

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 9, 2018 at 2:00 p.m.

1.	13-27903 -C-13	ELIZABETH KIMMONS	DEFAULT JUDGMENT STATUS
	17-2030	Peter Macaluso	CONFERENCE RE: AMENDED
		KIMMONS V. GLENN HUBBARD, INC.	COMPLAINT
		ET AL	6-13-17 [12]

NO TENTATIVE RULING PROVIDED

Final Ruling: No appearance at the January 9, 2018 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 November 12, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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
November 12, 2017 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.

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 November 20, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee opposes confirmation on the basis that debtor cannot make payments and the plan has not been filed in good faith. Debtor's plan calls for the surrender of her real property, yet debtor filed an ex-parte application to employ a realtor for the sale of her residence. Debtor has not filed a current schedule of expenses, her previous Schedule J includes housing expenses. 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)(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 November 27, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that the plan does not list the creditor names in Class 2, but this can be fixed in the order confirming.

Debtor responded indicating that such a change will be made in the order confirming.

The Plan does comply 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 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 November 27, 2017 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.

Tentative Ruling: The Motion for Sanctions for Violation of the Automatic Stay 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 November 30, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion for Sanctions for Violation of the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 for Sanctions for Violation of the Automatic Stay is xxxxxxxx.
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Debtor brings this motion requesting an order holding James Dunger in contempt for violation of the automatic stay. Dunger had filed a small claims suit with a hearing set for January 29, 2016. Debtor filed the case on January 21, 2016. Dunger received notice of the bankruptcy by at least January 28, 2016.

At that hearing, the civil suit was dismissed without being heard. On August 12, 2017, debtor was served with moving papers in a proceeding where Dunger filed a Request for Order with the Family Court for reimbursement from debtor. Dunger asserted that in the settlement agreement between Dunger and debtor stemming from their divorce, debtor had assumed some debts that she had not paid, and Dunger sought reimbursement for the payment of such debts.

Another hearing was set for November 22, 2017. Debtor requests an order holding Dunger in civil contempt, an award of compensatory damages, an award of deterrent sanctions, and attorneys' fees.

Trustee's Response

Trustee responds that Dunger appeared to be served correctly and that the debtor is current in plan payments.

No response has been filed by Dunger.

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 Sanctions for Violation of 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 xxxxxxxxxx

6. [17-24611](#)-C-13 LISA RICE AND JERRY
[BB-2](#) LORANGER
Bonnie Baker

MOTION TO CONFIRM PLAN
11-16-17 [[43](#)]

Final Ruling: No appearance at the January 9, 2018 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 November 16, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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
November 16, 2017 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.

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 November 20, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee opposes confirmation on the basis that:

- A. Debtor is in the 33rd month of the plan and the debtor proposes in § 1.03 of the plan a term of 27 months, with 26 payments of \$400 and 1 payment of \$11 remaining. The term of the confirmed plan is 38 months rather than 60.
- B. Debtor is adding a post petition claim for Platinum Resolution Services, Inc. in the amount of \$4,725.00. The creditor has not filed a post petition claim. Not enough information is included about this claim.
- C. There are procedural defects with the motion. Service was not properly effectuated on unsecured creditors.

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

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

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

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

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

8. [14-29214](#)-C-13 CLEVELAND BELLARD
[MET](#)-3 Mary Ellen Terranella

MOTION TO AVOID LIEN OF
GWENDOLYN M. ALLEN
12-5-17 [[57](#)]

Final Ruling: No appearance at the January 9, 2018 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 creditors, and Office of the United States Trustee on December 5, 2017. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien 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 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 Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Gwendolyn M. Allen for the sum of \$84,533.71. The abstract of judgment was recorded with Contra Costa County on April 11, 2011. That lien attached to the Debtor's residential real property commonly known as 15454 County Road 44, Guinda, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$165,000 as of the date of the petition. Debtor owns a 50% interest in the property. The unavoidable consensual liens total \$180,641.42 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$12,109.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Gwendolyn M. Allen, Contra Costa County Superior Court Case No. C09-01892, recorded on April 11, 2011, with the Solano County Recorder, against the real property commonly known 15454 County Road 44, Guinda, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Thru #11

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 December 12, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

- A. Debtor is delinquent in plan payments in the amount of \$3,500.00. Debtor has paid \$0 into the plan to date.
- B. The plan will complete in 83 months rather than 60 months due to the claims filed by the IRS and FTB.
- C. Debtor has not filed all tax returns during the 4-year period preceding the filing of the petition.
- D. The plan fails liquidation analysis as debtor has \$156,840 in non exempt equity but proposes to pay just 16% to unsecured creditors which totals only \$143,392.00.
- E. Debtor did not list social security number.

