

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**March 5, 2019 at 3:00 p.m.**

**Notice**

**The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 26.**

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|----|----------------------------------------------------------------------|------------------------------------------------------------|---------------------------------------------------------------------------|
| 1. | <a href="#"><u>18-22507-E-13</u></a><br><a href="#"><u>RJM-1</u></a> | <b>KENNETH LAWSON AND<br/>MARLO RAMIREZ<br/>Rick Morin</b> | <b>OMNIBUS OBJECTION TO CLAIMS<br/>1-7-19 <a href="#"><u>[24]</u></a></b> |
|----|----------------------------------------------------------------------|------------------------------------------------------------|---------------------------------------------------------------------------|

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on January 7, 2019. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Omnibus Objection to Claims is sustained, and Proof of Claim Number 14 of LoanMe, Inc. is disallowed in its entirety.</b></p>
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**March 5, 2019 at 3:00 p.m.**

**- Page 1 of 98 -**

Kenneth Eric Lawson and Marlo M Lourdes Ramirez, the Chapter 13 Debtor (“Objector”) requests that the court disallow the claims of LoanMe, Inc. (“Creditor”). Creditor filed Proof of Claim No. 10 on June 30, 2018 asserting a claim of \$73,142.48 (“Claim 10”) and Proof of Claim No. 14 on July 5, 2018 asserting a claim of \$58,932.10 (“Claim 14”). Objector asserts that the claims are duplicative of one another, and therefore should be disallowed.

## **CREDITOR’S RESPONSE**

Creditor filed a Response on February 19, 2019. Dckt. 30. Creditor argues Claim 14 was withdrawn, and the Objection is therefore moot.

## **OBJECTOR’S REPLY**

Objector filed a Reply on February 21, 2019. Dckt. 33. Objector argues that Claim 14 has not been withdrawn because Federal Rule of Bankruptcy Procedure applies, prohibiting a creditor from withdrawing a claim after an objection to claim has been filed.

## **DISCUSSION**

Debtor’s arguments are well-taken.

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).

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Here, Creditor does not disagree with Objector that Claim 10 and Claim 14 are duplicative of each other. Essentially, Creditor sought to resolve the Objection by withdrawing Claim 14. Being that Claim 14 was the duplicative filing ( filed after Claim 10 where Claim 10 should have been amended if there were changes to amounts owing), the court shall issue an order sustaining the Objection and disallowing Claim 14 in its entirety.

Based on the evidence before the court, Creditor’s Claim No. 14 is disallowed in its entirety. 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 of LoanMe, Inc. (“Creditor”), filed in this case by Kenneth Eric Lawson and Marlon M. Lourdes Ramirez, the Chapter 13 Debtor, (“Objector”) 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 Omnibus Objection to Claims is sustained, and Proof of Claim Number 14 filed by LoanMe, Inc. is disallowed in its entirety.

2.	<a href="#"><u>19-20008-E-13</u></a> <a href="#"><u>DPC-2</u></a>	<b>DEMETRA MOORE</b> <b>Pro Se</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>2-13-19 [23]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on February 13, 2019. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. The debtor, Demetra Ann Moore (“Debtor”), failed to appear at the First Meeting of Creditors held on February 7, 2019.
- B. Debtor cannot make the plan payments or comply with the plan, where the plan calls for \$400.00 monthly payments and Debtor’s mortgage payment to Carrington Mortgage is \$1,100.00. Further, Debtor’s proposed plan does not propose curing \$8,500 in mortgage arrears.
- C. Debtor’s proposed plan term is less than 36 months where Debtor is below median income and pays 0 percent of unsecured claims (no such claims having been listed).
- D. Debtor lists her home on Schedule A as one of her assets, but fails to list any debt on her Schedules D and E/F.
- E. Debtor failed to provide the Trustee with 60 days of employer pay advices received prior to the bankruptcy filing.
- F. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return for 2017.

## **DISCUSSION**

Trustee’s objections are well-taken.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor’s proposed plan payments of \$400.00 are insufficient to pay the ongoing mortgage payment of \$1,100.00 to Carrington Mortgage, and does not provide for prepetition arrears for Debtor’s mortgage. Additionally, no debts are listed on Schedules D or E/F. The plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

Debtor has proposed a plan term of 22 months, but Debtor has proposed to pay less than the full amount of allowed unsecured claims. Debtor does not meet the requirements of the Bankruptcy Code for a plan term lesser than 3 or 5 years. *See* 11 U.S.C. § 1325(b)(4)(B).

Debtor lists on Schedule A/B property valued at \$155,000.00 but lists no claims. No claims having been listed in this case, Debtor’s plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(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 Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 29, 2019. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXXXXXXXXXXXXX</span>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor, Lourdes Alvarado's ("Debtor") attorney failed to attend the First Meeting of Creditors on January 11, 2019, which caused Debtor not to be examined. The Meeting was continued to February 28, 2019.

## **DISCUSSION**

Trustee's objections are well-taken.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

However, the Trustee reports that Debtor and Counsel appeared at the continued First Meeting on February 28, 2019. March 1, 2019 Trustee Docket Entry Report.

At the hearing on the Objection to Confirmation, the Trustee reported ~~XXXXXXXXXXXXXXXXXX~~

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

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is ~~sustained, and the proposed Chapter 13 Plan is not confirmed.~~

4.

[18-27524-E-13](#)  
[DEF-3](#)

DAVID FOYIL  
Pro Se

MOTION TO CONVERT CASE TO  
CHAPTER 11  
1-23-19 [\[38\]](#)

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 23, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 11 is granted.</b></p>
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The debtor, David Foyil ("Movant"), filed this Motion to Convert the Chapter 13 bankruptcy case on January 23, 2019. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. This case has not been previously converted.
- B. Debtor is eligible to be a debtor under Chapter 11.
- C. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion To Dismiss on January 15, 2019 seeking to dismiss the case on the basis Debtor is not eligible for Chapter 13 relief. Dckt. 30.
- D. Debtor is qualified to represent himself in *Pro Se*.
- E. Debtor will file a proposed plan and disclosure before March 5, 2019.
- F. Pending confirmation of a plan Debtor will make adequate protection



payments to creditors with secured claims.

## **APPLICABLE LAW**

The Bankruptcy Code Provides:

Except as provided in subsection (f) of this section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court *may* convert a case under this chapter to a case under chapter 11 or 12 of this title.

11 U.S.C. § 1307(d)(emphasis added).

A debtor seeking conversion from a Chapter 13 to Chapter 11 must establish both eligibility to be a debtor under the new chapter and a reasonable prospect for a successful reorganization. *In re Tornheim*, 181 B.R. 161, 169 (Bankr. S.D.N.Y. 1995)(citing *In re Funk*, 146 B.R. 118, 124 (D.N.J.1992)). In exercising its discretion to convert the Chapter 13 case, the court may consider whether the debtor has willfully failed to abide by orders of the court or appear before the court to prosecute her case, whether she has caused unreasonable or prejudicial delay or is unable to effectuate a plan and whether she has filed and conducted her case in good faith. *Id*; *In re Funk*, 146 B.R. 118, 123 (D.N.J. 1992); *Anderson v. U.S. on Behalf of Small Bus. Admin.*, 165 B.R. 445, 449 (S.D. Ind. 1994); *In re Dilley*, 125 B.R. 189, 195 (Bankr. N.D. Ohio 1991).

## **PENDING MOTION TO DISMISS**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Motion To Dismiss the case on January 15, 2019. Dckt. 30. The basis of the motion is that Debtor is over the secured debt limit for a Chapter 13 case. On Debtor’s Schedule D, Debtor lists secured claims totaling \$1,067,182.00. Schedule D, Dckt. 1. However, secured claims filed in this case, as shown by a review of the official claims registry, to-date total \$1,382,163.28. The claim of PennyMac alone amounts to \$1,325,661.73. Proof of Claims, No. 6.

At the first hearing on the Motion To Dismiss, the court continued the hearing on that motion to be heard alongside this Motion for conversion.

## **OTHER CASES FILED BY DEBTOR**

The court summarizes some of Debtor’s past cases filed as follows:

Case No.	Chapter No.	Attorney	Date Filed	Date Plan Confirmed	Date Dismissed	Reason Case Dismissed
11-31046	7	Pro Se	05/03/2011			Debtor Granted Discharge on August 8, 2012

<b>12-35273</b>	13	Pro Se	08/21/2012	None	07/16/2013	Debtor exceeds the Chapter 13 debt limits, Chapter 13 case filed with knowledge of debt limits exceeded, and prejudicial in inability to confirm plan during the eleven months of the case. 12-35273; Civil Minutes, Dckt. 152.
<b>14-30670</b>	11	Pro Se	10/29/2014	None	2/19/2015	Court raised doubts as to whether the case was filed and prosecuted in good faith due to failure to serve creditors, significant changes to Debtor's schedules, and failure to file monthly operating reports. 14-30670; Civil Minutes, Dckt. 72.
<b>16-22194</b>	11	Pro Se	4/6/2016	None	6/29/2016	Debtor failed to notify several creditors of the bankruptcy case in compliance with the rules; the court had significant concerns Debtor could not prosecute the case diligently. 16-22194; Civil Minutes, Dckt. 57.
<b>18-26678</b>	13	Pro Se	10/24/2018	None	11/16/2018	Failure to Timely File Documents
<b>18-27524 Current Case</b>	13	Pro Se	12/1/2018	None	-----	Debtor exceeded the debt limits and was not eligible for a Chapter 13

## DISCUSSION

Debtor has had four, and now possibly five, unsuccessfully prosecuted Chapter 13 and Chapter 11 bankruptcy cases since August 2012. In Debtor's past cases, a recurring issue has been Debtor's ability

to successfully prosecute the case and whether the case was filed in good faith. There is no question that Debtor's fumbling around and having numerous cases dismissed caused significant prejudicial delay. In the current case, Debtor is seeking conversion only after the Trustee initiated a Motion To Dismiss based on grounds Debtor's past Chapter 13 case was dismissed—exceeding the debt limit for a Chapter 13 case.

At the hearing, **Debtor advised the court XXXXXXXXXXXX.**

In ruling on this Motion that conversion of the case should not be viewed by the Debtor as yet another opportunity to engage in non-productive bankruptcy court proceedings. Such further waste of time, judicial resources, and causing cost and expense to creditors is not a “no lose proposition” for Debtor. The U.S. Trustee has sought in other repeat filing situations dismissals with prejudice (which may be of minor consequence to Debtor in light of having obtained a discharge in his 2011 case. But if so, then all of the obligations incurred since 2011 would be nondischargeable in any future case.)

