fourteen days' notice is required. This requirement was met.

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.

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

1. Debtor does not appear able to make plan payments required under 11 U.S.C. § 1326(a)(6). Debtor is delinquent \$375. To date, Trustee has not received any plan payments from Debtor where on payment has come due. The next schedule payment of \$375 is due on November 25, 2015.
2. Debtor cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a Motion to Value the Collateral of OneMain Financial, which is set for hearing on November 24, 2014, the same date as this motion. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation.

3. Debtor admitted at the First Meeting of Creditors held on October 22, 2015 that she no longer resides at the address listed on the voluntary petition filed September 11, 2015. Debtor admitted that her rent expense for her new Rancho Cordova residence is \$1,200 per month. Debtor's plan payment could be increased by \$105 per month.

While the court has granted Debtor's Motion to Value Collateral of OneMain Financial, resolving Trustee's second basis for objection, Trustee's first and third basis for objection remain outstanding. 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

15. [15-27166](#)-C-13 VALERIE IVY
EJS-1 Eric Schwab

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL
10-26-15 [[30](#)]

Final Ruling: No appearance at the November 24, 2015 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 October 26, 2015. 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 OneMain Financial "Creditor," is granted.

The Motion filed by Valerie M. Ivy ("Debtor") to value the secured claim of OneMain Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2002 Honda Accord ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$4,361 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 in May 1, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$5,590. Therefore, the 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 \$4,361. *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 Valerie Monique Ivy ("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 [name of creditor] ("Creditor") secured by an asset described as 2002 Honda Accord ("Vehicle") is determined to be a secured claim in the amount of \$4,361, 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 \$4,361 and is encumbered by liens securing claims which exceed the value of the asset.

16. [15-27566](#)-C-13 JEFFREY/BECKY NEITHERCUTT MOTION TO VALUE COLLATERAL OF
RAC-1 Richard Chan CRHMFA HOMEBUYERS FUND
10-21-15 [[14](#)]

Tentative Ruling: 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).

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 October 21, 2015. Twenty-eight days' notice is required. That requirement was met.

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). 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 to Value secured claim of CRHMFA Homebuyers Fund, "Creditor," is set for evidentiary hearing on [DATE] at [TIME].

The Motion is accompanied by the Debtors' declaration. In January 2012, Debtors entered into an agreement with CRHMFA Homebuyers Fund to complete energy upgrades on their real property located at 958 K Street, Davis, California. The collateral consists of the following items:

- Lennox 2.5 ton A/C #XC14-030 Coll # LC23/37Y9BG Furnace #G61 MPV-36B-071 UPFLOW
- 16 seer 13 eer 95% afue 2 heat/1 cool Thermostat Vision Pro 8000 ARI #3333946
- Panel 14 x Schuco USA Model MPE 235 PS 09
 - Inverters Area 1 1 SMA America Model SB4000US 40 Gallan State GS6 40 YOCT Water Heater

The Debtors seeks to value the property at a fair market value of \$4,980.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The collateral is currently encumbered with a secured lien with a balance of approximately \$51,058.00. Therefore, the Creditor's claim secured by a lien on the asset is under-collateralized. Debtors ask the court to determine that the creditor's secured claim is in the amount of \$4,980.00. See 11 U.S.C. § 506(a).

CREDITOR'S OPPOSITION

Creditor, CRHMFA Hoomebuyers Fund, opposes the motion on the basis of Debtor's valuation of the collateral. Creditor submits an appraisal for the collateral provided by West Auctions, Inc., showing the "Replacement Cost Used In-Place" for the collateral amounts to \$16,355 as of September 28, 2015. As such, Creditor asserts that the court should find that the value of the collateral is \$16,355, and that Creditor's allowed secured claim in the bankruptcy is \$16,355, and that the remainder is unsecured pursuant to 11 U.S.C. § 506(a).

DISCUSSION

Debtors and Creditor have submitted competing valuations as to the collateral. The court will set an evidentiary hearing to resolve this matter.

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 filed by 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 pursuant to 11 U.S.C. § 506(a) is set for evidentiary hearing on [DATE] at [TIME].

Also #18

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 Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2015. By the court's calculation, 36 days' notice was provided. 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.)

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 Number 1 of the Law Offices of Allan R. Frumkin is

Debtor, Robert Dale Wagner, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of the Law Offices of Allan R. Frumkin ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$8,571.95. Objector asserts that in March 2014, Debtor retained the law Offices of Allan R. Frumkin to combat a foreclosure on his family residence scheduled for late March 2014.. Debtor unequivocally informed the Law Office of Allan R. Frumkin that he had very limited funds of approximately \$4,000, and that there were \$9,000 in arrears on the mortgage. The Law Office of Allan R. Frumkin then pursued a legal strategy putting Debtor in further arrears and did not solve the foreclosure issue. The Frumkin Firm asserts Debtor owed \$14,517.95 in aggregate fees, \$8,571.95 of which are being pursued in the proof of claim.