F. Debtor has not provided evidence confirming business income.

G. Debtor is unable to make the payments.

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

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

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

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

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

10. [17-27023](#)-C-13 JOSE SANDOVAL
[PPR](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
12-4-17 [[24](#)]

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 December 4, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, U.S. Bank National Association opposes confirmation of the Plan on the basis that:

A. The plan fails to provide for payment of prepetition arrears owed to the creditor.

B. The plan treats creditor's claim in Class 4, however there are arrears and the claim should be treated in Class 1.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

11. [17-27023](#)-C-13 JOSE SANDOVAL
[USA](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY INTERNAL REVENUE
SERVICE
12-13-17 [[31](#)]

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 December 4, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, Internal Revenue Service, opposes confirmation of the Plan on the basis that:

A. The debtor has failed to file pre-petition tax returns by the date of the meeting of creditors.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 November 22, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee opposes confirmation on the basis that:

A. The plan states that as of month 9, October 2017, \$32,300 has been paid into the plan, where month 9 is actually November 2017. This could be corrected in the order confirming.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) in its current form. However, if debtor is willing, this error can be corrected in the order confirming.

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan

is denied and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the January 9, 2018 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 November 30, 2017. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on December
4, 2017 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if
so approved, the Chapter 13 Trustee will submit the
proposed order to the court.

Final Ruling: No appearance at the January 9, 2018 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 November 17, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 November 17, 2017 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.

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 December 4, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent on plan payments in the amount of \$13,835.00. Debtor has paid \$9,901.00 to the trustee to date. Additionally, the plan proposed to increase the monthly dividend for administrative expenses prior to the hearing on the motion to modify.

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

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

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

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

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

16. [17-27037](#)-C-13 EARL MILLER
Timothy Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY UNIFY FINANCIAL FEDERAL
CREDIT UNION
12-7-17 [[33](#)]

Thru #18

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 7, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, Unify Financial Federal Credit Union opposes confirmation of the Plan on the basis that debtor is attempting to avoid a lien on his principal residence that is not wholly unsecured.

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

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

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

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

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

17. [17-27037](#)-C-13 EARL MILLER
[AP-1](#) Timothy Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
12-1-17 [[26](#)]

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 December 1, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, U.S. Bank National Association, objects to debtor's plan as the plan does not fully provide for creditor's pre-petition arrears. Raising the monthly payments to account for the arrears would make the plan not feasible.

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

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

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

IT IS ORDERED that Objection to confirmation of the

Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

18. [17-27037](#)-C-13 EARL MILLER
[DPC](#)-1 Timothy Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-6-17 [[29](#)]

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 4, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. The plan relies upon a motion to value but no motion to value has been filed to date.

B. The plan will not complete with 60 months because the mortgage arrears claims is more than scheduled and the IRS filed a claim which is not provided for in the plan.

Debtor's Response

Debtor requests 75 days to confirm a plan as this plan cannot be confirmed.

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

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

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

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

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

19. [17-22440](#)-C-13 AMADO BARAJAS AND AURORA MOTION TO CONFIRM PLAN
[TOG-2](#) CARRILLO 11-28-17 [[58](#)]
Thomas Gillis

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 November 28, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the Motion to Confirm the Plan to January 23, 2018 at 2:00 p.m.
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The Trustee opposes confirmation on the basis that:

A. The plan indicates that there are additional provisions on a separate sheet of paper identified by a heading for section 6.01. The provisions are in fact not on a separate piece of paper and have no identifying heading.

B. Debtor proposes to pay 100% to unsecured creditors and the plan calls for \$98,405.00 in total plan payments. Unsecured claims are \$91,061.71 and the combined priority claims filed by State Board of Equalization and the IRS are \$16,380.00.

Debtor's Reply

Debtor states that the additional provisions are still clear on the plan and the mistake of not labeling them will not be made again. The plan is a bit short on funds but the debtor will fix this through "belt tightening."

Discussion

The court notes that the plan is not feasible if the objection to claim is not granted. This hearing will be continued to coincide with the

objection to claim on January 23, 2018 at 2:00 p.m.

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 continued to January 23, 2018 at 2:00 p.m.

20. [16-23842](#)-C-13 PHILIP REVILLAS
[SDB](#)-2 W. Scott De Bie

MOTION TO EMPLOY ERIKA LEWIS AS
ATTORNEY(S)
12-1-17 [[38](#)]

Final Ruling: No appearance at the January 9, 2018 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 Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 1, 2016. 28 days' notice is required.

The Motion to Employ Attorney 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 Employ Attorney is granted.

