**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

**Honorable Ronald H. Sargis**
Chief Bankruptcy Judge
Sacramento, California

# 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 19.

# The court has also reorganized the items for which the tentative rulings are issued, Items 1–18, attempting to first address the items in which short argument is anticipated.

**March 6, 2018, at 3:00 p.m.**

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**1.** **14-32002-E-13 MJD-2** | **KAO SAECHAO AND MYHANH NGUYEN** **Matthew DeCaminada** | **MOTION TO MODIFY PLAN** **1-26-18 [75]**

**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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2018. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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).

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

Kao Saechao and Myhanh Nguyen ("Debtor") seek confirmation of the Modified Plan to increase the pre-filing mortgage arrears, due to a larger-than-predicted creditor claim, and a claim by Golden 1 Credit Union secured by personal property. Dckt. 77. The Modified Plan calls for monthly plan payments of $2,190.00 for the remainder of the Plan. Dckt. 78. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 20, 2018. Dckt. 82.

The Chapter 13 Trustee asserts that Debtor is $230.00 delinquent in plan payments, which represents less than one month of the $2,190.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325 (a)(3), requiring the plan be proposed in good faith, or that the Plan violates 11 U.S.C. § 1325(b), requiring Debtor's best effort. As the Modified Plan stands right now, no language is included addressing payments from Debtor's tax refund to the Chapter 13 Trustee, as is included in the Confirmed Plan. The Chapter 13 Trustee asserts that without paying, or at least addressing the tax refund, it appears that the Modified Plan attempts to avoid paying $2,313.00 due under the Confirmed Plan. Debtor has or will receive a $4,313.00 tax refund for 2017. To resolve this issue, the Chapter 13 Trustee requests language including the tax refund in the Modified Plan.

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 Kao Saechao and Myhanh Nguyen ("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.

**2.** **14-28613-E-13** **JUSTINE MILES** **CONTINUED MOTION TO AVOID LIEN**
**PGM-1** **Peter Macaluso** **OF SPRINGLEAF FINANCIAL SERVICES**
**1-29-18 [38]**

**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 Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 29, 2018. By the court's calculation, 15 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 lien of Springleaf Financial Services ("Creditor") against personal property of Justine Miles ("Debtor") commonly known as an LG 52" plasma flatscreen, an LG 55" plasma flatscreen, and an HP laptop ("Property"). The grounds stated with particularity (FED. R. BANKR. P. 9013) are:

A. On October 3, 2014, Springleaf Financial Services, now known as Onemain Financial Services, Inc., filed a secured claim in the amount of $3,228.88.

B. Creditor has a non-possessory, non-purchase money lien on personal property owned by Debtor, consisting of

1. LG 55" Plasma Flatscreen

2. LG 52" Plasma Flatscreen

3. HP Laptop

C. Debtor has claimed exemptions in these items of personal property pursuant to California Code of Civil Procedure § 703.140(b)(3).

D. Creditor's lien impairs Debtor's exemption.

Motion, Dckt. 38. Based on the above, Debtor prays that the lien be avoided. *Id.*

Debtor's Points and Authorities directs the court to 11 U.S.C. § 506(a) (1) for the legal principal that a creditor's secured claim is the value of the collateral. No value for the collateral is alleged in the Motion. In the Points and Authorities (which is not the Motion), no value is stated, but the court is provided with the legal principal that a debtor may testify to value and that Debtor may state under penalty of perjury the value of the Property in the bankruptcy schedules.

Debtor provides his declaration, providing the court with his legal analysis that Creditor holds a "secured lien" against the personal property. Debtor then goes on to dictate to the court his personal finding of fact and ultimate conclusion of law that the "secured lien" impairs Debtor's personal property exemption. With Debtor having completed those findings of fact and conclusions of law, there is little left for the court to do, other than have the Clerk of the Court file the order that Debtor signs granting the relief that Debtor has awarded himself. FN.1.

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FN.1. The court is unsure of the legal principle being espoused by Debtor in advising the court of Debtor's legal conclusion that this Creditor holds a "secured lien." It appears that Debtor has discovered a legal principle by which a lien, which is security for a debt, is itself secured, thus a "secured lien." Presumably, if the court were to avoid the lien that secures the lien, then the lien that secures the debt remains firmly in place for the full amount of the debt.