More significantly, the U.S. Trustee may well seek an injunction barring Debtor from filing yet another bankruptcy case for a specified period of time. This would not merely be for a pre-filing review before the chief bankruptcy judge authorizes filing of a new case as has been done for less sophisticated debtors who unknowingly stumble through bankruptcy filings and waste their rights. Rather, it may be an absolute bar on filing a new case, or a limitation that Debtor be represented by counsel and not further attempt to prosecute the case in *pro se*.

It is time for Debtor to either prosecute his Chapter 11 case or acknowledge that he is unable to prosecute such a case.

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 Convert the Chapter 13 case filed by the debtor, David Foyil (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Convert is granted and the case is converted to one under Chapter 11.

5.

[18-27524-E-13](#)  
[DPC-1](#)

DAVID FOYIL  
Pro Se

CONTINUED MOTION TO DISMISS  
CASE  
1-15-19 [\[30\]](#)

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

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*) and Office of the United States Trustee on January 15, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*Pro Se*) filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is denied without prejudice.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the bankruptcy case of David Eugene Foyil ("Debtor") on the basis that Debtor is over the secured debt limit for a Chapter 13 case. On Debtor's Schedule D, Debtor lists secured claims totaling \$1,067,182.00. Schedule D, Dckt. 1. However, secured claims filed in this case, as shown by a review of the official claims registry, to-date total \$1,382,163.28. The claim of PennyMac alone amounts to \$1,325,661.73. Proof of Claims, No. 6.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition to the Motion on February 5, 2019. Dckt. 42. Debtor does not oppose (although not conceding the amount of PennyMac's secured claim) the Motion, but notes a Motion To Convert the case to one under Chapter 11 has been filed. *See* Dckt. 38. Debtor requests the case be converted and not dismissed. Debtor states further he is capable of representing himself adequately in *Pro Se*, and will have a plan and disclosure filed before March 5, 2019.

## OTHER CASES FILED BY DEBTOR

The court summarizes Debtor's past cases filed within the past 5 years as follows:

Case No.	Chapter No.	Attorney	Date Filed	Date Plan Confirmed	Date Dismissed	Reason Case Dismissed
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<b>11-31046</b>	7	Pro Se	05/03/2011			Debtor Granted Discharge on August 8, 2012
<b>12-35273</b>	13	Pro Se	08/21/2012	None	07/16/2013	Debtor exceeds the Chapter 13 debt limits, Chapter 13 case filed with knowledge of debt limits exceeded, and prejudicial in inability to confirm plan during the eleven months of the case. 12-35273; Civil Minutes, Dckt. 152.
<b>14-30670</b>	11	Pro Se	10/29/2014	None	2/19/2015	Court raised doubts as to whether the case was filed and prosecuted in good faith due to failure to serve creditors, significant changes to Debtor's schedules, and failure to file monthly operating reports. 14-30670; Civil Minutes, Dckt. 72.
<b>16-22194</b>	11	Pro Se	4/6/2016	None	6/29/2016	Debtor failed to notify several creditors of the bankruptcy case in compliance with the rules; the court had significant concerns Debtor could not prosecute the case diligently. 16-22194; Civil Minutes, Dckt. 57.
<b>18-26678</b>	13	Pro Se	10/24/2018	None	11/16/2018	Failure to Timely File Documents
<b>18-27524 Current Case</b>	13	Pro Se	12/1/2018	None	-----	Debtor exceeded the debt limits and was not eligible for a Chapter 13

## **FEBRUARY 20, 2019 HEARING**

At the February 20, 2019 hearing on the Motion, the court continued the hearing to March 5, 2019, to be heard in conjunction with the Motion to Convert the Case to one under Chapter 11.

## **DISCUSSION**

Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, “noncontingent, liquidated, secured debts” of less than \$1,184,200.00 may be a debtor under Chapter 13. Here, Trustee argues and, the claims registry supports, Debtor owes \$1,382,163.28 in secured debt. At the least, Debtor would need to file Objections to various claims in order to meet the debt limit for a Chapter 13 case.

The Motion to Convert this case to one under Chapter 11 filed by the Debtor states the following grounds with particularity (Fed. R. Bankr. P. 9013):

1. This case has not been previously been converted under Chapters 11 U.S.C. §§ 1112, 1208, or 1307. Motion ¶ 1, Dckt. 38.
2. Debtor is eligible to be a debtor in a Chapter 11 case. Motion ¶ 2.
3. Though Debtor does not concede the amount alleged to be due by Penny Mac Holdings, LLC, discovery will be required to determine the final amount. Debtor now believes that a Chapter 11 case is in his creditors’, and Debtor’s, best interests because it will not require payment of Chapter 13 Trustee fees, which Debtor now estimates to be in excess of \$50,000. Motion ¶ 5.

With respect to an alleged dispute as to the amount of the Penny Mac Holding, LLC claim, the court notes that the eligibility provisions of 11 U.S.C. § 109(e) does not exclude a claim from being included in the determination because the debtor disputes it.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$ 394,725 and noncontingent, liquidated, secured debts of less than \$ 1,184,200 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$ 394,725 and noncontingent, liquidated, secured debts of less than \$ 1,184,200 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e). The dismissal of Chapter 13 Case 12-35273 included the grounds that the secured claims exceeded the debt limits. In Debtor’s 2016 Chapter 11 case, 16-22194, PennyMac Holdings, LLC filed its secured claim for \$1,213,364.52. 16-22194, Proof of Claim No. 5-1. It appears undisputed that as of 2016, PennyMac Holdings, LLC was asserting a claim in excess of the current \$1,184,200 secured debt limit.

Proof of Claim No. 6-1 filed in Debtor's current Chapter 13 case is for a \$1,325,661.73 secured claims, for which an arrearage of \$70,129.16. The Mortgage Proof of Claim Attachment to Proof of Claim No. 6-1 states that Debtor made a payment on June 15, 2017, August 16, 2017, and November 7, 2017, and no other payments during the period June 2017 through December 2018.

4. Debtor states that he is qualified to represent himself adequately in pro se, thereby avoiding any legal expenses that would be paid as an administrative priority in a Chapter 11 case. Motion ¶ 5.

While making this statement, the court notes that Debtor has had four, and now possibly five, unsuccessfully prosecuted Chapter 13 and Chapter 11 bankruptcy cases since August 2012.

5. Debtor will file a proposed plan and disclosure statement by March 5, 2019. Motion ¶ 6.

As experienced Chapter 11 attorneys know, Chapter 11 plans and disclosure statements are not simple forms to be complete or pleadings that can quickly be "knocked out" (at least if they are to be successfully prosecuted). No exhibits are filed with the Motion and the court is not presented with draft versions of a plan and disclosure statement that Debtor is finalizing. It is a mere 15 days from the hearing on the Motion to Dismiss and the promised filing date of a good faith plan and disclosure statement that comply with the Bankruptcy Code. With no drafts presented, such appears to be a very short period of time for an attorney with an active practice to prosecute his own Chapter 11 case.

6. Debtor has not defaulted on the proposed Chapter 13 Plans in this case. Motion ¶ 7.
7. Pending confirmation, Debtor will make adequate protection payments to creditors with secured claims. Motion ¶ 8.

Debtor's Declaration has been filed in support of the Motion to Convert. Declaration, Dckt. 40. It repeats the allegations in the Motion to Convert. No specific are given concerning a Chapter 11 Plan, the terms of such plan, or what Debtor considers to be "adequate protection" payments to creditors with secured claims.

At the hearing, the court announced its decision to convert the case to one under Chapter 11 - to afford Debtor one final opportunity to prosecute a Chapter 11 case.

The Motion is denied without prejudice.

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

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

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

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

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 13, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor, Thomas James Ivers ("Debtor"), does not propose any payments to class 2 creditors until the sale of his residence (proposed to be within 6 months).

## **DISCUSSION**

Trustee's objections are well-taken.

Debtor proposes a plan that does not provide for Class 2 Creditors until his residence is sold, stated to be within 6 months. 11 U.S.C. § 1325(a)(5)(B)(iii) requires that all payments to secured claims be in equal monthly amounts if Debtor proposes to make periodic monthly payments.

A review of the proposed plan shows that unsecured claims are stated to be \$0.00. Therefore, even though there are proposed monthly payments of \$100.00, nothing is going to any creditors until the sale



of Debtor's residence.

The plan also provides in Section 7 that Debtor will waive any homestead amount necessary to ensure 100 percent payment of all claims in the case.

Currently, there is nothing holding Debtor to this proposed plan. Debtor is providing no adequate protection to secured claims while a proposed sale is presumably in the works. If Debtor, in six months, decides to amend or modify his plan to provide for other treatment, Debtor would be free to do so (after having reaped the benefit of making no payments of any kind to creditors for several months).

Currently, the plan is overly speculative and does not appear feasible. 11 U.S.C. § 1325(a)(6). Creditors are not provided adequate protection on their claims, and the plan proposes to provide for secured claim in unequal payments despite the requirements of the Bankruptcy Code. 11 U.S.C. § 1325(a)(5)(B)(iii). <sup>FN. 1</sup>

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FN. 1. On Schedule I Debtor lists having only \$1,442 in monthly income. Dckt. 1 at 25-26. On Schedule A/B and D Debtors lists the real property to be sold and states that his gross equity in it is approximately \$200,000. This presents a dilemma, and opportunity, for Debtor and creditors. It appears that Debtor acknowledges that he must move to promptly sell the property. Creditors and the Trustee are skeptical given the general, open ended approach taken by Debtor. The objection is also made that Debtor does not provide for making the current mortgage payments pending the sale. However, it appears questionable as to whether such could be made given Debtor's current income.

Thus, both Debtor and creditors are presented with a situation of trying to come up with a mutually agreeable game "Plan" to get this accomplished, cash in the creditor's hands, and the Debtor's homestead exemption preserved and not lost through foreclosure. As this court has noted in connection with other cases, the Chapter 13 process is not one in which a debtor forfeits the ability to exercise the powers of a trustee to market and sell property in a commercially reasonable manner. The court is aware of some courts, when presented with arguments by creditors that such a sale is not permissible under a plan because the Debtor cannot make the current mortgage and arrearage payment pending the sale, in which the judge would just keep the case opening with a "pending plan" for years. This court has not done that, finding that rational debtors and creditors can agree on terms for the prompt and orderly sale of such property (in one case the parties "agreeing" to the appointment of a special purpose representative as a condition of confirmation for a debtor who emotionally just could not come to sell the property).