Debtor seeks to employ non-bankruptcy counsel for debtor regarding his claim for personal injury damages against Esurance and its insured, Laura Apperson, resulting from a vehicle accident. Debtor seeks to employ personal injury counsel Erika Lewis on a contingency basis with fees subject to review by the court.

Trustee's Response

Trustee responds that he does not oppose the motion, but that debtor should consider amending his schedules to disclose the potential asset.

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

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

The Motion to Employ Attorney 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 Employ Erika Lewis is granted.

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 November 3, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent under the terms of the plan in the amount of \$790.00. Debtor has paid \$2,260.00 into the plan to date.

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.

22. [16-27454](#)-C-13 ROBERT/DONNA DECELLE
[JHW](#)-1 Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
11-9-17 [[66](#)]

FORD MOTOR CREDIT COMPANY
VS.

Thru #23

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 9, 2017. Twenty-eight days' notice is required. That requirement was met.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is xxxxx

Ford Motor Credit Company LLC, seeks relief from the automatic stay with respect to a 2013 Ford F150 motor vehicle.

The Larson Declaration states that the Debtor has not made nearly 6 post-petition payments, with a total of \$7,078.00 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$21,974.47, while the value of the property is determined to be \$12,704.00, as stated in Schedules A and D filed by Debtor.

Debtor's Opposition

Debtor responds by asserting that a Motion to Modify has been filed and has a hearing date of January 9, 2018. The proposed modified plan

provides for creditor's secured interest and pays the claim in full with interest over the course of the plan.

The Trustee has asserted that the plan is feasible and the debtor is current under the terms of the modified plan.

The court continued the Motion for Relief from Stay to coincide with the hearing on the modified plan.

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Stay is
xxxxxx

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 November 29, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee opposes confirmation on the basis that:

A. The debtors' plan indicated that all tax refunds would be turned over to the estate. Debtors' 2016 tax returns revealed a tax refund of \$2,278.00, but those funds have not been turned over to the Trustee.

B. Debtors have indicated that Debtor 1 anticipates returning to work, yet debtor 1's income is represented as monthly disability. It is unclear whether the income for Debtor 1 includes the back-to-work income.

C. Debtors' plan indicates a stepup in Month 30 based "somewhat on gradual increase in pay and end of orthodontic care for Child." Yet debtors' supplemental Schedule J no longer includes the orthodontic expense.

Debtor's Reply

Debtor replies that their HVAC system went down and the tax refund was spent fixing that. Debtor states that the orthodontic care has been paid off.

Discussion

Debtor has not adequately addressed the Trustee's concerns. The debtor appears to argue that the tax refund was spent on a necessary expense,

but there was no disclosure of this until the Trustee inquired into the tax refund, and the Trustee appears justified in wondering if other tax refunds will be paid into the estate. The supplemental schedules do not appear to accurately reflect the debtors' current income and expenses as the work income is admittedly merely an estimate.

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

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

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

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

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

24. [17-27056](#)-C-13 PATRICK BERNARD
[DPC](#)-1 Arasto Farsad

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-6-17 [[26](#)]

Final Ruling: No appearance at the January 9, 2018 hearing is required.

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

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

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

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

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

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 December 6, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Debtor is delinquent in plan payments in the amount of \$231.80. Debtor has paid \$0 into the plan to date.

B. Debtors failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required.

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

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

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

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

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee opposes confirmation on the basis that:

A. Debtors filed supplemental Schedules I and J. Schedule I shows net income from operating a business at \$10,072.87. The previous Schedule I reported \$17,093.45. This is supposedly an average of the previous 6 months, but debtors previous 6 months show a loss of income due to debtor's work vehicle being totaled and other difficulties. It therefore appears that debtors' income is understated due to the unusual circumstances in the past 6 months. Expenses are listed at \$8,772.67 on the supplemental Schedule J, whereas they were \$16,443.45 on the previous Schedule J. No explanation is given.

Debtors' Reply

Debtors reply that the current income is more in line with what the debtor will likely make going forwards as medical problems and other issues have caused the business to not have the same earnings potential. The expenses are mainly a result of lowering business expenses.

Discussion

Debtors motion states that the business expenses will be lowered and states that an attachment showing this is filed along with the response. The exhibit is a Business Income and Expenses sheet. Some expenses have gone down,

but there is no accompanying declaration. The declaration filed with the response only deals with medical issues and problems in the business. There is no explanation for the lowering of business expenses. As a result, the plan is not confirmable.

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

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

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

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

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

27. [17-20765](#)-C-13 DAVID SIMS
[MRG](#)-4 Peter Macaluso

CONTINUED OBJECTION TO CLAIM OF
DEUTSCHE BANK NATIONAL TRUST
COMPANY, CLAIM NUMBER 2-1
10-3-17 [[125](#)]

Thru #29

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Ch 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 3, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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 2-1 of Deutsche Bank National Trust is sustained.