The court notes that Schedule A/B, provided as Exhibit B by Debtor, Dckt. 42, does not list the TVs and laptop as assets. Possibly they are included in the generic "Household Goods and Furnishing" with a stated value of $1,350.00. However, they may not be so included, or if Debtor actually testified as to value, such value would be well in excess of such amount.

The court acknowledges that the comments in this footnote and the above paragraph are snide, snarky, and condescending. However, the court is at a loss to understand how Debtor's counsel, who has appeared in this court for decades, is presenting such a declaration to the court. Additionally, as discussed below, the Motion is bereft of legal support or a basis for granting the relief demanded. It appears that the pleadings have not been prepared by or reviewed by counsel but by a staff person who believes that the court does not attempt to grant relief as properly allowed by law (*See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010)), but instead just whatever a party tells the judge to grant.

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**CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on January 31, 2018. Dckt. 44. The Chapter 13 Trustee notes that the confirmed plan does not provide for Creditor's claim. Creditor is listed on Schedule F as "American General Financial/Springleaf Financial" for $2,645.00. Creditor filed Proof of Claim No. 8-1 on October 3, 2014, for a secured amount of $3,228.88. Finally, the Chapter 13 Trustee notes that Debtor claim an exemption on Schedule C in the amount of $1,350.00 for household goods and furnishings.

**DEBTOR'S REPLY**

Debtor filed a Reply on February 6, 2018. Dckt. 47. Debtor notes that Creditor's name originally was American General Finance, then Springleaf Financial, and is now Onemain Financial Services, Inc.

Debtor's attorney states that Creditor was listed as an unsecured claim because the basis of its claim is personal property. Debtor seeks to have Creditor's secured portion provided for in the Plan.

**FEBRUARY 13, 2018 HEARING**

The court granted a continuance for the Motion to Avoid Judicial Lien to March 6, 2018 at 3:00 p.m. Dckt. 49. The continuance was granted to allow Debtor to supplement the record.

**DEBTOR'S SUPPLEMENTAL DECLARATION**

Debtor filed a Supplemental Declaration on February 27, 2018. Dckt. 50. Debtor's Supplemental Declaration testifies that Debtor's LG 55" Plasma flat screen, LG 52" flat screen, and HP laptop computer have a $50 each value, for a total collateral value of $150.00.

**RULING**

Debtor specifically filed this Motion as one that seeks to have a lien avoided under 11 U.S.C. § 522(f). Commonly, such relief is sought with respect to a judicial lien. 11 U.S.C. § 522(f)(1)(A). Debtor has not presented any evidence of there being a judicial lien issued to Creditor against Debtor that is secured by Debtor's property.

Though not cited by Debtor, 11 U.S.C. § 522(f)(1)(B) provides relief in authorizing the court as follows:

> (f) (1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is–
>
> (A) [judicial lien]; or

(B) a nonpossessory, nonpurchase-money security interest in any–

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

Debtor does allege that the lien is a nonpossessory, nonpurchase-money security interest. Debtor does not provide any testimony as to what was purchased with the credit that makes up Creditor's secured claim in this case.

Proof of Claim No. 8 filed in this case states that the claim is in the amount of $3.228.88, is accruing interest at the rate of 24.99% per annum, and is secured by personal property collateral with a value of $5,000.00. The Attachment to Proof of Claim No. 8 is a "Loan Agreement and Disclosure Statement" for a $5,046.07 loan, with an interest rate of 30.01% per annum, for which Springleaf Financial Services, Inc. is the lender and Debtor is the borrower.

On the Attachment, it appears that of the loan, $5,000.00 was paid to Debtor, and $46.07 was for a "Single Life Premium" for life insurance on Debtor. Under the Security Interest section of the Attachment, it states that Debtor gives lender a security interest in the personal property, which "includes a purchase money security interest if property is being purchased with the proceeds [of the loan . . . ." On the Personal Property Appraisal Form attached to the Loan Agreement, the three items of personal property are listed , with the word "Secondary" placed in parentheses next to the two TVs. The form states that only personal property, not business property or equipment, may be included on the Schedule of the collateral.