The Frumkin Firm nitially filed a skeletal chapter 13 case, then instituted costly litigation against Seterus, the home loan servicer. The Frumkin Firm was billing for suspended attorney Steven Lynes at \$300 per hour, although the principal Allan R. Frumkin knew that effective March 21, 2014, Mr. Lynes had been suspended by the California State Bar.

Further, in April 2014, the placer County Superior Court judge ruled that an ex parte application for a temporary restraining order halting the foreclosure sale was denied in significant part because the work was defective because the firm did not prosecute the chapter 13 case.

Debtor asserts that Proof of Claim 1 (in the amount of \$8,571.95) should be dismissed, and that the Law Offices of Allan R. Frumkin should be required to repay the bankruptcy estate all sums collected from Debtor (\$7,446) because the firm pursued a faulty legal strategy and grossly overbilled Debtor.

CLAIMANT'S RESPONSE

Claimant, the Law Offices of Allan R. Frumkin, starts by pointing out that incorrect notice was provided pursuant to LBR 3007-1(b)(1), pursuant to which 44 days' notice is required. Here, instead, 36 days' notice was provided. Moreover, Claimant objects that the notice was not served at the proper address.

Finally, Claimant asserts that Debtor's objection does not comply with the requirements of the Bankruptcy Code, as Debtor has failed to state a basis under 11 U.S.C. §§ 502(a) & 502(b) for his objection to claim. Furthermore, Creditor asserts that this claim is better suited to adjudication in state court, and in fact, stay relief may here be appropriate to permit resolution in state court as to the matter of fees permissible.

TRUSTEE'S RESPONSE

Trustee states that he is not opposed to hearing on this matter, and is not opposed to the relief requested. Trustee, however, points out that the Law Offices of Allan R. Frumkin did not file a 2016(b) Disclosure of Attorney Compensation when he was Debtor's attorney in Debtor's prior bankruptcy case, Case No. 14-22753.

DISCUSSION

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

The court will render its decision upon hearing oral argument of the parties 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 Objection to Claim of the Law Offices of Allan R. Frumkin, Creditor filed in this case by the Chapter 13 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

Number 1 of the Law Offices of Allan R. Frumpkin is

18. [15-22968](#)-C-13 ROBERT WAGNER
NLG-1 Bruce Rorty

OBJECTION TO CONFIRMATION OF
PLAN BY SETERUS, INC.
10-29-15 [[74](#)]

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 October 29, 2015. Fourteen days' notice is required. This requirement was met.

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.

Creditor Federal National Mortgage Association c/o Seterus, Inc., is holder of a secured claim against real property commonly known as 3521 Sierra College Boulevard, Loomis, California. Creditor opposes confirmation of the Plan on the basis that Debtor's plan fails to satisfy the full value requirement of 11 U.S.C. § 1325(a)(5)(B)(ii). The plan accounts for pre-petition arrears of \$18,800 when, in fact, \$40,604.79 in pre-petition arrears are due and owing. To pay the full amount of arrears owed, Debtor would need to increase current plan payments to Creditor from \$330 to \$676.75 per month. Creditor also points out that Debtor has failed to account for arrears of \$300 owed to Bank of America Deed of Trust. Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6).

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 Federal National Mortgage Association c/o Seterus, Inc., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

19. [14-27476](#)-C-13 EDUARDO/MARIE ORTEGA
CA-4 Michael Croddy

MOTION FOR COMPENSATION FOR
MICHAEL D. CRODDY, DEBTORS
ATTORNEY(S)
11-3-15 [[219](#)]

DEBTOR DISMISSED:
09/24/2015
JOINT DEBTOR DISMISSED:
09/24/2015

Tentative Ruling: The Motion for Allowance of Professional Fees 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2015. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees 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 for Allowance of Professional Fees is

Michael Croddy, the Attorney for Debtors, ("Applicant") for Eduardo and Marie Ortega, ("Clients"), makes a Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 2014 through present. Applicant requests the amount of \$18,225 in additional fees and \$973.04 in costs. Counsel has previously received a \$1,750 retainer and \$310 for the filing fee, and here requests \$17,138.04 in additional compensation.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to

an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant received a retainer in the amount of \$1,750 at the outset of the case.