Bosco Credit, LLC, the Creditor, ("Objector") requests that the court disallow the claim of Deutsche Bank National Trust Company ("Deutsche"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$423,494.79. Debtor executed a deed of trust with Wilmington Finance (eventually transferred to Deutsche) in the amount of \$350,000.00. Objector asserts that on March 15, 2012 debtor executed a Loan Modification Agreement wherein the new principal balance of the loan will be \$85,278.57. Ocwen (servicer on the loan) filed a proof of claim in this case in the amount of \$423,494.79 with a \$350,922.06 deferred balance.

On August 17, 2016 Bosco obtained a Payoff Quote from Ocwen for the amount due and payable through September 15, 2016. The amount required to payoff the Ocwen loans as of September 15, 2016 was \$76,218.24. There was no

reference to a deferred balance. Bosco obtained two additional payoff quotes dated March 10, 2017. One stated that the current balance due and owing was \$75,899.56 while the other stated that it was \$150,901.66. Neither payoff quote listed any deferred balance due. Ocwen received yet another payoff quote dated September 12, 2017 that listed the payoff amount at \$75,767.46.

Bosco argues that where the proof of claim includes a deferred principal balance of \$350,922.06, that amount should be disallowed from the proof of claim.

The issue revolves around the amount of Ocwen's claim.

Bosco objected to Ocwen's proof of claim on the basis that Ocwen provided a document to the debtor that is a loan modification agreement that states "You agree that the new principal balance due under your modified Note and the Mortgage will be \$85,278.57. Upon modification, your Note will become contractually current." Additionally a loan payment history shows a principal balance of \$75,338.91 attached to Ocwen's proof of claim.

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).

TRUSTEE'S RESPONSE

Trustee responds that the service was not proper on the Objection to Claim, but that the objection has merit. Additionally, trustee asserts that Bosco has filed a Notice of Post-Petition Mortgage Fees, Expenses, and Charges asserting a \$750 charge for the proof of claim filed that is being objected to and that this fee may not be warranted.

Trustee points to FRBP 7004(b)(3) that requires that an agent of service of process be served. The documents were served on the address listed on the proof of claim as the address to where notices should be sent. Some courts have held that listing an address on the proof of claim is an "appointment" under 7004(b)(3). Other courts have held that with respect to FRBP 7004(b)(3), serving an office is insufficient where an officer must be served.

Based on the evidence before the court, the creditor's claim is disallowed to the extent it exceeds the charge off amount. The Objection to the Proof of Claim is sustained.

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

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

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

IT IS ORDERED that the objection to Proof of Claim Number 2-1 of Deutsche Bank National Trust Company is sustained.

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 19, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to xxxxxxxx.

The Trustee opposes confirmation on the basis that:

A. The Plan relies upon a Motion to Value.

The court continued the Motion to Value, as a result this matter will be continued to the same date and time as the Motion to Value. The court notes that on September 6, 2017, the Motion to Value was taken off calendar and a Motion to Continue Evidentiary Hearing was set for September 19, 2017.

The court continued the Motion to Confirm plan to October 3, 2017. No tentative ruling is appropriate as the motion to confirm plan relies upon the outcome of the evidentiary hearing.

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

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

The Motion to 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 xxxxx

29. [17-20765](#)-C-13 DAVID SIMS
[PGM](#)-3 Peter Macaluso

CONTINUED STATUS CONFERENCE RE:
MOTION TO VALUE COLLATERAL OF
BOSCO CREDIT, LLC
6-19-17 [[63](#)]

Tentative Ruling: The Motion to Continue Evidentiary Hearing has been set for hearing on Shortened Time by order of the Court.

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)(3) 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 30, 2017. The court issued an order to shorten time setting this hearing on a shortened time.

The Motion to Continue Evidentiary Hearing been set for hearing on the notice required by Local Bankruptcy 9014-1(f)(3), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is xxxxxx.

Movant, Bosco Credit LLC moves for an order continuing the evidentiary hearing set for a Motion to Value Collateral on the basis that counsel for the Movant, Wright Finlay & Zak, LLP, assert that they "discovered" a conflict of said counsel on the eve of the September 6, 2017 scheduled Evidentiary Hearing. It is asserted that this eve of Evidentiary Hearing "discovered" conflict necessitated vacating the Evidentiary Hearing date and allow the substitution of counsel, The Law Offices of Michelle Ghidotti, for Bosco Credit, LLC. This "discovered" conflict was asserted as now requiring a delay in conducting the Evidentiary Hearing so the new counsel could prepare for the Evidentiary Hearing. As discussed below, given the alleged conflict, such continuance on the eve of the Evidentiary Hearing was effectively a mandate by Bosco Credit, LLC and its attorneys Wright Finlay & Zak, LLP that the court remove the Evidentiary Hearing from its calendar and reschedule the Evidentiary Hearing at some later date.