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

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

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

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

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

7. [19-20026-E-13](#) **THOMAS IVERS**  
[NLG-1](#) **Lucas Garcia**

**OBJECTION TO CONFIRMATION OF  
PLAN BY PROVIDENT FUNDING  
ASSOCIATES, LP  
2-14-19 [24]**

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

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 14, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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Provident Funding Associates ("Creditor") opposes confirmation of the Plan on the basis that:

- A. the Debtor, Thomas James Ivers ("Debtor"), fails to account for monthly installments due under the Note and Deed of Trust, notwithstanding the proposed sale of Debtor's residence.
- B. Debtor's Plan is completely devoid of information regarding the status of the proposed sale of Debtor's residence, and what should happen if Debtor fails to sell the residence within 6 months.
- C. Debtor's plan proposes to provide for Creditor through a lump sum payment, and does not proposes monthly payments on the obligation or towards arranges (amounting to \$28,351.63). If the proposed sale is

unsuccessful, Debtor's monthly payment would be \$472.53, which Debtor does not seem capable of paying.

- D. Debtor lists his monthly mortgage payment as \$0.00, where the payment due is actually \$1,804.54. Given the correction, the plan is not feasible. Furthermore, the plan is not feasible because the proposed sale, on the limited information provided from Debtor, is entirely speculative.

## DISCUSSION

Creditor's objections are well-taken.

Debtor proposes a plan that does not provide for Class 2 Creditors until his residence is sold, stated to be within 6 months. 11 U.S.C. § 1325(a)(5)(B)(iii) requires that all payments to secured claims be in equal monthly amounts if Debtor proposes to make periodic monthly payments. Furthermore, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

A review of the proposed plan shows that unsecured claims are stated to be \$0.00. Therefore, even though there are proposed monthly payments of \$100.00, nothing is going to any creditors until the sale of Debtor's residence.

The plan also provides in Section 7 that Debtor will waive any homestead amount necessary to ensure 100 percent payment of all claims in the case.

Currently, there is nothing holding Debtor to this proposed plan. Debtor is providing no adequate protection to secured claims while a proposed sale is presumably in the works. If Debtor, in six months, decides to amend or modify his plan to provide for other treatment, Debtor would be free to do so (after having reaped the benefit of making no payments of any kind to creditors for several months).

As Creditor notes, Debtor's Schedule J does not appear accurate (failing to account at least for the ongoing mortgage payment to Creditor).

Currently, the plan is overly speculative and does not appear feasible. 11 U.S.C. § 1325(a)(6). Creditors are not provided adequate protection on claims, the plan does not provide for the amount owing on Creditor's secured claim, and the plan proposes to provide for Creditor's secured claim in unequal payments despite the requirements of the Bankruptcy Code. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

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 Provident (“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

8. [19-20026-E-13](#) **THOMAS IVERS** **OBJECTION TO CONFIRMATION OF**  
[RPZ-1](#) **Lucas Garcia** **PLAN BY CITIBANK, N.A.**  
**2-14-19 [28]**

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

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 14, 2019. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

**The Objection to Confirmation of Plan is sustained.**

Citibank, N.A. (“Creditor”) opposes confirmation of the Plan on the basis that:

A. Notwithstanding the debtor, Thomas Ivers’ (“Debtor”) intent to sell his residence, the proposed plan fails to provide for periodic payments for

Creditor's secured claim.

- B. Debtor's proposed plan does not provide for Creditor's prepetition arrears amounting to \$35,591.34 and therefore does not provide for the full amount of Creditors claim and does not promptly cure arrears. Furthermore, the Debtor's plan does not specify treatment in the event Debtor is unable to sell his residence within the proposed six month period.
- C. Debtor's Schedule J indicates that the Debtor has a disposable income of \$133.85 monthly. However, the Debtor will be required to apply \$593.19 towards Creditor's claim in order to cure Creditor's pre-petition arrears over the proposed sixty (60) month term of the Plan. As the monthly plan payment sufficient to cure Creditor's pre-petition arrears exceeds the Debtor's monthly disposable income, the Debtor lacks sufficient monthly disposable income with which to fund the Plan.
- D. Debtor's plan does not provide for ongoing post-petition payments.
- E. The loan relating to Creditor's secured claim matures on April 30, 2036, after the term of the Debtor's Plan and therefore should not be included in this classification. Further, Debtor does not appear to be modifying the claim. Therefore, Debtor improperly lists Creditor as Class 2(A).

## DISCUSSION

Creditor's objections are well-taken.

Debtor proposes a plan that does not provide for Class 2 Creditors until his residence is sold, stated to be within 6 months. 11 U.S.C. § 1325(a)(5)(B)(iii) requires that all payments to secured claims be in equal monthly amounts if Debtor proposes to make periodic monthly payments. Furthermore, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

A review of the proposed plan shows that unsecured claims are stated to be \$0.00. Therefore, even though there are proposed monthly payments of \$100.00, nothing is going to any creditors until the sale of Debtor's residence.

The plan also provides in Section 7 that Debtor will waive any homestead amount necessary to ensure 100 percent payment of all claims in the case.

Currently, there is nothing holding Debtor to this proposed plan. Debtor is providing no adequate protection to secured claims while a proposed sale is presumably in the works. If Debtor, in six months, decides to amend or modify his plan to provide for other treatment, Debtor would be free to do so (after having reaped the benefit of making no payments of any kind to creditors for several months).

As Creditor notes, Debtor has a disposable income of \$133.85 monthly. However, the Debtor will be required to apply \$593.19 towards Creditor's claim.

Currently, the plan is overly speculative and does not appear feasible. 11 U.S.C. § 1325(a)(6). Creditors are not provided adequate protection on their claims, the plan does not provide for the full amount owing on Creditor's secured claim, and the plan proposes to provide for Creditor's secured claim in unequal payments despite the requirements of the Bankruptcy Code. §§ 1322(b)(2) & (5), 1325(a)(5)(B)

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 Citibank ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 13, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor, Martine Pascual Perez ("Debtor"), admitted at the First Meeting of Creditors February 7, 2019 he is no longer employed. Declaration ¶ 3, Dckt. 15.

## **DISCUSSION**

Trustee's objections are well-taken.

Debtor having admitted he is unemployed, it is unclear whether he will be able to make payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. 11 U.S.C. § 1325(a)(6).

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



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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on January 16, 2019. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Claimed Exemptions is sustained, and the exemption is disallowed in its entirety.**

David Cusick ("the Chapter 13 Trustee") objects to the debtor Elena Gonzalez's ("Debtor") claimed exemption on her real property commonly known as 56 Obermeyer Avenue, Gridley, California (the "Property") under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140(b)(2)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amount has not been claimed as to the Property, Dckt. 1. The Chapter 13 Trustee's Objection is sustained, and the claimed exemption are disallowed.

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 Claimed Exemption filed by David Cusick ("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 is sustained, and the claimed exemption for Debtor's real property under California Code of Civil Procedure § 704.730 is disallowed in its entirety.

The court's Order is without prejudice to any amendment to Schedule C claiming an exemption.

11. [15-22747-E-13](#)      **GARY/VICTORIA TEDFORD**      **MOTION TO SELL O.S.T.**  
[PLC-9](#)                      **Peter Cianchetta**                      **2-19-19 [132]**

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

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

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 19, 2019. By the court's calculation, 14 days' notice was provided. The court previously determined Debtor's Application to Shorten Time should be granted and set the hearing for March 5, 2019; however, the Order mistakenly references a motion to extend automatic stay. Order, Dckt. 137.

The Motion to Sell Real Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

<b>The Motion to Sell Property is granted.</b>
------------------------------------------------

The Bankruptcy Code permits Gary and Victoria Tedford, the Chapter 13 Debtor, ("Movant" or "Debtor") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant

proposes to sell the real property commonly known as 6905 Lyonia Way, Orangevale ,California (“Property”).

The proposed purchaser of the Property is Constance St. Louis, and the terms of the sale are:

- A. The sales price is \$375,000.
- B. The buyer is Constance St. Louis.
- C. The sales commission shall be 5 percent.
- D. Escrow shall be closed by March 20, 2019.
- E. A deposit of \$5,000 shall be paid, the first loan shall be for \$337,500, and the balance of the purchase price, \$32,500, paid in cash.
- F. The sale of the Property will pay off the First Deed of Trust of Specialized Loan Servicing.

Motion, Dckt. 132.

Movant argues that without the sale, Movant would be forced to surrender the Property.

## **DISCUSSION**

### **Order Shortening Time For Hearing**

The present Motion was set for hearing on seventeen days notice pursuant to order of the court. Order, Dckt. 137. The order contains a clerical error and references the hearing as being one for a motion to extend the automatic stay. The Motion for Order Shortening Time clearly requests that time be shortened to not less than fifteen days. *Ex Parte* Motion, Dckt. 129.

The need to have the hearing on less than the 21 days notice as specified in Federal Rule of Bankruptcy Procedure 2002 was and is warranted. Debtor has marketed the property with a Realtor and buyer is seeking a closing that is not commercially unreasonable.

The Notice of Hearing is for the Motion to sell, identifies the property to be sold, and that opposition, if any, may be presented orally at the hearing. Dckt. 133.

Debtor’s bankruptcy case is now four years old. The Chapter 13 Plan provides for a 0% dividend for creditors holding general unsecured claims. Dckt. 55. With the sale of the property, Debtor will be relieved of having to make monthly payments of \$2,276.11 which was required to service the debt (and arrearage) on the property.

As Debtor testified in the Motion to Sell the Property, Debtor cannot afford to continue with the payments to retain the Property. Declaration, Dckt. 134.

Further, while modest in the amount, the net proceeds of the sale shall be paid into the Chapter 13 plan and used for payment of creditor claims.

The above are factors considered by the court in shortening time for the hearing on the Motion to Sell. While the Order Shortening Time contains a clerical error and misidentifies the name of the motion, the substance of the relief is correct.

### **Sale of Property Authorized**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate, Movant no longer being able to financially support the property, the sale price being greater than the asserted value of \$235,000.00 stated on Debtor's Schedule A/B (Dckt. 9), and the First Deed of Trust being paid through the sale.

### Authorized Real Estate Commission

Movant proposes paying a sales commission of no more than 5 percent of the sales price. The court approved the employment of Joy Mahrle as debtor's real estate salesperson ("Broker") on January 17, 2019. Order, Dckt. 127. In the Listing Agreement and Motion To Employ, the Debtor sought only a commission of 4 percent. Movant does not assert why a higher commission than previously authorized is appropriate.

Debtor projects that the net proceeds for creditor will be approximately \$4,093.87. Motion, Dckt. 132. The court does not find a projected closing statement filed by Debtor showing how this net amount is computed and what the commission amount used in projecting that net proceeds.

The court interprets that reference to 5 percent in the Motion to be a clerical error, a statement inconsistent with the court's order authorizing the employment. If the \$4,093.87 projected net proceeds is based on the authorized 4 percent commission and the court were to increase it by another percentage point, then there would be nothing for creditors.

The Debtor is authorized to pay the 4 percent real estate commission as authorized in the order for employment, which may be divided between the Buyer and Seller real estate brokers.