This motion seeks in additional fees \$17,138.04 for services related to: meeting with clients (4.90 hours); data acquisition and input (10.30 hours); 341 meeting of creditors (1.90 hours); motion to dismiss (18.20 hours); motion to confirm first amended chapter 13 plan (4.10 hours); motion to confirm second amended plan (7.30 hours); and motion for attorneys fees (0 hours).

The hourly rate here charged for services of the senior attorney is \$375. The total number of hours expended in this case for which the applicant seeks compensation is 48.6 hours.

CHAPTER 13 TRUSTEE RESPONSE

Chapter 13 Trustee, David Cusick, responds to this motion stating Trustee has a balance on hand of \$15,000. Debtors have paid in a total of \$47,984.48 and \$32,984.48 of those funds were previously disbursed to secured claims and Trustee fees under the confirmed plan. On or about October 29, 2015, Trustee received a Notice of Levy from Creditor Robert Guerra requesting the funds held by the Trustee.

The court will render its decision upon hearing the oral argument of the parties at hearing.

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

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

The Motion for Allowance of Fees and Expenses filed by Michael Croddy ("Applicant"), Attorney for the Chapter 13 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 for Compensation is

Also #21

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 October 29, 2015. Fourteen days' notice is required. This requirement was met.

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.

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

1. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Kwikcash Inc. listed in Class 2C. To date, Debtor has not filed such motion.
2. Debtor lists Bk of Amer and Springfield Financial S in Class 2A. Both creditors are listed on Schedule F. It does not appear these creditors qualify as Secured Creditors. Moreover, Debtor lists Toyota Motor Credit regarding a 2014 Toyota Camry in Class 2B. It appears this debt cannot be valued as the auto was purchased in July 2014, within 910 days of the filing of the case.

Trustee's concerns are well-taken, and Trustee raises credible concerns as to Debtor's 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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 September 25, 2015. Fourteen days' notice is required. This requirement was met.

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.

Creditor, Toyota Motor Credit Corporation, holder of a secured interest in a 2014 Toyota Camry, opposes confirmation of the Plan on the basis that:

1. Debtor may not strip Creditor's lien because this debt was incurred within 910 days of the filing of this petition, on August 3, 2014. The "hanging paragraph" of 11 U.S.C. § 1325(a) requires that the value of the vehicle to be distributed under the plan on account of Creditor's secured claim may not be less than its claimed amount: \$25,626.94.
2. Pursuant to 11 U.S.C. § 1325(a)(5)(B), the value of the property to be distributed to Creditor is less than the allowed amount of Creditor's secured claim. Debtor's plan only provides for \$17,900.00. However, Debtor must provide for Creditor's full claim of \$25,626.94.
3. Pursuant to 11 U.S.C. § 1325(a)(5)(B), the plan fails to provide sufficient payments to Creditor's for adequate protection.

Creditor is correct; Debtor, having purchase the 2014 Toyota Camry within 910 of the filing of the bankruptcy petition, may not strip down the

Creditor's secured claim to the value of the vehicle. 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, Toyota Motor Credit Corporation, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Confirm the 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). 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 October 13, 2015. Thirty-five 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtor's proof of service filed on October 13, 2015 states that Debtor's declaration was served along with the Notice of Hearing, Motion, Modified Plan, and Exhibits. Copies served to Trustee included the Motion with the last page missing, Modified plan with pages 1-4 missing, Notice, and Exhibits, but no declaration.
2. Trustee is uncertain of Debtor's ability to pay. Debtors filed a supplemental schedule I and J in support of this plan showing a substantial reduction in Debtor Erin O'Brien's income of over \$1000 per month.

The supplemental schedule J shows substantial decreases in expenses—including a \$75.00 decrease in home maintenance (from \$125 to \$50); \$60 decrease in electricity and heat (from \$350 to \$290); \$425 decrease in food and housekeeping (from \$950 to \$525); \$225 decrease in clothing and laundry (from \$350 to \$125); \$225 decrease in personal care (\$275 to \$50); \$200 decrease in transportation (\$625 to \$425); \$225 decrease in entertainment (from \$275 to \$50).

Debtor's modified plan proposes to increase Debtor's monthly plan payments from \$2,842 to \$2,902, while Debtor's show a dramatic reduction in income. Trustee is uncertain if all the reductions Debtors have included in their supplemental schedules are reasonable and Debtors do not provide any kind of explanation to support the adjustment.