Though it might be inferred from the court implying that this could be a hard-money, high-interest-rate loan in which Debtor obtained cash by giving a lien in the pre-existing personal property, Debtor has not been willing to so testify. Rather, there is merely an allegation that the lien is non-purchase money, non-possessory. The Loan Agreement attached to Proof of Claim No. 8 expressly provides for a purchase money security interest if the proceeds of the loan are used to purchase the collateral.

The court declines the opportunity to infer from an implication drawn from an allegation something that Debtor has failed or refuses to actually testify to under penalty of perjury. Additionally, Debtor being willing to testify under penalty of perjury as to his personal conclusions of law, while failing to give any actual testimony puts Debtor's good faith and credibility into question. If Debtor has such legal knowledge, then he would know that such testimony is inadequate and improper. If he does not have such training, he has shown that his "testimony" consists of nothing more than signing under penalty of perjury any document his attorney puts in front of him.

It appears these three items are included in the Household Goods and Furnishings, with a value of $1,350.00 listed on Schedule B and claimed exempt on Schedule C.

Debtor chooses to state his legal conclusion in his Supplemental Declaration that the liens are non-possessory, non purchase money security interests. The court is unsure as to what legal training Debtor has received to make such conclusions of law in his Declaration. Though Debtor could have simply testified that he owned the two TV's and the laptop, needed to borrow money, and this creditor demanded that Debtor give the creditor a lien on the two TV's and laptop he already owned to secure the obligation for the money he borrowed, he chose not to so testify.

Though Debtor has provided the court with questionable testimony, after two hearings and multiple opportunities to oppose the Motion, Creditor has elected not to respond. Such inaction is an indication that Creditor concurs in Debtor's "legal testimony."

The court grants the Motion and avoids the lien of Springleaf Financial Services in Debtor's LG 55" Plasma flat screen, LG 52" flat screen, and HP laptop in its entirety pursuant to 11 U.S.C. § 522(f)(1)(B), subject to the provisions of 11 U.S.C. § 349 in the event that this case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Justine Miles ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the lien of Springleaf Financial Services in the Debtor's LG 55" Plasma flat screen, LG 52" flat screen, and HP laptop is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1)(B), subject to the provisions of 11 U.S.C. § 349 in the event that this case is dismissed.

**3.** **15-28113-E-13** **BYRON/DARLENE DADE** **MOTION TO SUBSTITUTE ATTORNEY**
**MS-1** **Michael Croddy** **2-16-18 [55]**

**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 and Counsel for Debtor on February 16, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion to Substitute Counsel was adequately set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Substitute Counsel is granted.**

Byron Dade and Darlene Dade ("Debtor") have filed this Motion for the court to order the substitution of Mark Shmorgon as counsel for Debtor in place of Michael Croddy, Debtor's current counsel of record. The substitution is requested by this Motion, alleging that current counsel of record is not communicating with Debtor. Debtor's proposed replacement counsel is also alleged to have attempted to communicate with the current counsel, but he did not receive a response. Motion, Dckt. 55.

Debtor provides a Declaration testifying as to the attempts to communicate with current counsel, as well as authenticating Exhibit A. Dckt. 57.

The Chapter 13 Trustee filed a Response (Dckt. 67), stating that he does not oppose the substitution. The Chapter 13 Trustee's response states that he corroborates the information included with Debtor's Motion.

No opposition has been presented by current counsel.

Debtor has shown proper grounds for the requested substitution. The court orders that Mark Shmorgon is substituted in as counsel for Debtor, and that David Croddy is removed as counsel for Debtor.

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 Substitute Counsel filed by Byron Dade and Darlene Dade ("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 Mark Shmorgon is substituted in as counsel for Debtor, and each of them, in this bankruptcy case, and the withdrawal of Michael David Croddy as counsel for Debtor in this case is authorized and effective by this order, no further act of Mr. Croddy required.