Debtor's Response

Debtor opposes continuance on the basis that the creditor has asserted no legal basis for the continuance requested. **The original Motion to Value was filed on June 19, 2017 and the Movant had notice of the Motion to Value on April 20, 2017.** Debtor questions why, taking Movant's contentions as true, Wright Finlay & Zak has not been subbed

out of all cases in which they are attorney for Bosco Credit, LLC. The Movant had plenty of time to discover this conflict of interest and a continuance solely based upon Movant's failure to discover until the last moment is not warranted.

Unfortunately for Debtor, in light of the asserted eve of Evidentiary Hearing "discovery" of the asserted conflict, the Evidentiary Hearing was continued without any opportunity for Debtor to address such request before it was granted.

Movant's Reply

Movant specifies that the Motion to Value was filed on June 19, 2017 and opposition filed July 18, 2017. Movant states that while preparing for the evidentiary hearing, the conflict of interest was discovered. **The conflict of interest arose as prior counsel represents Ocwen in other matters and the position of Bosco in this evidentiary hearing would run contrary to the interests of Ocwen in this case.**

Stated Conflict Asserted by Prior Counsel and Bosco Credit, LLC on Eve of September 6, 2017 Evidentiary Hearing

The present Motion to Value was filed by Debtor on June 19, 2017. Dckt. 63. It was served on Bosco Credit, LLC on June 19, 2017. Cert. of Serv., Dckt. 68. On July 18, 2017, Nichole Glowin of Wright, Finlay & Zak, LLP filed an eight-page Opposition. Dckt. 75. The Opposition is based on the contention by Bosco Credit, LLC, as advanced by its attorneys, Wright, Finlay & Zak, LLP, that some portion of the claim secured by the senior deed of trust securing the claim of Ocwen Loan Servicing, LLC, was subordinated to that of Bosco Credit, LLC. *Id.* It is argued by Bosco Credit, LLC, through its attorneys Wright, Finlay & Zak, LLP, that due to the conduct of Ocwen Loan Servicing, LLC in modifying its loan with the Debtor, the modification created prejudice to Bosco Credit, LLC such that based on California law a portion of the Ocwen Loan Servicing, LLC claim was subordinated.

Asserting such subordination, Bosco Credit, LLC and Wright, Finlay & Zak, LLP contend that at least a portion of the Bosco Credit, LLC claim is secured by value in the Property and therefore there is purpose to be served by valuing the Property. 11 U.S.C. § 1322(b)(2), *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

At the August 3, 2017 hearing on the Motion, at the behest of Bosco Credit, LLC and Debtor, the court set the Evidentiary Hearing to resolve the factual disputes for September 6, 2017. Civil Minutes, Dckt. 84; Order, Dckt. 85. This date was set with the participation and concurrence of Bosco Credit, LLC, appearing through its attorneys Wright, Finlay & Zak, LLP.

On August 30, 2017, a mere two working days before the Evidentiary Hearing (there being a weekend and the Labor Day Holiday between the August 30, 2017 disclosure of the "discovered" conflict and

the September 6, 2017 Evidentiary Hearing), a Motion to Continue the Evidentiary Hearing was filed by Bosco Credit, LLC, through a new attorney, Kristin Zilberstein of the Law Office of Michelle Ghidotti. Dckt. 96. In this Motion Bosco Credit, LLC asserts that only "recently" Wright Finlay & Zak, LLP "discovered" a conflict of interest necessitating it withdrawing as counsel for Bosco Credit, LLC. Being on the eve of the Evidentiary Hearing and having its counsel, Wright Finlay & Zak, LLP leaving Bosco Credit, LLC unrepresented, the Law Office of Michelle Ghidotti, as stated new replacement counsel, requested that the Evidentiary Hearing be continued.

The September 6, 2017 Evidentiary Hearing was removed from the calendar and the hearing on this Motion to Continue the Hearing was set for September 19, 2017. Having "discovered" the asserted conflict only on the eve of the Evidentiary Hearing, Bosco Credit, LLC and Wright Finlay & Zak, LLP forced the court to "grant" the continuance *ex parte*, without any opportunity for opposition by Debtor. Order, Dckt. 105.

