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FILED  
JUN 27 2016  
UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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In re: ) Case No. 16-21574-B-13  
)  
RODNEY SCOTT RATH and ANNA ) DC No. BN-2  
KRISTINA RATH, )  
)  
Debtor(s). )

**SUPPLEMENTAL ORDER DENYING MOTION FOR RECONSIDERATION**

This order supplements the court's civil minutes and oral ruling stated on the record on June 21, 2016. It also addresses an argument that The Golden 1 Credit Union made during the hearing held on its motion for reconsideration of the court's earlier order overruling Golden 1's objection to confirmation of the chapter 13 plan filed by debtors Rodney and Kristina Rath.

Golden 1 initially objected to confirmation of the debtors' chapter 13 plan on the basis the plan failed to pay Golden 1 the full amount of its secured claim. The debtors' personal liability to Golden 1 on an underlying note was discharged in the debtors' prior chapter 7 case. However, because Golden 1's claim is secured by a second deed of trust on the debtors' principal residence, Golden 1 asserted in its objection to confirmation of the debtors' plan that 11 U.S.C. § 1322(b)(2) prohibited the debtors from bifurcating the lien created by the second deed of trust and that, in turn, required the debtors to pay the loan balance in full. In other words, although the debtors are no

1 longer liable personally for the Golden 1 loan, in its objection  
2 to confirmation Golden 1 maintained that the debtors' residence  
3 remains liable for the entire debt because of § 1322(b)(2).

4 At the same time that Golden 1 asserted in its objection to  
5 confirmation of the debtors' plan that § 1322(b)(2) prevented the  
6 debtors from paying less than the loan balance by bifurcating the  
7 second deed of trust lien into secured and unsecured portions,  
8 Golden 1 supported its objection with several exhibits that  
9 granted Golden 1 a security interest in additional personal  
10 property collateral. Golden 1 authenticated and validated those  
11 exhibits with a declaration submitted by Jesus Vasquez, a Golden  
12 1 employee. Thus, while Golden 1's objection stated that §  
13 1322(b)(2) established the amount of its claim, its authenticated  
14 exhibits reflected otherwise. In other words, Golden 1's  
15 argument was completely inconsistent with and unsupported by its  
16 evidence.

17 Golden 1 made no effort within its objection to confirmation  
18 to address, explain, or reconcile the apparent conflict between  
19 its argument that § 1322(b)(2) established the amount of its  
20 claim and its evidence that reflected otherwise. It also failed  
21 to appear at the confirmation hearing in support of its  
22 objection. So in that regard, Golden 1 failed to carry its  
23 burden of proof that § 1322(b)(2) established the amount of its  
24 claim. In re Santiago, 404 B.R. 564, 570 (Bankr. S.D. Fla. 2009)  
25 (creditor asserting the protections of § 1322(b)(2) bears the  
26 burden of proof that its claim is entitled to protection from  
27

1 modification); see also In re Moore, 441 B.R. 732, 736 (Bankr.  
2 N.D.N.Y. 2010). Stated another way, inasmuch as Golden 1's own  
3 evidence supported a conclusion that the anti-modification  
4 provisions of § 1322(b)(2) were inapplicable, Golden 1 failed to  
5 establish the amount of its claim was in excess of \$86,000.<sup>1</sup>

6 Fast forward to the reconsideration motion, or actually the  
7 day before the hearing on the reconsideration motion. On June  
8 20, 2016, Golden 1 filed a Supplemental Declaration of Jesus  
9 Vasquez in Support of Objection to Confirmation of Chapter 13  
10 Plan. The caption of the declaration is telling. Filed in  
11 support of Golden 1's objection to confirmation, but submitted  
12 with the motion for reconsideration, for the first time this new  
13 declaration purported to address the conflict between Golden 1's  
14 argument in its objection to confirmation that § 1322(b)(2)  
15 established the amount of its claim and its exhibits that on  
16 their face appeared to render § 1322(b)(2) inapplicable. The  
17 testimony in this supplemental declaration was not presented with  
18 Golden 1's initial objection to confirmation of the debtors'  
19 plan.

20 During the hearing on reconsideration of the motion held on  
21 June 21, 2016, Golden 1 was unable to sufficiently explain why it  
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23 <sup>1</sup>The objection refers to a \$191,000 valuation of the debtors'  
24 residence in Schedule D and also states that the holder of the  
25 first deed of trust on the residence is owed \$143,758. Even if  
26 that limited Golden 1's lien to \$47,242, Golden 1 did not argue  
27 that difference was the full amount of its claim. Rather, Golden  
28 1 vigorously asserted that (1) its lien could not be bifurcated  
and (2) that meant the amount of its claim was in excess of  
\$86,000 and no less than that amount had to be included in the  
debtors' plan.

1 could not have provided the testimony in Mr. Vasquez's  
2 supplemental declaration with its initial objection to  
3 confirmation. In any event, presented for the first time on  
4 reconsideration, Golden 1's supplemental declaration in support  
5 of its objection to confirmation is untimely and improper because  
6 it could reasonably have been filed (and the testimony therein  
7 presented) earlier in the litigation, *i.e.*, with the initial plan  
8 objection. Marlyn Nutraceuticals Co. v. Mucos Pharma GMBH, 571  
9 F.3d 873, 880 (9th Cir. 2009); Kona Enters., Inc. v. Estate of  
10 Bishop, 229 F.3d 877, 890 (9th Cir. 2000).

11 Therefore, Golden 1 having failed to demonstrate any basis  
12 for reconsideration of the court's earlier order overruling its  
13 objection to confirmation of the debtors' plan, and for the  
14 reasons previously stated,

15 IT IS ORDERED that Golden 1's motion for reconsideration is  
16 DENIED WITH PREJUDICE.

17 Dated: June 27, 2016.

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20 UNITED STATES BANKRUPTCY JUDGE  
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**INSTRUCTIONS TO CLERK OF COURT  
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Mohammad M. Mokarram  
1101 Fulton Avenue  
Sacramento CA 95825

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55 Second Street, 17th Floor  
San Francisco CA 94105