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

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

The Motion to Sell Property filed by Gary and Victoria Tedford, the Chapter 13 Debtor, (“Movant”) having been presented to the court, the court having shortened the required time for providing notice for hearing on the Motion on March 5, 2019, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;

**IT IS ORDERED** that the previous Order of the court (Dckt. 137) granting the Application for Order Shortening time is vacated, and the period of notice for this Motion is reduced, the Debtor having provided sufficient.

**IT IS FURTHER ORDERED** that Gary and Victoria Tedford, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Constance St. Louis or nominee (“Buyer”), the Property commonly known as 6905 Lyonia Way, Orangevale, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$375,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 135, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than four percent (4%) of the actual purchase price upon consummation of the sale, which may be divided between the Debtor’s broker and Buyer’s broker.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 24, 2019. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is overruled.</b></p>
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TD Auto Finance, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The debtors, Timothy Carl Speek and Victor Arnold Nigro's ("Debtor") proposed Plan provides only a 5.50 percent interest rate for Creditor's claim. Given Debtor's tight budget and the debtor's vehicle (securing Creditor's claim) being a rapidly depreciating asset, Creditor asserts the interest rate should be 7.50%
- B. Debtor incorrectly lists Creditor's claim as being a non purchase money security interest, in Class 2 of the proposed Chapter 13 Plan.

## **DEBTOR'S RESPONSE**

Debtor filed a response on February 8, 2019. Dckt. 21. Debtor concurs with Creditor's arguments, and requests that the plan be amended to fix the aforementioned issues in the language of the order confirming the plan.

## **CREDITOR'S REPLY**

Creditor filed a reply on February 14, 2019 noting Debtor's concurrence and requesting the court enter an order confirming the plan with the necessary additional language. Dckt. 24.

## **DISCUSSION**

Debtor has not opposed the Objection, and concurs with Creditor's alternative requested relief that Creditor's grounds for Objection be addressed before confirmation. The Objection is sustained, and the Plan is confirmed, having complied with 11 U.S.C. §§ 1322 and 1325(a) after increasing the interest rate to 7.5 percent on Creditor's claim and correctly identifying the claim as being a purchase-money security interest.

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 TD Auto Finance, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained, and Timothy Carl Speak and Victor Arnold Nigro's ("Debtor") Chapter 13 Plan filed on December 31, 2018, is confirmed. Counsel for Debtor shall prepare an appropriate order and 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. The proposed order shall confirm the Chapter 13 Plan, increase the interest rate to 7.5 percent on Creditor's claim, and correctly identifying Creditor's claim as being a purchase-money security interest.



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2018. By the court's calculation, 61 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Amended Plan is denied.**

Richard Sterling Greene ("Debtor") seeks confirmation of the Amended Plan, which would constitute the first confirmed plan in this case. The Amended Plan provides for monthly payments of \$250 for 12 months, \$750 for 48 months, and a lump sum payment of \$2000,000.00 by month 12. Dckt. 64. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 27, 2018. Dckt. 72. Trustee opposes confirmation on the following grounds:

1. Debtor is \$250.00 delinquent in plan payments and another payment will become due before the date of this hearing.
2. The IRS filed Proof of Claim, No. 3, which indicates Debtor has not filed his 2015 and 2017 tax returns. While Debtor has provided copies of each

tax return to Trustee, the documents are not endorsed and may not have been filed.

3. The proposed plan does not account for the claim of the Franchise Tax Board. The FTB filed Proof of Claim, No. 6 indicating secured tax claim amounting to \$15,214.64.
4. Debtor has not indicated how Debtor will make the stepped-up payments of \$750. Debtor is on fixed income, receiving social security and rental income.
5. The proposed plan relies on the sale of Debtor's partnership interest in Enterprise Group Partnership, which is disputed by Aronowitz Lyon.

### **JANUARY 15, 2019 HEARING**

At the January 15, 2019 hearing, the court continued the hearing on the Motion to March 5, 2019. Dckt. 76.

### **DISCUSSION**

Debtor is \$270.00 delinquent in plan payments, which represents one month of the \$270.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Proof of Claim, No. 3 filed by the IRS indicates that the federal income tax return for the 2015 and 2017 tax year have not been filed still (despite having been provided to Trustee). Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The FTB filed Proof of Claim, No. 6 indicating secured tax claim amounting to \$15,214.64. Without accounting for that secured claim, the proposed plan may not be feasible. 11 U.S.C. § 1325(a)(6).

Debtor proposes to make stepped-up plan payments, but has not explained what expected change in disposable income is pending. Furthermore, the plan relies on a lump sum resulting from proceeds of the sale of Debtor's partnership interest, which is currently disputed. Without an accurate picture of Debtor's financial reality, the proposed plan does not appear to be feasible.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on January 10, 2019. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Plan is denied.**

Ricardo J. Cortez ("Debtor") seeks confirmation of the Plan, which would be the first Confirmed Plan in this case. The Plan provides for payments of \$1,759.00 per month for 60 months, and proposes a dividend of 0 percent to unsecured claims totaling \$5,895.00. Dckt. 21.

#### **CHAPTER 13 TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 19, 2019. Dckt. 46. The Chapter 13 Trustee, David Cusick ("Trustee"), states Debtor is \$310.08 delinquent in plan payments.

Trustee states further that the proposed plan payment is not enough to cure the arrears of Class 1 creditor Shellpoint Mortgage in the 60 month term (Proof of Claim, No. 3 showing an amount necessary to cure arrears as \$17,795.00 where the plan provides for only \$15,804.31 to be paid within 60 months).

## DISCUSSION

Debtor is \$310.08 delinquent in plan payments, which is only a fraction of the monthly \$1,759.00 payment. However, delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

More substantially, Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. Proof of Claim, No. 3 states the amount necessary to cure arrears is \$17,795.00 where the plan provides for only \$15,804.31 to be paid within 60 months. Without Debtor objecting to the proof of claim of Shellpoint Mortgage, the proposed plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, January 30, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Objection to Claimed Exemptions is overruled.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), objects to Mark and Renee Evans's ("Debtor") claimed exemption as to "attorney holding funds in trust" ("Property") pursuant to California Civil Code Procedure section 704.140. Trustee argues Debtor fails to list which debtor the funds are held on behalf of, what is the source of the funds, and what Debtor intends to do with the funds, and therefore concludes Trustee is unable to determine whether Debtor is entitled to the exemption.

**DEBTOR'S RESPONSE**

Debtor filed a response on February 18, 2019. Dckt 3. Debtor explains that Debtor was involved in an automobile accident with an uninsured motorist, was insured for up to \$25,000 in damages in accidents with uninsured motorists, and those funds were transferred to Debtor's personal injury attorney.

Debtor filed Amended Schedule C on February 15, 2019, to provide additional information. Dckt. 28. The Amended Schedule C lists Debtor's \$25,000.00 asset as "Uninsured Motorist Claim on Debtor's Own Policy."

**DEBTOR'S SUPPLEMENTAL RESPONSE**

Debtor filed a Supplemental Response on February 28, 2019. Dckt. 37. The Supplemental

Response adds that the exemption here is necessary for the Debtor's support on the following grounds:

1. Debtor's family relies only on a worker's compensation payment currently.
2. Debtor's Schedules demonstrate financial need.
3. Debtor is below median income.
4. Debtor has modest assets.

## **DISCUSSION**

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

California Civil Code Procedure section 704.140 specifies an exemption debtors are entitled to based on a personal injury cause of action.

Here, Trustee objects to the claimed exemption on the basis Debtor fails to list which debtor (Mark or Renee Evans) the funds are held on behalf of, what is the source of the funds, and what Debtor intends to do with the funds. Trustee does not actually provided any argument or evidence that Debtor is not entitled to the claimed exemptions. Rather, Trustee merely concludes that Debtor may not be entitled to the exemption.

Trustee has not rebutted the presumption of validity of Debtor's claimed exemption. *In re Carter*, 182 F.3d at p. 1029. The Objection is overruled.

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 Claimed Exemptions filed by David Cusick ("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 is overruled.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 21, 2019. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Modified Plan is denied.</b></p>
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Anthony and Angel Gutierrez (“Debtor”) seek confirmation of the Modified Plan to address Debtor’s decision to provide for the claim securing their vehicle as a Class 3. Dckt. 52. The Modified Plan proposes that the plan payments from month one through December 2018 shall be \$559 per month and that the plan payment for January 2019 through the end of the plan shall be \$110. Dckt. 53. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on February 19, 2019. Dckt. 59. Trustee opposes the Motion on the basis there are several issues with Debtor’s Schedule’s I and J, including:

- A. Debtor filed Schedule J on January 21, 2019 as Amended (dating back to the commencement of the case) rather than Supplemental (from a post-petition date reflecting a post-petition change), over three years into the



case.

- B. Debtor's current Schedule J shows an increase in home maintenance, water/sewer, food/housekeeping, personal care, transportation, and vehicle insurance expenses without providing an explanation for the changes. Debtor's Amended Schedules also do not reflect the current ages of Debtor's children.
- C. Debtor's transportation and vehicle insurance costs increased even though Debtor is surrendering both of their vehicles.
- D. Debtor has not filed a Supplemental Schedule I even though it has been over 3 years since Debtor's last Schedule I was filed.

## **DISCUSSION**

Debtor filed this case November 2015. On January 21, 2019, over three years after filing, Debtor filed Amended Schedule J. Dckt. 55. Whereas supplemental schedules provide updated information of the Debtor, amended schedules indicate changes to the financial information stated as of the time of filing. If Debtor truly intended for the Amended Schedule J to be as of the time of filing, it appears Debtor has not been proceeding in good faith.

No supplemental Schedule I (or J) has been filed to provide evidence of the current financial circumstances 3 years into the case. Additionally, Debtor still proposes transportation and vehicle expenses where the Modified Plan provides for the vehicle to be surrendered.

Where Debtor indicates (without supporting evidence such as supplemental schedules and a declaration explaining income and expenses) that circumstances have not changed in the past 3 years, the Modified Plan does not appear to be proposed in good faith. 11 U.S.C. § 1325(a)(3). Furthermore, without an accurate picture of Debtor's financial circumstances, the Modified Plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

Making statements under penalty of perjury, such as Schedules I and J, has significance, with the trustee, other parties in interest, and the court relying on such statements. The court accepts that "things change," but a party providing different testimony/statements under penalty of perjury needs to provide an explanation under penalty of perjury as to why and how the changes have occurred (and are reasonable). Otherwise, such is nothing more than dictating to the court, trustee, and creditors that they just accept, without support, whatever the Debtor says is the true facts.

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

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

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

hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by Anthony and Angel Gutierrez (“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.