**4.** **12-41422-E-13** **DAVID/ANNA MONTOYA** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH DEFENDANTS, OCWEN LOAN SERVICING, LLC AND WELLS FARGO BANK, NATIONAL ASSOCIATION,**
**PLC-5** **Peter Cianchetta** **2-7-18 [52]**

**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 Not 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 7, 2018. By the court's calculation, 27 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 Motion for Approval of Compromise is denied without prejudice.**

David Montoya, Jr. and Anna Montoya, Chapter 13 Debtor, ("Movant") request that the court approve a compromise and settle competing claims and defenses with Ocwen Loan Servicing, LLC and Wells Fargo Bank, N.A., as Trustee for Ownit Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-2 ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those associated with the Adversary Proceeding No. 16-02057, regarding Movant's default on a loan granted by Settlor.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 54):

A. Ocwen agrees to pay $13,500.00 by check to "the Law Office of Peter Cianchetta" within thirty days of the later of Movant's counsel's delivery of a W-9 form or the effective date. Additionally, Ocwen shall pay $1,500.00 by check to "Anna and David Montoya" within thirty days of the later of the date upon the delivery of the W-9 form to Ocwen or the effective date.

B. Movant and Settlor agree to dismiss Adversary Proceeding No. 16-02057 with prejudice and without costs. Further, Movant's counsel shall prepare and file the Motion to Approve Compromise with the bankruptcy court.

C. If and when the Motion is granted by the court, Settlor will resume sending monthly mortgage statements to Movant.

D. Movant and Settlor agree that as of December 1, 2017, the Principal Balance on the Loan shall be $194,295.66; the Escrow Balance on the Loan shall be ($334.63); and the Suspense Balance on the Loan shall be $1,777.00.

E. Movant and Settlor agree to bear their own attorneys' fees and costs incurred, above the fees Settlor shall pay per part A. However, should any action arise out of the agreement, the prevailing party shall be entitled to reasonable attorney's fees and expenses incurred.

F. Movant agrees to unconditionally, irrevocably, forever, and fully release Settlor from any and all issues that arise, or could arise out of, relate to, or involve this adversary proceeding, the property, note, deed of trust, or loan at issue.

G. Movant agrees to release Settlor from any and all unknown claims that may arise under federal or state statute or common law principle.

H. The governing law of this compromise shall be the laws of the State of California.

**CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on February 20, 2018. Dckt. 56. The Chapter 13 Trustee does not oppose the Motion to Approve Compromise.

**INSUFFICIENT NOTICE OF MOTION**

Movant provided twenty-seven days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(3) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. However, the court does have discretion to determine whether or not the notice given was sufficient when raised by one of the parties.

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 Approve Compromise filed by David Montoya, Jr. and Anna Montoya, 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 the Motion for Approval of Compromise is denied without prejudice.

## THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF IT IS DETERMINED THAT MOVANT GAVE SUFFICIENT NOTICE

### DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant does not argue that the four factors have been met, nor does Movant discuss the four factors. Instead, Movant argues that the proposed settlement resolves the matters in dispute between Movant and Settlor and avoids further litigation, thus making settlement in the best interest of the estate. Because Movant contends the proposed settlement is in the best interest of the estate, Movant urges the court to approve the settlement pursuant to 11 U.S.C. § 105(a).

The court notes that Movant's Plan in this case is complete but for the case being closed by the court at this time. Because Movant's case is not closed, Movant must still obtain

court permission before entering into this settlement agreement. Because the Plan is complete, though, there is a lower level of scrutiny required in assessing whether or not to grant the Motion.

**Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing **----------**.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it resolves the claims and disputes with Settlor, thereby avoiding further litigation and because the Plan has been completed, there is no impact on the creditors. The Motion is granted.

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

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

~~The Motion to Approve Compromise filed by David Montoya, Jr. and Anna Montoya, 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 the Motion for Approval of Compromise between Movant and Ocwen Loan Servicing, LLC and Wells Fargo Bank, N.A., as Trustee for Ownit Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-2 ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 54).~~

**5. 17-20827-E-13 STEPHEN ALBERTS MOTION TO MODIFY PLAN**
**MRL-1 Mikalah Liviakis 1-3-18 [29]**

**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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 03, 2018. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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).

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

Stephen Alberts ("Debtor") seeks confirmation of the Modified Plan because of the addition of a secured claim. Dckt. 31. The Modified Plan pays the additional secured claim $96.53 over sixty months with 4.72% interest through Class 2 of the Plan. Dckt. 33. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 20, 2018. Dckt. 44.

The Chapter 13 Trustee asserts that Debtor is $3,841.00 delinquent in plan payments, which represents one month of the $3,520.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor has failed to sign the modified plan according to Local Bankruptcy Rule 9004-1(c).