The purported conflict "discovered" only on the eve of the Evidentiary Hearing is asserted to be that Wright Finlay & Zak, LLP also represent Ocwen Loan Servicing, LLC - the very person whom Wright Finlay & Zak, LLP has argued has subordinated its deed of trust due to its conduct in modifying the loan secured by the first deed of trust. Declaration, Dckt. 114. While contending that a conflict was "discovered" on the eve of the Evidentiary Hearing, Nicole Glowin offers no testimony as to how she and her firm did not "recall" that they do work for Ocwen Loan Servicing, LLC, how Wright Finlay & Zak, LLP would file an Opposition which directly attacked the lien priority of Ocwen Loan Servicing, LLC, and what reasonable conflicts check was conducted prior to launching the Bosco Credit, LLC attack on the alleged rights and interests of Owen Loan Servicing, LLC.

Misidentification of Creditor

The Opposition filed by Wright Finlay & Zak, LLP and the declaration of Nichole Glowin affirmatively state that Ocwen Loan Servicing, LLC is the creditor having the claim secured by the first deed of trust, that Ocwen Loan Servicing, LLC is a client of Wright Finlay & Zak, LLP, and based upon Bosco Credit, LLC having attacked the deed of trust held by Ocwen Loan Servicing, LLC, Wright Finlay & Zak, LLP "discovered" a conflict only on the eve of the Evidentiary Hearing.

This contention is premised on a wrong fact - the identify of the creditor holding the claim secured by the first deed of trust. As clearly stated in Proof of Claim No. 2 which is filed for the claim secured by the first deed of trust, the creditor is stated to be Deutsche Bank National Trust Company, as Trustee for Morgan Stanley Home Equity Loan Trust Series 2006-3 ("DBNTC, Trustee"). Nowhere in Proof of Claim No. 2 is it stated that Ocwen Loan Servicing, LLC is the creditor, that Ocwen Loan Servicing, LLC has a claim, or that Ocwen Loan Servicing, LLC has an interest in the deed of trust securing the DBNTC, Trustee Claim. Ocwen Loan Servicing, LLC did file Proof of Claim No. 2 for DBNTC, Trustee, clearing identifying itself solely as the "agent"

for DBNTC, Trustee. Proof of Claim No. 2, p. 3. On the attachment to Proof of Claim No. 2, Owen Loan Servicing, LLC is stated to be the "Servicer."

To the extent that Wright Finlay & Zak, LLP does represent Ocwen Loan Servicing, LLC in other matters, Ocwen Loan Servicing, LLC is not the creditor whose rights and interests are attacked by Bosco Credit, LLC. in this Contested Matter. Thus, it is not clear what "conflict," if any, that Wright Finlay & Zak, LLP actually "discovered" on the eve of the Evidentiary Hearing that has derailed the Evidentiary Hearing.

Failure to Prosecute the Contested Matter

What has come to light is that while the Debtor and his counsel complied with the Evidentiary Hearing Scheduling Order and Local Bankruptcy Rule 9017-1 to lodge with the court the required direct testimony statements and exhibits, nothing was lodged with the court by Bosco Credit, LLC. By the time the conflict was "discovered" and the Motion to Continue filed, Bosco Credit, LLC had already failed to comply with the order, leaving it with no evidence for which to prosecute the contention that the a portion of the first deed of trust held by DBNTC, Trustee to secure its claim had been subordinated.

Additional Judicial Concerns Drawn From September 19, 2017 Hearing

At the September 19, 2017 hearing no good reason was given for the conflict being "discovered" only on the eve of the Evidentiary Hearing - for which Bosco Credit, LLC and Wright Finlay & Zak, LLP had provided no evidence. Further, in listening to the arguments advanced, it could well appearance that Ocwen Loan Servicing, LLC and Bosco Credit, LLC, as orchestrated by Wright Finlay & Zak, LLP (which purports to represent both) and the Law Office of Michelle Ghidotti, are manufacturing a purported subordination of some small amount to create the (mis)appearance that there was some value in the Property for Bosco Credit, LLC's second deed of trust so as to create the (mis)appearance that Bosco Credit, LLC has a secured claim in this case.

Payment of Legal Fees and Costs

The Debtor has incurred the costs and expenses of his counsel preparing for the unilaterally aborted September 6, 2017 Evidentiary Hearing by Bosco Credit, LLC and Wright Finlay & Zak, LLP and the September 19, 2017 hearing on this Motion. These costs and expenses create an undue burden on and prejudice this Chapter 13 Debtor and the creditors in the bankruptcy case.

As set forth in Local Bankruptcy Rule 9014-1(d), failure to file the direct testimony statements, other evidence, and legal authorities for a scheduled evidentiary hearing may result in the imposition of sanctions. The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders (such as the order scheduling the Evidentiary Hearing in this Contested Matter). *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th

Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

Further, Federal Rule of Civil Procedure 16(f) and Federal Rules of Bankruptcy Procedure 7016 (made applicable in this contested matter by this court), 9014 provides for the imposition of corrective sanctions for the failure of a party to comply with the order of the court in the prosecution of litigation. Federal Rule of Civil Procedure 16(f) (2) goes so far as to mandate the imposition of attorney's fees and costs when there is the failure of a party to comply with the court's scheduling order - such as the court's order setting the Evidentiary Hearing in this Contested Matter.