17. [12-20389-E-13](#) **EDMOND/CARMELA CHILDS** **MOTION TO AVOID LIEN OF**  
[TJW-2](#) **Timothy Walsh** **AMERICAN EXPRESS CENTURION**  
**BANK**  
**2-14-19 [62]**

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

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

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and Office of the United States Trustee on February 15, 2019. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<b>The Motion to Avoid Judicial Lien is granted.</b>
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This Motion requests an order avoiding the judicial lien of American Express Centurion Bank

("Creditor") against property of Edmond and Carmela Childs ("Debtor") commonly known as 205 Howard Ave, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,733.50. Exhibit 1, Dckt. 64. An abstract of judgment was recorded with Solano County on September 17, 2010, that encumbers the Property. *Id.* Proof of Claim, No. 4 filed by Creditor indicates the amount of the debt outstanding at the time of filing was \$6,456.81. Proof of Claim, No. 4.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$211,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$269,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §703.140(b)(1) in the amount of \$100.00 on Amended Schedule C. Dckt. 23.

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 the judicial lien impairs 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 COURT-DRAFTED ORDER**

An order (not a minute 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 Edmond and Carmela Childs ("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 judgment lien of American Express Centurion Bank, California Superior Court for Solano County Case No. VCM109164, recorded on September 17, 2010, Document No. 201000084698, with the Solano County Recorder, against the real property commonly known as 205 Howard Ave, Vallejo, California, is avoided in its entirety 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.

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

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

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and Office of the United States Trustee on February 15, 2019. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Kelkris Associates Inc., dba Credit Bureau Associates ("Creditor") against property of Edmond and Carmela Childs ("Debtor") commonly known as 205 Howard Ave., Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$30,160.73. Exhibit 1, Dckt. 69. An abstract of judgment was recorded with Solano County on November 16, 2010, that encumbers the Property. *Id.* Proof of Claim, No. 10 filed by Creditor indicates the amount of the debt outstanding at the time of filing was \$34,364.37. Proof of Claim, No. 10.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$211,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$269,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §703.140(b)(1) in the amount of \$100.00 on Amended Schedule C. Dckt. 23.

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 the judicial lien impairs 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 COURT-DRAFTED ORDER**

An order (not a minute 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 Edmond and Carmela Childs ("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 judgment lien Kelkris Associates Inc., dba Credit Bureau Associates, California Superior Court for Solano County Case No. FCS036241, recorded on November 16, 2010, Document No. 201000106890, with the Solano County Recorder, against the real property commonly known as 205 Howard Ave., Vallejo, California, is avoided in its entirety 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.

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

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on February 13, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The debtor, Randy Kemp's ("Debtor") Plan, dated January 7, 2019, is not complete. The proposed plan identifies in Section 2.01 that Debtor's payments are in the \$0.00 from future earnings and that Administrative Expenses under Sections 3.05 & 3.06 are \$0. All other information is blank and Debtor failed to include the last page of the Plan.
- B. Trustee questions (and Debtor does not address in the plan) whether the plan was filed in good faith based on:
  - 1. The amount of the proposed payments and the amounts of the Debtor's surplus.

2. The probable or expected duration of the Plan.

3. The accuracy of the Plan's statements of the debts, expenses, and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court.

4. The extent of preferential treatment between classes of creditors.

5. The extent to which secured claims are modified.

6. The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7.

7. The motivation and sincerity of the Debtor in seeking Chapter 13 relief.

- C. Debtor's non-exempt assets total a minimum of \$64,951.00 and the Debtor failed to propose any dividend to unsecured creditors. On Schedule C, Debtor exempted a federal tax refund in the amount of \$2,200.00 by claiming exemption code 26 U.S. Code §501. Trustee has filed an Objection to this Exemption, which is set to be heard on March 26, 2019.
- D. Debtor has failed to properly complete the "Chapter 13 Calculation of Your Disposable Income". Trustee is uncertain if Debtor is above or below median income.
- E. On Debtor's Schedule C, Debtor marked the box claiming federal exemptions under 11 U.S.C. §522(b)(2). The Petition shows that Debtor has a California Address and the Statement of Financial Affairs, Question 2, is marked "No" as to whether Debtor has lived anywhere other than the current address in the last 3 years. Debtor has listed "Tax Refunds" under 26 U.S. Code § 501 as the only property he is claiming exempt. California Code of Civil Procedure section 703.130 provides that these exemptions are not authorized in this state.
- F. Debtor failed to provide proof of his Social Security Number at the First Meeting of Creditors on February 7, 2019. The Meeting is continued to March 28, 2019 at 1:00pm.
- G. Debtor stated at the First Meeting of Creditors that he lives in Unit #186, which was not shown in his Petition.
- H. Schedule J lists net monthly income of \$22.00. On Schedule J, Debtor

listed \$375 on Question 4 for rental or home ownership and he identifies \$375.00 on Question 5 for Addition to mortgage payments. The Plan does not identify any mortgage payments in Class 1 or Class 4, nor does Schedule D identify any creditors who are secured by real property. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

- I. The Statement of Financial Affairs is incomplete because Debtor did not answer Questions 4 and 5 regarding income, Question 9 regarding lawsuits, and Question 20 and 21 are not clearly marked.
- J. Debtor failed to provide 521 Documents, including employer pay advices and a tax transcript or tax return for the most recent prepetition filing year.

## DISCUSSION

Trustee's numerous objections are well-taken.

Many of Trustee's grounds for objection show clearly that the proposed plan is not feasible and that the plan has possibly not been filed in good faith. Those grounds include the petition and other filing documents not having been completed, expenses not being properly listed, exemptions not being properly claimed, and a blank plan having been filed. these are all grounds to deny confirmation. 11 U.S.C. §§ 1325(a)(3), (a)(6).

Nothing being provided into the plan,, Debtor's plan clearly fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

Debtor also did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Additionally, Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(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 Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 30, 2018. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Amended Plan is denied.</b></p>
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Anthony Paul Gianola and Wendy Elaine Gianola (“Debtor”) seek confirmation of the Amended Plan, which would be the first confirmed plan in this case. Dckt. 59. The Amended Plan provides for payments of \$600 for 8 months, and \$3,650.00 for 52 months. Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on November 13, 2018. Dckt. 62. Trustee objects on the basis that the plan term may exceed 60 months because Debtor does not fully account for the Internal Revenue Service’s claim amounting to \$32,785.29, because Debtor is only paying \$1,669.00 towards the Class 1 claim of Nationstar Mortgage (an amount not providing adequate protection), and because Debtor increased the unsecured dividend to 70 percent amounting to \$45,275 to be paid out through

the plan. Trustee further opposes confirmation of the proposed plan on the grounds that Debtor's Schedule J reflects only \$600 in disposable income (far below the proposed monthly payment), and that Debtor has failed to file taxes for the 2014, 2015, and 2017 years.

## **DEBTOR'S REPLY**

Debtor filed a Reply to Trustee's Opposition on November 27, 2018. Dckt. 68. Debtor states that tax returns have been filed for 2014 and 2015, that Amended Schedules I and J were filed on November 15, 2018, and that Debtor requests that the Chapter 13 payment be increased to \$4,075.0 in the order confirming plan to ensure payment to creditors under the terms of the proposed plan.

## **DECEMBER 4, 2018 HEARING**

At the December 4, 2018, hearing, the court continued the hearing on the Motion to December 18, 2018 to allow the Debtor and Trustee to work out final plan amendments. Dckt. 70.

## **DECEMBER 18, 2018 HEARING**

At the December 18 hearing, the court continued the hearing on the Motion to January 15, 2019. Dckt. 71.

## **TRUSTEE'S STATUS UPDATE**

On December 27, 2018, Trustee filed an Updated Status In Support of Opposition. Dckt. 72. Trustee asserts the following:

1. The plan remains overextended and will not complete in 60 months because it does not account for the claim of the IRS.
2. Debtor does not provide for the correct payment to Nationstar Mortgage—\$2,380.22 as opposed to \$1,669.00.
3. Debtor does not explain when Debtor moved to Seattle for a new job, who the employer is, and why Debtor moved where the income received is similar to Debtor's prior job
4. Debtor has not reported filing the 2017 tax return.

## **DEBTOR'S REPLY TO TRUSTEE'S UPDATED STATUS**

Debtor filed a Reply to Trustee's Updated Status on January 8, 2019. Dckt. 75. Debtor argues Claim #5-1 filed by the Internal Revenue Service shows tax debt owed by each individual Debtor even though they file their returns jointly, effectively doubling the amount owed. Dckt. 75 at ¶ 1.

## **JANUARY 15, 2019 HEARING**

At the January 15, 2019 hearing, the court continued the hearing on the Motion to March 5, 2019 based on the Debtor's representation the Internal Revenue Service will amend its claim based on duplicative charges ( and in consideration of the Federal budget issues and the furloughing of personnel at the Internal Revenue Service). Dckt. 79.

### **TRUSTEE'S UPDATED STATUS REPORT IN OPPOSITION**

Trustee filed an Updated Status Report on February 20, 2019. Dckt. 80. The Updated Report appears to only summarize and reassert Trustee's previous oppositions.

### **DEBTOR'S REPLY TO TRUSTEE'S UPDATE STATUS REPORT**

Debtor filed a Reply on February 25, 2019. Dckt. 83. Debtor notes Amended Proof of Claim, No. 5-2, was filed by the IRS on February 21, 2019. The Amended Proof of Claim asserts a priority unsecured amount of \$10,596.97, and a general unsecured amount of \$11,158.39.

Debtor argues the total asserted claim of \$21,755.36 renders the proposed plan feasible.

## **DISCUSSION**

An Amended Proof of Claim has now been filed by the IRS reducing the claim from \$ 41,812.69 to \$21,755.36. However, several of Trustee's grounds for opposition have not been addressed.

No evidence was filed showing Debtor filed tax returns for 2017. Filing of the returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor filed Amended/Supplemental Schedules I and J on November 15, 2018. Dckt. 65. The Amendment removes the mortgage payment, modestly increases income, and increases other expenses to arrive at a disposable income of \$4,527.12. Debtor's Declaration in support of the Amended Schedules explains some of the increased expenses as "new living situation," further explaining Co-Debtor Anthony Gianola moved to Seattle for a new job. Debtor has not explained why this move was necessary.

Debtor's lack of an explanation causes concern where there has been no or virtually no increase to expenses for electricity/heating/gas and water/sewer/garbage. Food and housekeeping costs have been reduced from \$800 to \$600. Transportation costs have been reduced from \$600 to \$375.

Furthermore, the Declaration characterizes several expenses as being increased that have actually been reduced or remained constant, including clothing (\$200 to \$150), personal care (\$200 to \$150), and

heat/electric (\$455.33, unchanged). Failure to provide accurate expenses suggests the plan is not feasible.  
11 U.S.C. § 1325(a)(6).