The Chapter 13 Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6) because Debtor's supplemental Schedule I reflects less income. Debtor's Schedule I shows a combined monthly income of $5,272.43, which is an $800.00 reduction over the combined monthly income of $6,072.43 on Debtor's Schedule I filed on February 09, 2017. Debtor has provided no explanation regarding the reduction in his income while maintaining the same position with the same employer. Debtor also offers no explanation for the reduced monthly contribution from his sister toward expenses when Debtor's Schedule J reflects expenses have increased from $2,553.00 to $2,973.00.

Debtor's plan does not provide a monthly payment for pre-petition mortgage arrears and refers to the additional provisions for the arrearage dividend. The Chapter 13 Trustee has disbursed to date a total of $3,314.28 in pre-petition mortgage arrears. The monthly dividend under the confirmed plan is $1,209.30. The Chapter 13 Trustee is uncertain if Debtor is proposing no further pre-petition mortgage arrears disbursements during the nine months Debtor is proposing it will take to sell his property.

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 Stephen Alberts ("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.

**6.** **17-24453-E-13** **MICHELLE QUINLIVAN** **MOTION TO CONFIRM PLAN**
**MWB-4** **Mark Briden** **1-16-18 [119]**

**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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2018. By the court's calculation, 49 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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.**

Michelle Quinlivan ("Debtor") seeks confirmation of the Amended Plan because it incorporates the treatment of Class 2 Creditor PNC Bank N.A. in accordance with the terms of the Order granting Docket Control No. MWB-1. Dckt. 122. The Amended Plan calls for monthly Plan Payments in the amount of $100.00 for the duration of the thirty-six month Plan. Dckt. 120. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on February 6, 2018. Dckt. 135. The Chapter 13 Trustee acknowledges that Debtor is current in Plan Payments to the Chapter 13 Trustee and does not oppose the Motion to Confirm the Amended Plan. However, the Chapter 13 Trustee notes that whether or not Debtor can make the Plan Payments and comply with the Plan may be an issue for the court.

**CREDITOR'S OPPOSITION**

JPMorgan Chase Bank, National Association ("Creditor") holding a secured claim filed an Opposition on February 20, 2018. Dckt. 140.

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $879.05 in pre-petition arrearages. The Plan does not propose to cure those arrearages. 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). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 Michelle Quinlivan ("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.

| | | | |
|---|---|---|---|
| **7.** | **18-20779-E-13**<br>**SDH-1** | **DAMON TURNER**<br>**Scott Hughes** | **MOTION TO EXTEND AUTOMATIC STAY**<br>**2-13-18 [9]** |

**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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 13, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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, ----------.

**The Motion to Extend the Automatic Stay is granted.**

Damon Turner ("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. 16-25194) was dismissed on August 11, 2017, after Debtor failed to make Plan Payments. *See* Order, Bankr. E.D. Cal. No. 16-25194, Dckt. 53, August 11, 2017. 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.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because, after coaching football at Sierra College for the 2016 year, the school refused to pay Debtor, and therefore, Debtor could not afford the Plan Payments. Dckt. 11. Debtor states that he is currently employed as a high school football coach and is in fact being paid for work.

**CHAPTER 13 TRUSTEE'S RESPONSE**

On February 20, 2018, David Cusick ("the Chapter 13 Trustee") filed a Response to Debtor's Motion to Extend the Automatic Stay. Dckt. 13. The Chapter 13 Trustee responds that he does not oppose Debtor's Motion.

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.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

**8. 17-28284-E-13 DPC-1** | **RICARDO SANCHEZ** **Thomas Amberg** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-7-18 [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.

**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).**
**----------**

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 7, 2018. By the court's calculation, 27 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.**

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

A. Ricardo Sanchez ("Debtor") is delinquent in plan payments;

B. Debtor has failed to provide the Chapter 13 Trustee with a copy of the most recent pre-petition tax year for which a return was required, or else that such a return does not exist;

C. Debtor has failed to file all pre-petition tax returns for the four preceding years;

D. Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms to the Chapter 13 Trustee;

E. Debtor cannot afford to make the plan payments or comply with the Plan that depends on the Motion to Avoid Lien of Marina Mar;

F. Debtor cannot complete the Plan within sixty months; and

G. Debtor has not reported the correct value for the purchase of his former insurance business on Debtor's Schedule A/B.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is $4,963.00 delinquent in plan payments, which represents one month of the $4,963.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 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).