Additionally, as discussed by the Bankruptcy Appellate Panel for the Ninth Circuit in *Kostecki v. Sutton (In re Sutton)*, 2015 Bankr. LEXIS 4084, *19-20 (B.A.P. 9th Cir. 2015):

A bankruptcy court's inherent powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). In appropriate cases, a court may select from the menu of sanctions available under its inherent powers the draconian sanction of dismissal to "the 'less severe sanction' of an assessment of attorney's fees," *Chambers*, 501 U.S. at 44-45, to an intermediate sanction of the exclusion of some evidence or testimony, see *Dillon v. Nissan Motor Co.*, 986 F.2d 263, 266-69 (8th Cir. 1993).

In considering the proper corrective sanction, the court notes that the primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003).

As discussed above, it appears questionable whether the eve of Evidentiary Hearing claim of a conflict actually exists (the purported other "creditor" being misidentified by Bosco Credit, LLC).

Bosco Credit, LLC's strategy of ignoring what, if its current contention of a conflict is correct, should be an obvious conflict for its counsel - expressly asserting a defect in the asserted lien rights of Ocwen Loan Servicing, LLC (which has been shown by Proof of Claim No. 2 not to be the creditor whose rights and interests at issue) - has caused the Debtor (and the creditors in the Chapter 13 case) significant monetary prejudice. Debtor has been forced to wasted limited financial

resources in preparing for the Evidentiary Hearing that Bosco Credit, LLC aborted on the eve of such hearing based on the eleventh and one-half hour "discovered" conflict.

Rather than denying the continuance, the court has taken the more measured approach in allowing Bosco Credit, LLC its day in court and merely requiring Bosco Credit, LLC to reimburse Debtor for the costs and expenses in preparing for the aborted Evidentiary Hearing and having to address the eve of Evidentiary Hearing demand for a continuance. Requiring Bosco Credit, LLC to reimburse Debtor for the reasonable attorney's fees and costs for the aborted Evidentiary Hearing is a very limited and reasonable corrective, compensatory sanction. Bosco Credit, LLC is not being "punished," but merely have to pay compensatory damages caused by its decision to abort the September 6, 2017 Evidentiary Hearing.

Therefore, as condition of having the September 6, 2017 Evidentiary Hearing continued, the court orders Bosco Credit, LLC to pay the attorney's fees and costs of Debtor as set forth below.

Further Hearing on Attorney's Fees to be Awarded as Compensatory Sanction

The court ordered that on or before September 26, 2017, Peter Macaluso, counsel for Debtor, shall file a statement of the fees and costs incurred in preparing for the September 6, 2017 Evidentiary Hearing, preparing for and attending the September 19, 2017 hearing, preparing the statement of fees and costs being requested, an hour of time for the October 3, 2017 hearing at which the court will consider the fees requested and reschedule the Evidentiary Hearing. On or before September 29, 2017, Bosco Credit, LLC shall file and serve a Reply to the fees requested. The court determines that the reply period is appropriate because the parties have been directed to discuss the amount requested, with the issue for the court to determine at the October 3, 2017 hearing the reasonable amount of such fees.

On September 26, 2017, Mr. Macaluso filed a statement of fees indicating that the amount of time he spent on the above listed items is **\$3,300.00**. Bosco has filed no response to the declaration.

The court delays the preparation and filing of the fee documents to afford the Debtor, Bosco Credit, LLC, and their respective counsel time to meet and confer - not only as to the reasonable amount of the fees (which if agreement can be reached Bosco Credit, LLC can "save" having to pay for the preparation of the fee pleadings and the hearing concerning the fees), but also to the actual merits of Bosco Credit, LLC's contentions as advanced by Wright Finlay & Zak, LLP.

Valuation

The court notes that debtor's opinion of the value of the property is \$240,000.00. There does not appear to be any contest on the issue of valuation of the property. As a result, the court is inclined to grant

the Motion to Value the Collateral at \$240,000.00. However, in light of the issue of the valuation of Claim 2-1, the court will stay the Motion to Value the Collateral until adjudication of Bosco's Objection to Claim of Deutsche Bank 2-1. A status conference in this matter will be set.

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

IT IS ORDERED THAT xxxxxxxxxxxx

Thru #31

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 December 19, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that debtor failed to appear at the first Meeting of Creditors. The continued Meeting of Creditors is to be held January 11, 2018.