Debtor also failed to address Trustee's argument Debtor is underpaying the claim of Nationstar Mortgage. Where the plan is not properly providing for this claim, the plan does not appear 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 Motion to Confirm the Amended Chapter 13 Plan filed by Anthony Paul Gianola and Wendy Elaine Gianola ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied.

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

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

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 17, 2019. <sup>FN.1</sup>. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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FN.1. Debtor filed its Original Notice on February 15, 2019 and provided notice the same day. Dckts. 13, 16. The Original Notice sought to set the hearing on the Motion for March 5, 2019 at 1:30 p.m. No such hearing date/time existing for law & motion matters, the court issued a Memo To File Re: Calendar Correction informing Debtor the Motion would not be calendared until an Amended Notice corrected the defect. Dckt. 18.

Pursuant to the written instruction of the court, Debtor filed an Amended Notice seeking to set the hearing for the correct time of 3:00 p.m. Dckt. 19.

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The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

-----.

<b>The Motion to Extend the Automatic Stay is denied.</b>
-----------------------------------------------------------

Tre Wilbur Ball ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-24391) was dismissed on August 7, 2018, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 17-24391, Dckt. 42, August 7,

2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

## APPLICABLE LAW

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at \*6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

*In re Elliot-Cook*, 357 B.R. at 814–15.

## DISCUSSION

### Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by

the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. See 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. See 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought.” The standard for “particularity” has



been determined to mean “reasonable specification.”

*Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

### **Grounds Stated in Motion**

Debtor has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Debtor are:

- A. Debtor filed this case February 11, 2019. Motion ¶ 1, Dckt. 12.
- B. Debtor previously filed a petition on January 4, 2017 (Case No. 17-20044) and on June 30, 2017 (Case No. 1724391). Debtor’s prior cases were closed without a discharge on May 5, 2017 and October 31, 2018. *Id.*, ¶¶ 2-3.
- C. Because Debtor had a case dismissed within the preceding year, the Automatic Stay is for a term of 30 days in this case. However, Debtor can seek extension of the stay by showing the present case is filed in good faith, and dismissal of the prior case was not due to wilful inadvertence or negligence. *Id.*, ¶¶ 4-6.
- D. The Debtor’s attorney avers (and Debtor’s Declaration is incorporated by reference supporting that) the present case was filed in good faith and dismissal of the prior case was not due to wilful inadvertence or negligence. *Id.*, ¶ 7.
- E. Without the Automatic Stay, the creditors in the case could seize assets of the Estate in last-minute self-help efforts before the Meeting of Creditors. *Id.*, ¶ 8.

The only “ground” responsive to what is necessary to be pleaded in the Motion is merely a conclusion of law by Debtor’s attorney—specifically, that the case is filed in good faith. Presumably, Movant believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated

conclusions.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are also found in Debtor’s Declaration, which was “incorporated by reference.” The court generally declines an opportunity to do associate attorney work and assemble motions for parties.

A review of the Declaration adds little to the information necessary for granting the Motion. Debtor states under penalty of perjury :

I was between work assignments and companies. I have now returned and have a regular schedule again. This will allow me to fulfill my duties in my Bankruptcy.

Dckt. 15. A review of Debtor’s Schedules I in both the present case and the prior dismissed case show Debtor has the same employer, which Debtor in the first case states (and now states again nearly two years later) that he has had for 4 years. *compare* Schedule I, Dckt. 11, *with* Schedule I, Bankr. E.D. Cal. No. 17-24391, Dckt. 1.

Debtor states under penalty of perjury his case was dismissed (for failure to make payments) because he was in between companies. Debtor has not stated information sufficient to determine whether the present case was filed in good faith. Debtor has not stated with particularity in the Motion what caused his prior unemployment, why he has been rehired (presuming the Debtor works for the same employer as stated under penalty of perjury), or why he will not become unemployed again.

In looking at Schedule J, Debtor’s stated expenses are for a family of four: Debtor, Debtor’s dependent fiancé, and Debtor’s fiancé’s two dependent children. Debtor’s fiancé is stated on Schedule I to provide an \$800 a month contribution for the fiancé’s three-quarters of these household expenses being paid by Debtor (and Debtor’s creditors). Dckt. 11. Debtor’s statement under penalty of perjury of expenses for this household of two adults and two teenage children includes:

1. \$500 a month for food and housekeeping expenses. Allowing \$50 a month for housekeeping expenses, for a 30 day month that leaves \$0.97 per meal for each of these four members of the household.
2. These two adults and two teenagers have an expense of only \$20 a month for clothing and laundry, which is \$5 a month per person.
3. These two adults and two teenagers have no expenses for personal care products and services (such as shampoo, hair cuts).

4. The two adults and two teenagers have no medical or dental expenses.
5. Debtor lists having pet care and food expenses of \$188 a month. On Schedule A/B Debtor lists the household having 3 dogs and 4 cats.

Dckt. 11 at 18-19. These expenses do not appear to be a reasonable, or accurate, statement of expenses.

While listing his fiancé and her two children as dependents, on Schedule I Debtor only lists “assistance” of \$800 a month by his fiancé and for income of the person sharing his home, states that it is “N/A.” How much the person living in Debtor’s home, listed as a dependent with two children as Debtor’s dependents, and for whom expenses are being paid by Debtor, makes and should be contributing for her and her two children’s expenses is relevant.

The Motion contains bare legal conclusion which Debtor’s counsel “avers” to. Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is denied.

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

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

The Motion to Extend the Automatic Stay filed by Tre Wilbur Ball (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

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

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 29, 2019. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
-------------------------------------------------------------------

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor, Clinton Motta ("Debtor"), admitted at the Meeting of Creditors held on January 24, 2019, he has not filed his 2017 Tax Returns. Trustee also notes Debtor's first payment will come due January 25, 2019.

## DISCUSSION

Trustee's objection is well-taken.

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2017 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(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 Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2019. By the court’s calculation, 22 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<b>The Motion to Sell Property is <del>granted</del>.</b>
-----------------------------------------------------------

The Bankruptcy Code permits Ken Subia, Chapter 13 Debtor, (“Movant” or “Debtor”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 3092 Orchard View Court, Fairfield, California (“Property”).

Debtor valued the Property at \$520,000.00 at the date of filing and claimed an exemption of \$100,000.00 on Schedule C. Dckt. 1. Debtor asserts that the sale of the Property will allow him to complete the proposed plan and pay a 100 percent dividend to unsecured claims.

The proposed purchaser of the Property is Saddedin R. Majjar and Randa Rateb, and the terms of the sale are:

- A.           The purchase price for the Property is \$518,000.00.

- B. The purchase will be financed in the approximate amount of \$300,000.
- C. Close of escrow shall occur before March 8, 2019.
- D. The net proceeds due to Debtor are \$152,342.29 to be released to the Trustee directly through escrow.
- E. Debtor shall provide the Trustee with a copy of escrow closing statement within 14 days of the close of escrow.
- F. The fees for RE/MAX Gold (“Broker”) per the residential listing agreement are to be 6% of the selling price. Fees of \$18,130.00 and \$12,950.00 would go to Broker for work on behalf of seller and buyer, respectively.

Motion, Dckt. 25.

## DISCUSSION

The listing agreement entered into by Movant and Broker is dated January 5, 2019. Exhibit A, Dckt. 28. 55 days passed before that date and the date of the hearing, March 5, 2019. No motion was filed before or during that time seeking approval to employ Broker or approve Broker’s compensation.

Exhibit B consists of the sales agreement and addenda thereto. Exhibit B, Dckt. 28. Most of the Agreement was scanned and copies filed in a way that the pages are incomplete—the pages being sideways and the tops of the pages cut off. Even with the Agreement missing much information, it is apparent the document was executed on January 16 or 17, 2019. *Id.*

It is unclear what the status of the transaction is. It may be Movant is actually seeking retroactive approval of the sale.

At the hearing, ~~xxxxxxxxxxxxx~~.

## Conclusion

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

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor will be able to complete the Chapter 13 case paying off 100 percent of unsecured claims.~~

Movant has estimated that a 6 percent broker’s commission from the sale of the Property will equal approximately \$31,080.00. ~~[As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 6 percent commission.]~~ **OR** ~~[As part of the sale, the court authorizes~~

~~\$31,080.00 to be disbursed to and held by the Chapter 13 Trustee pending further order of the court to afford Debtor the opportunity to obtain the real estate professional for the sale of the Property and the payment of such professional.]~~

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

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

~~The Motion to Sell Property filed by Ken Subia, the Chapter 13 Debtor (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that Ken Subia, the Chapter 13 Debtor is authorized to sell pursuant to 11 U.S.C. § 363(b) to Sadeddin R. Majjar and Randa Rateb or nominee (“Buyer”), the Property commonly known as 3092 Orchard View Court, Fairfield, California / Single family home (“Property”), on the following terms:~~

~~A. The Property shall be sold to Buyer for \$518,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B; Dckt. 28, and as further provided in this Order.~~

~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~

~~C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~

~~D. [ The Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount equal to 6 percent of the actual purchase price upon consummation of the sale, which may be divided between the Buyer’s and Debtor’s brokers.] **OR** [ **As part of the sale, the court authorizes \$31,080.00 to be disbursed to and held by the Chapter 13 Trustee pending further order of the court to afford Debtor the opportunity to obtain the real estate professional for the sale of the Property and the payment of such professional.]**~~

~~E. Except as provided in the following Paragraph “F,” no proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor.~~



~~Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

~~F. Pursuant to the written instruction of the Chapter 13 Trustee, an amount of not more than \$100,000.00 may be disbursed directly from escrow which monies represent the Debtor's claim homestead exemption claimed in the Property sold.~~

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

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

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
-------------------------------------------------------------------

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

- A. Debtor, Robert Scott (“Debtor”), may not be able to make payments. Debtor lists \$1,200 in income from unemployment, \$192 from welfare, and \$750 from Debtor’s significant other. Debtor also admitted to being an agricultural laborer for marijuana growers. Debtor has not provided a declaration of his significant other to demonstrate commitment to contributions, has not provided evidence of prior unemployment income, and has not provided evidence of income from agricultural work.
- B. Debtor’s agricultural income is derived from farming marijuana, which is

currently illegal under federal law and was not previously disclosed to the court.

## **DEBTOR'S RESPONSE**

Debtor filed a Response to the Objection on February 26, 2019. Dckt. 29. Debtor states Schedule I has been corrected to reflect an increase in unemployment income. Debtor states further he has a pending job interview and will amend Schedules if he obtains that job; he will obtain a declaration from his significant other; and he is not and will not perform agricultural work discussed by the Trustee.