The court shares Trustee's concerns. Aside from the various service issues pointed out by Trustee, the court is dissatisfied with the lack of explanation offered by Debtors as to how they expect to reduce basic living necessities amounting to a decrease in expenses of over \$1000. Debtors propose to decrease food expenses by \$425 to an amount below the national average, cut transportation costs by \$200 for a daily commute from Roseville to Davis and West Sacramento, reduce entertainment expenses from \$275 to \$50 for a family of five. In the modified plan and supplemental schedules, Debtors show a substantial reduction in income, yet propose to raise monthly plan payments. The court is not convinced the modified plan is feasible. The modified 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 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 to Confirm the 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 October 1, 2015. 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.

Chapter 13 Trustee, David Cusick, opposes Debtors' motion to confirm plan on the basis that:

1. Debtors' motion does not comply with LBR 9014-1(d)(7). Debtors have failed to file a declaration in support of the motion and the first amended plan, providing testimony of the debtors' ability to comply and perform pursuant to the terms of the proposed plan and motion. While Debtors have provided as exhibits amended schedules A, B, C, & D, Debtor has not provided a declaration to prove or assist in proving to the court the nine separate details required under 11 U.S.C. § 1325(a) have been met.
2. In section 6 of the plan, Debtors appear to propose plan payments of one payment of \$320 on September 25, 2015, and \$410 per month for 59 months, although the plan does not clearly state this where it states, "Debtors have included said payment in their TPI calculation." Trustee is not opposed to clarifying plan payments in the order confirming.

The court notes that as of the date of hearing, Debtor has not filed an explanatory declaration of the Debtor in support of the Motion to Confirm Plan. 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 Motion to Confirm the 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). 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 26, 2015. Thirty-five 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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.

PREVIOUSLY

The court heard this matter on October 6, 2015, and continued the instant motion to November 24, 2015 in order to permit Trustee time to review the documents in contention and submit supplemental briefing.

TRUSTEE'S OPPOSITION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtor does not appear to be able to make payment. Debtors filed amended schedules I and J in support of the plan. The declaration filed by Debtors indicates one Debtor changed employment in August 2014, and no longer receives restricted stock options. Debtor has not provided Trustee with copies of pay stubs to verify income or receipts to verify expenses.
2. Trustee notes a substitution of attorney for Debtors was filed with the court on August 24, 2015. This substitution was signed by Debtors but not dated. The Declaration and Modified Plan were filed August 26, 2015, but dated August 21, 2015 and

were signed electronically, prior to the substitution of attorney form. A balance of \$1,156 appears owing to the prior attorney of record based on the Court's prior order. Trustee opposes any change to the attorney fees provisions absent a specifically noticed motion.

DEBTORS' RESPONSE

Debtors respond to Trustee's opposition, stating that they are above the median income with a positive CMI of \$2.24 per month. Debtors' confirmed plan called for an additional \$808 per month beginning when their 401k loan was paid off in July of 2015, and Debtors were to sell the "stock units" and pay trustee \$12,000 every year in May. Since confirmation, Debtors made two full payments in May of 2013 and 2014. However, the Debtors changed jobs in August of 2014 and no longer received stock units in May of 2015.

Debtors reassert their ability to make plan payments, stating they have forwarded the July 2015 paystubs for Trustee's review, and filed amended schedules I and J.

As to Trustee's second concern, Debtors state they signed the substitution form on August 13, 2015 at 11:59 a.m., after which present counsel prepared and filed this Motion to Modify Plan.

TRUSTEE'S SUPPLEMENTAL RESPONSE

On November 10, 2015, Trustee submitted a supplemental response, again urging the court to deny the Motion to Confirm Plan. Trustee states that he has received Debtors' pay advices for the semi-monthly payroll periods ending 07/15/15, 07/31/15, 08/31/15, and 09/15/15. Debtor received a salary increase on 09/15/15 of \$175. A review of the 09/15/15 pay advice indicates the Debtors have understated their monthly net income by \$716.02. Additionally, the 09/15/15 pay advice indicates that the Debtor has received bonuses totaling \$8,000 year to date which are not included in the above amounts. Furthermore, as to the increase in expenses, Debtors state only that the increase in expenses are "normal cost of living increases since 2012" without additional explanation.

DEBTORS' DECLARATION

Debtors submit a declaration in response to Trustee, explaining various increases in expenses in greater detail.

DISCUSSION

While Debtors have explained in the expenses incurred since 2012, Debtors have not addressed Trustee's concern that Debtors have received a salary increase of \$175 and bonuses in excess of \$8,000. The court is not satisfied that Debtors have sufficiently addressed the concerns raised by Chapter 13 Trustee.

The modified 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 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 to Confirm the Plan is denied, and the plan is not confirmed.