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

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

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

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

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

31. [17-26667](#)-C-13 MICHAEL/KIMBERLY GAINZA
[EAT](#)-1 Michael Hays

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, NA
10-30-17 [[23](#)]

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 30, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, Wells Fargo Bank N.A. opposes confirmation of the Plan on the basis that debtors plan on effecting a short sale of their property, and therefore the plan does not propose any payments to Wells Fargo. Wells Fargo asserts that the short sale is speculative at best. A motion for approval of sale has not been filed.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Thru #33

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 December 11, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Debtors are delinquent in plan payments in the amount of \$1,685.00. Debtors have paid \$0 into the plan to date.

B. Debtors have not provided an accurate statement of current monthly income and filed a blank means test that did not disclose income received in the 6 months prior to filing.

C. The IRS filed a claim that is not provided for in the plan.

D. The plan includes Ensminger Provisions but does not use all of the required approved language.

E. Debtors did not report a prior case filed on January 30, 2013 and dismissed March 30, 2017.

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

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

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

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

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

Tentative Ruling: The Objection to 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 November 22, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, Wells Fargo Bank, N.A. opposes confirmation of the Plan on the basis that the plan does not fully cure the pre-petition arrears owed to the creditor.

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

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

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

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

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

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 December 6, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

- A. The U.S. Department of Housing and Urban Development filed a \$56,823.55 claim indicating a subordinate deed of trust on debtors' real property. This debt is not disclosed in the plan or schedules.
- B. The plan will not complete within 60 months as claims have come in higher than expected.

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

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

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

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

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Two parties oppose the motion. The Trustee opposes confirmation on the basis that:

- A. The plan will not complete in 60 months because the IRS filed a claim in the amount of \$1,525,062.02 whereas this claim is not fully provided for in the plan.
- B. The plan relies upon motions to value that have not been filed.
- C. The plan has Ensminger Provisions but debtors have admitted to working on a loan modification for about a year and have not shown any proof that they are making progress on a loan modification.
- D. The plan fails to indicate if the debtor is opting into the guidelines for payment of attorney fees or opting out.
- E. Debtor failed to list a prior bankruptcy filing on the petition.

The IRS also opposes confirmation on the basis that the IRS's debt pushes the debtors out of chapter 13 eligibility as their debt limit is surpassed by the amount of debt. Debtors have failed to file numerous federal employment tax returns. The plan does not provide for the IRS's claim, and the

plan is not feasible.

Debtor filed a reply to each of the oppositions. Debtor requests time to file an amended plan and motions to value. Debtor argues that part of the IRS claim will be objected to, but does not discuss how to deal with the issue of the chapter 13 eligibility.

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.

Final Ruling: No appearance at the January 9, 2018 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 November 16, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 November 16, 2017 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.

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 4, 2017. Fourteen days' notice is required.

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

The court's decision is to continue the Objection to January 30, 2018 at 2:00 p.m.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that debtors did not appear at the first Meeting of Creditors. The continued meeting of creditors is to be held on January 18, 2018.

Debtor filed a response requesting that the court continue the matter and indicating that the debtors would appear at the continued meeting of creditors.

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

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

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

The Objection to the Chapter 13 Plan filed by the

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

IT IS ORDERED that Objection to confirmation of the Plan is continued to January 30, 2018 at 2:00 p.m.

38. [17-26999](#)-C-13 RADOSLAV DONKOV AND
[MDE](#)-1 SVETLANA DONKOVA
David Ritzinger

OBJECTION TO CONFIRMATION OF
PLAN BY FV-1, INC.
12-5-17 [[22](#)]

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 December 5, 2017. Fourteen days' notice is required.

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

The court's decision is to continue the Objection to February 13, 2018 at 2:00 p.m.

The Creditor, FV-1, Inc., objects to confirmation of the plan on the basis that creditor is preparing a proof of claim that is approximately \$169,459.07 with \$83,884.82 in arrearages. According to the plan, the claim is being treated under Class 4 which is improper due to the arrearages. Including the creditor's claim, the plan is not feasible.

Debtors' Response

Debtors respond that on October 21, 2017, the debtors accepted a Structured Settlement Acceptance Form from SLS, the creditor's loan servicer. The terms of the settlement fix the unpaid principal balance and appears to abolish any arrearages. As a result, debtor request that the objection to confirmation be denied.

Discussion

Creditor filed proof of claim #3-1 in the amount of \$164,902.55. Debtor has filed an objection to claim. The court will continue this objection

to the date of the objection to claim.

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

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

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

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

IT IS ORDERED that Objection to confirmation of the Plan is continued to February 13, 2018 at 2:00 p.m.