In support of the Response, Debtor concurrently filed his Declaration. Dckt. 30. The Declaration attests to statements in the Response, and adds that Debtor will no longer need significant other contributions if he obtains new employment, that Debtor's unemployment was increased by \$450 (now totaling \$1,800 monthly), that Debtor's interview is for a position as a full-time substitute teacher.

## **DEBTOR'S AMENDED SCHEDULE I**

On February 26, 2019 Debtor filed an Amended Schedule I. Dckt. 32. The Amended Schedule I reflects an increase in unemployment income from \$1,200 to \$1,800, as well as a decrease in significant other contribution from \$750 to \$150.

## **DISCUSSION**

Trustee's objections are well-taken.

While Debtor has Amended his Schedule I, Trustee's concern that no substantiating documentation has not been addressed. Debtor has not provided a declaration of his significant other to demonstrate commitment to contributions, and has not provided evidence of prior or current unemployment income. Timing-wise, it is notable that Debtor reported a significant increase in unemployment income after Trustee filed this Objection seeking documentation to prove-up the statements made under penalty of perjury on Debtor's Schedules. Even assuming Debtor's statements as to his unemployment income were true, nothing has been provided upon which the Trustee or the court can determine the likelihood that the income is stable.

Debtor offers no explanation as to how he has been able, when faced with the Objection of the Trustee, to increase his unemployment benefits. The court is not aware of that program providing for increases in benefits based on a Trustee objecting to confirmation of a Chapter 13 Plan.

With the changing income numbers, the court was prompted to look at Debtor's Schedule J. Dckt. 16 at 18-19. This financial information, provided under penalty of perjury, includes the following information:

1. Debtor's maintenance and repair expenses on the property for which the Class 1 Secured Claim is paid monthly are.....\$0.00

2. Debtor's monthly electricity, heat and natural gas expenses are exactly.....\$100
3. Debtor's monthly water, sewer, and garbage expenses are exactly.....\$100
4. Debtor's monthly expense for food and housekeeping supplies are.....\$110

Allowing \$50 a month for housekeeping supplies, wipes, soap, paper towels and the like, there is \$60 a month for food, which for a 30 day month, with 3 meals a day, is\$0.66 per meal.

5. Debtor's monthly clothing expense is.....\$ 10
6. Debtor's monthly personal care products and services expenses are.....\$ 10
7. Debtor's monthly medical and dental expenses are.....\$ 2
8. Debtor's monthly transportation expenses (registration, gas, maintenance) are.....\$100

On Schedule A/B Debtor lists owning a 1996 Chevy Impala to which these expenses appear to relate. Dckt. 16 at 4.

Debtor tells us, under penalty of perjury, that his expenses, other than his mortgage/taxes/insurance, are only \$592 a month.

It may be that his significant other is paying some of these expenses, such as part of the utilities, maintenance, food, and the like, but such is not stated by Debtor.

At this juncture, Debtor has not shown the plan is feasible. That is cause to sustain the Objection. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the

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

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

25. [17-24484](#)-E-13      MELISSA CHAMBERS  
[JSO-2](#)                      Bonnie Baker

**MOTION FOR BANKRUPTCY COURT  
ORDER AUTHORIZING DISBURSEMENT  
OF FUNDS PURSUANT TO STATE  
COURT FAMILY LAW ORDER ON  
RESERVED ISSUES  
1-31-19 [\[98\]](#)**

**Tentative Ruling:** The Motion For Authorization to Disburse Funds 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—No Opposition Filed.

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's attorney (and not on Debtor), Chapter 13 Trustee, and Office of the United States Trustee on January 31, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<b>The Motion For Order Authorizing Disbursement Of Funds is granted.</b>
---------------------------------------------------------------------------

The movant, Mark Gwaltney ("Movant"), filed this Motion seeking disbursement of funds pursuant to this court's prior Order and a state law family court order. Movant is the former spouse of the debtor, Melissa Marie Chambers fka Melissa Gwaltney ("Debtor").

On March 2, 2018, this court issued an Order granting relief from the Automatic Stay as to litigation in *Gwaltney v. Gwaltney*, Shasta County Superior Court Case No. 176573, stated to be for division of assets between Debtor and Movant, and the transfer of title to such assets as provided in the final state court judgment. Order, Dckt. 66.

In support of the Motion, Movant filed as Exhibit A a copy of Order on Reserved Issues, issued by the Superior Court of California, County of Shasta, Case No. 176573 ("State Court Order"). Exhibit A, Dckt. 101. The State Court Order presents findings that the net sale proceeds of the sale of real property (the former family residence) were 125,250.84. *Id.* at p. 2:6-8.5.

The State Court Order provides a complex computation showing how the net proceeds are to be divided equally, subject to a series of "adjustments" for other obligations owing between the two parties, with the calculations provided as follows:

<u>Description of reimbursements</u>	<u>Movant</u>	<u>Debtor</u>
Net ½ Each	\$62,625.42	\$62,625.42
Equalization, Petitioner to Respondent	(15,389.00)	15,389.00
Interest on Equalization	( 6,041.26)	6,041.26
Respondent's separate property Rutterford (Paid from escrow)		(10,725.00)
Respondent's separate debt Child Support (Paid from escrow)		(15,776.48)
½ Operating Engineers Credit Union	1,050.00	(1,050.00)
½ Cattle expenses	2,514.09	(2,514.09)
½ Home repairs	727.25	(727.25)
½ Property tax		
12/09/13	2,718.77	
04/01/14	2,718.77	
12/02/14	<u>2,807.87</u>	
	8,245.18	
Less cow proceeds	(5,892.18)	
and Graff check	2,352.18	
÷ 2 =	1,176.34	(1,176.34)
½ Home insurance		
173.11 x 25 months		
= \$4,327.75 ÷ 2 =	2,163.87	(2,163.87)

Derivative repayment	7,233.47	(7,233.47)
Less Court approved prior distributions or charges	(5,000.00)	(11,000.00)
Title Company Check	<u>0.00</u>	<u>( 350.00)</u>
<b>Totals Due Each Party</b>	<b>\$51,060.18</b>	<b>\$31,339.18</b>

Exhibit A, Dckt. 101. As provided above, The State Court Order concludes Movant is entitled to \$51,060.18 and Debtor to \$31,339.18.

### **DEBTOR'S DECLARATION IN NONOPPOSITION**

On February 15, 2019, the Debtor filed her Declaration indicating nonopposition to the Motion. Dckt. 107. Debtor states that recent weather activity has prevented an earlier filed response.

### **DISCUSSION**

#### **Approval of Disbursement of Funds**

This court previously issued an Order granting relief from the Automatic Stay for division of assets between Debtor and Movant. Order, Dckt. 66. During the hearing on that Motion For Relief, the parties reported that proceeds of the sale of the former family residence were being held in an attorney trust account pending determination of each party's interest in the proceeds.

A final determination has now been provided as to each party's interest in the proceeds, as provided in the State Court Order filed as Exhibit A. Dckt. 101. Therefore, the Motion is granted, and the court shall issue an order authorizing the disbursement of \$51,060.18 to Movant pursuant to the State Court Order.

The State Court Order also makes a determination of Debtor's interest in the proceeds. However, included in the calculation for Debtor's interest are offsets for expenses not paid, including those for home insurance and taxes. These "adjustments" appear to be for expenses and obligations that are to be paid by Debtor's ex spouse, not Debtor's portion of the homestead sales proceeds.

Before this court can determine Debtor's exempt homestead proceedings, the court must determine what are the exempt homestead proceeds and what are the "accounts receivable" due from the ex-husband for paying third party expenses (which may be claims in this case). This court cannot determine that these various items are "homestead exempt proceeds:"

"Equalization"

"Interest on Equalization"

Therefore, the court authorizes disbursement of Debtor's \$31,339.18 interest in the proceeds, to



be held by David Cusick, the Chapter 13 Trustee, to be held subject to further order of the court determining the exempt portion of the monies received and the non-exempt (if any) proceeds.

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 Order Authorizing Disbursement Of Funds filed by the movant, Mark Gwaltney (“Movant”) having been presented to the court, upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion For Order Authorizing Disbursement Of Funds is granted, and Jeffrey Ogilvie, counsel for movant, is authorized to disburse \$51,060.18 to the movant Mark Gwaltney as his interest in sales proceeds of the former family residence.

**IT IS FURTHER ORDERED** that Jeffrey Ogilvie, counsel for movant, is authorized and shall disburse \$31,339.18 as Debtor’s interest in sale proceeds to David Cusick, the Chapter 13 Trustee, to be held subject to further order of the court determining the exempt portion of the monies received and the non-exempt (if any) proceeds.

# FINAL RULINGS

26. 18-27720-E-13      **DAVID RYNDA**  
**Tracy Wood**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID HICKS  
1-29-19 [52]**

**Final Ruling: No appearance at the March 5, 2019 Hearing is required.**

### Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditor's counsel, and Office of the United States Trustee on February 1, 2019. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Debtor's counsel, and the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The Objection is sustained, and the plan is not confirmed.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, David Rynda (“Debtor”) filed a Fifth Amended Plan on February 16, 2019. Dckt. 93. Though no Motion to Confirm was filed, filing a new plan is a *de facto* withdrawal of the pending plan. The Objection To Confirmation of the Amended Plan is sustained, and the Fourth Amended 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 Motion to Confirm the Amended Chapter 13 Plan filed by David Rynda (“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 is sustained, and the proposed Fourth and Chapter 13 Plan is not confirmed.

27. 18-27720-E-13      **DAVID RYNDA**  
RAS-1      **Tracy Wood**

**OBJECTION TO CONFIRMATION OF  
PLAN BY OCWEN LOAN SERVICING,  
LLC**  
**2-11-19 [74]**

**Final Ruling: No appearance at the March 5, 2019 Hearing is required.**

### Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 11, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Debtor's counsel, and the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The Objection is sustained, and the plan is not confirmed.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, David Rynda (“Debtor”) filed a Fifth Amended Plan on February 16, 2019. Dckt. 93. Though no Motion to Confirm was filed, filing a new plan is a *de facto* withdrawal of the pending plan. The Objection To Confirmation of the Amended Plan is sustained, and the Fourth Amended Plan is not confirmed.<sup>FN. 1</sup>

FN. 1. The Objection addresses issues that will be relevant to other proposed plans advanced by Debtor. First, that the amount of the current regular mortgage payment is under stated. Second, that the arrearage

amount stated in the Plan understates the amount to be cured, which Ocwen Loan Servicing, LLC asserts is \$21,753.56. *See also* Proof of Claim 4-1.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by David Rynda (“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 is sustained, and the proposed Fourth Amended Chapter 13 Plan is not confirmed.

**Final Ruling:** No appearance at the March 5, 2019, hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 30, 2019. By the court's calculation, 34 days' notice was provided 28 days' notice is required.

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

**The Objection to Claimed Exemption is sustained, and the exemption is disallowed in its entirety.**

David Cusick ("the Chapter 13 Trustee") objects to David Rynda's ("Debtor") claimed exemption as to Debtor's real property, commonly known as 9436 Windrunner Lane, Elk Grove, California ("Property") Trustee opposes the claimed exemption on the following grounds:

1. Debtor's ownership of the Property is disputed. C.C.P. section 704.950 claimed by Debtor requires a recorded homestead declaration, which the Trustee has not seen.
2. Debtor admitted at the Meeting of Creditors he is under 65; not receiving disability or supplemental security income; and his gross income is more than \$25,000.00. Therefore, he does not meet the requirements for claiming the exemption of \$175,000.00 pursuant to C.C.P. 704.950.

## DISCUSSION

Trustee's arguments are well-taken.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

The California Code of Civil Procedure section 704.730 specifies the amount of a claimed homestead exemption. An exemption of \$175,000.00 applies where the judgment debtor or spouse of the judgment debtor who resides in the homestead is (1) a person 65 years or older; (2) a person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment; or (3) a person 55 years of age or older with a gross annual income of not more than \$25,000.00 (or \$35,000.00 for both the judgment debtor and spouse if married). Cal. Civ. Proc. Code § 704.730(a)(3).

Here, Debtor indicated on his Statement of Financial Affairs he is not married, is under 65, and receives more than \$25,000.00 in annual gross income. Dckt. 12. There is no indication Debtor is physically or mentally disabled. Therefore, Debtor is not entitled to the claimed exemption amount.

Trustee also argues there is "some question" whether Debtor's residence can be claimed as his homestead. However, the specific grounds for opposing the claim of exemption are not assembled. Trustee merely notes for the court that Debtor admitted to recently filing a photo copy of a QuitClaim deed; that a state court action exists which is currently on appeal; and that Trustee has not seen but there may be a recorded homestead declaration.

A claim of exemption pursuant to California Code of Civil Procedure section 704.950 requires a homestead declaration be filed prior to the time the abstract or certified copy of the judgment was recorded to create the judgment lien, and that the homestead declaration names the judgment debtor or the spouse of the judgment debtor as a declared homestead owner. Trustee has not asserted Debtor has not met these requirements, or otherwise rebutted the presumptive validity of the claimed exemption. *In re Carter*, 182 F.3d at p. 1029.

Because Debtor has not shown there being a declared homestead exemption as required by State law, the Objection is sustained, and the claimed exemption is disallowed.

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 Claimed Exemptions filed by David Cusick ("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 is sustained, and the claimed exemption for real property commonly known as 9436 Windrunner Lane, Elk Grove, California under California Code of Civil Procedure § 704.950 is disallowed in its entirety.

The sustaining of the Objection is without prejudice to Debtor’s rights, if any, to file an amended Schedule C stating an allowable exemption in a property claimed to be Debtor’s homestead property.

29. [19-20047](#)-E-13      **JULIUS/CHRISTINA JARVIS**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)      **Chad Johnson**      **PLAN BY DAVID P. CUSICK**  
2-13-19 [\[20\]](#)

**Final Ruling: No appearance at the March 5, 2019 Hearing is required.**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on February 13, 2019. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

<b>The Objection to Confirmation of Plan is sustained.</b>
------------------------------------------------------------

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the debtors, Julius T Jarvis and Christina M Jarvis (“Debtor”), are above median income but list a net income of -\$191.02. Debtor has additional projected disposable income, including \$670 proposed in charitable contributions and \$405 from Debtor’s duplicative listing of Exeter Finance’s claim as a Class 2 Claim and an expense on Schedule J.

#### **FILING OF AMENDED PLAN**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on February 27, 2019. Dckts. 24, 27. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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



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

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

30.    [19-20047](#)-E-13      **JULIUS/CHRISTINA JARVIS**      **OBJECTION TO CONFIRMATION OF**  
         [RAS-1](#)                      **Chad Johnson**                      **PLAN BY U.S BANK, N.A.**  
                                         **2-5-19 [16]**

**Final Ruling: No appearance at the March 6, 2019 Hearing is required.**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 5, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

<p><b>The Objection to Confirmation of Plan is sustained, and the plan is not confirmed.</b></p>
--------------------------------------------------------------------------------------------------

U.S. Bank National Association (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the debtors Julius and Christina Jarvis’s (“Debtor”) proposed Chapter 13 Plan incorrectly asserts the outstanding arrearage balance of Creditor’s pre-petition claim is \$16,000.00. Debtor’s arrears are actually \$20,724.45 in accordance with Creditor’s timely-filed Proof of Claim, Claim No. 5-1.

## **FILING OF AMENDED PLAN**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on February 27, 2019. Dckts. 24, 27. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by U.S. Bank National Association (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

31. [15-21068-E-13](#) [MRL-1](#) KENNETH/SUZANNE GALPIN  
Mikalah Liviakis MOTION FOR COMPENSATION BY  
THE LAW OFFICE OF LIVIAKIS LAW  
FIRM FOR MIKALAH RAYMOND  
LIVIAKIS, DEBTORS' ATTORNEY(S)  
1-23-19 [34]

**Final Ruling:** No appearance at the March 5, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 23, 2019. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Kenneth and Suzanne Galpin, the Chapter 13 Debtor ("Client"), makes a Request for Additional Allowance of Fees in this case.

Fees are requested for the period May 11, 2015, through January 23, 2019. Applicant requests fees in the amount of \$1,917.00 for substantial and unanticipated work performed. Applicant states he has already been paid \$6,000 from the Client as a flat fee.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner,

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

### **“No-Look” Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the

application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$6,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 15. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **TASK BILLING ANALYSIS**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Case Administration: Applicant spent 4.4 hours in this category. Post confirmation, Applicant reviewed approximately 41 notices of changes to Debtor's mortgage payment. The numerosity of notices was unexpected, substantial, but need to be reviewed.

Fee Applications: Applicant spent 1 hour in this category. Applicant prepared the present

Application.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Mikalah Raymond Liviakis	5.4	\$355.00	\$1,917.00
<b>Total Fees for Period of Application</b>			\$1,917.00

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

The unique facts surrounding the case, including review of an unusually high number of notices of mortgage payment changes, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,917.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,917.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Mikalah Raymond Liviakis (“Applicant”), Attorney for Kenneth and Suzanna Galpin, the Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that Mikalah Raymond Liviakis is allowed the following fees and expenses as a professional of the Estate:

Mikalah Raymond Liviakis, Professional employed by the Chapter 13 Debtor

Fees in the amount of \$1,917.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

32. [18-27680](#)-E-13      **CHERYL BLACK**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)      **Peter Macaluso**      **PLAN BY DAVID P. CUSICK**  
1-29-19 [\[30\]](#)

**Final Ruling:** No appearance at the March 5, 2019, hearing is required.  
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The case having previously been dismissed, the Objection is overruled as moot, 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed, and the plan is not confirmed.

33. [18-27798](#)-E-13      **AE SAETEURN AND JUDY**      **CONTINUED OBJECTION TO**  
[DPC-1](#)      **SAETERN**      **CONFIRMATION OF PLAN BY DAVID**  
Mark Shmorgan      **P. CUSICK**  
1-23-19 [\[13\]](#)

**DISMISSED BY M.P.**

**Final Ruling:** No appearance at the March 5, 2019 hearing is required.  
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The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on December 16, 2018 is confirmed by prior Order of the court issued February 26, 2019. Order, Dckt. 21.**

**Final Ruling:** No appearance at the March 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 4, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Discharge is sustained.**

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Demetra Moore's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on November 28, 2016, Case No. 16-27816. Debtor received a discharge on May 5, 2017. Case No. 16-27816, Dckt. 42.

The instant case was filed under Chapter 13 on January 2, 2019.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on May 5, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 16-27816, Dckt. 42. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-20008), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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 Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") 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 Discharge is sustained, and upon successful completion of the instant case, Case No. 19-20008, the case shall be closed without the entry of a discharge.

35.	<a href="#"><u>18-26629</u></a> -E-13 <a href="#"><u>RJ-3</u></a>	<b>DWAYNE MONEY</b> <b>Richard Jare</b>	<b>MOTION TO CONFIRM PLAN</b> <b>1-9-19 <a href="#"><u>[42]</u></a></b>
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**CASE DISMISSED: 01/13/2019**

Final Ruling: No appearance at the March 5, 2019 hearing is required.

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The case having previously been dismissed (Order, Dckt. 49), the Motion is dismissed as moot 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 Motion to Confirm having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed, and the plan is not confirmed.

**Final Ruling:** No appearance at the March 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on January 21, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Motion filed by Tawana Miesha Bridgewater ("Debtor") to value the secured claim of Exeter Finance LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Hyundai Sonata ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$12,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 19, 2019. Dckt. 21. Trustee notes the treatment of Creditor in the plan, and that Creditor has not filed a response.

#### DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on or about February 2016, which is more than 910 days prior to filing of the petition (1,055 days have passed from February 28, 2016 through the filing date of January 18, 2019), to secure a debt owed to Creditor with a balance of

approximately \$19,141.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$19,141.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Exeter Finance LLC ("Creditor") secured by an asset described as 2015 Hyundai Sonata ("Vehicle") is determined to be a secured claim in the amount of \$12,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$12,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

37.	<a href="#"><u>18-26945-E-13</u></a> <a href="#"><u>DPC-1</u></a>	<b>ARACELY RIVAS</b> <b>Peter Macaluso</b>	<b>CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>12-12-18 [21]</b>
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**Final Ruling: No appearance at the March 5, 2019, hearing is required.**

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The case having previously been dismissed, the Objection is overruled as moot, 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed, and the plan is not confirmed.

38. [18-26945](#)-E-13      **ARACELY RIVAS**      **MOTION TO VALUE COLLATERAL OF**  
[PGM-3](#)      **Peter Macaluso**      **TITLEMAX**  
1-21-19 [\[32\]](#)

**Final Ruling:** No appearance at the March 5, 2019 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Value Collateral of Titlemax having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

39.    [18-27147](#)-E-13        CHERYL/ANTHONY HEARNS        MOTION TO CONFIRM PLAN  
         [TAG-3](#)                    Aubrey Jacobsen                   1-8-19 [[35](#)]

**DEBTOR CASE DISMISSED:**

**02/19/2019**

**JOINT DEBTOR CASE DISMISSED:**

**02/19/2019**

**Final Ruling:** No appearance at the March 5, 2019 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot 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 Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed, and the plan is not confirmed.



**Final Ruling:** No appearance at the March 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 28, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Sherry L. Evans ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on February 19, 2019. Dckt. 46. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified

Chapter 13 Plan filed on January 25, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.