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); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2015 and 2016 tax years have not been filed still. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee argues that Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms. Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms to the Chapter 13 Trustee. Debtor has not provided these forms.

A review of Debtor's Plan shows that it relies on the court granting the Motion to Avoid Lien of Marina Marr. This Motion, however, is pending has been continued until March 27, 2018. Without the court granting the Motion to Avoid Lien, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will require more than sixty months to complete due to the secured claim filed by Bradley Peterson for $71,237.01, which is not provided for by Debtor's Plan and appears to be secured by Debtor's interest in real property. The Chapter 13 Trustee is also not certain that Debtor has the ability to pay this claim outside of the Plan or to litigate the claim. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor has supplied incorrect information relating to the value of the purchase of Debtor's former insurance business. While Debtor reported the value of this sale as $1.00, on Debtor's Schedule A/B, the note payable to Debtor for the sale of his business is $208,000.000. Dckt. 10.

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

**9. 16-25985-E-13 DARLENE BURGESS MOTION TO INCUR DEBT**
**RWF-1 Robert Fong 2-19-18 [20]**

**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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.**

Darlene Burgess ("Debtor") seeks permission to purchase a 2013 Hyundai Accent, with a total purchase price of $12,276.18 and monthly payments of $280.00 to Carmax over 5 years with a 12.7% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor would be able to make the projected payment on the vehicle loan, which would be the same monthly payment as her prior vehicle payment. The court finds that the proposed credit, based on the

unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Darlene Burgess ("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 Darlene Burgess is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 25.

**10. 17-22489-E-13 MRL-5** | **EUGENE NIERI** / **Mikalah Liviakis** | **MOTION TO APPROVE LOAN MODIFICATION** **2-4-18 [86]**

**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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 04, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Eugene Nieri ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $3,082.00 per month to $2,944.50 per month.

The Motion is supported by the Declaration of Eugene Nieri. Dckt. 89. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

**CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick, ("the Chapter 13 Trustee") filed a Response on February 20, 2018. Dckt. 96. The Chapter 13 Trustee does not oppose the Motion. However, the Chapter 13 Trustee notes uncertainty as to whether the U.S. Department of HUD has already agreed to the terms provided by Wells Fargo Home Mortgage because no signature line appears on the note.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund the Plan. There being no opposition from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve Loan Modification filed by Eugene Nieri ("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 court authorizes Eugene Nieri to amend the terms of the loan with Wells Fargo Home Mortgage ("Creditor"), which is secured by the real property commonly known as 2098 Bates Circle, El Dorado Hills, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 88).

**11.** **16-24246-E-13** **RICHARD CRUZ** **CONTINUED MOTION TO CONFIRM PLAN**
**EWV-140** **Eric Vandermey** **10-22-17 [157]**

**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 Not 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 22, 2017. By the court's calculation, 44 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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 Cruz ("Debtor") seeks confirmation of the Amended Plan because he has removed income and expenses for his non-filing spouse. Dckt. 159. The Amended Plan proposes plan payments of $1,260.00 for sixty months with a 0.00% dividend to unsecured claims. 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 17, 2017. Dckt. 165. The Chapter 13 Trustee asserts that Debtor is $485.00 delinquent in plan payments, which represents less than one month of the $1,260.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a zero percent dividend to unsecured claims, which total $183,852.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $5,801.53. Thus, the court may not approve the Plan.

The Chapter 13 Trustee also raises a concern that this plan may not have been filed in good faith. 11 U.S.C. § 1325(a)(3). He notes that there is a motion not set for hearing for a boat and that the transaction has been misrepresented as an arms' length transaction. He also notes that Debtor has omitted S-Corp income and has failed to provide numerous documents regarding dissolution, spousal support, and taxes.

Concerning the S-Corp, Debtor does not list an income from said corporation, but only a monthly salary of $9,000.

**DECEMBER 5, 2017 HEARING**

At the December 5, 2017 hearing, the court continued the hearing on the Motion to Confirm the Amended Plan until 3:00 p.m. on January 23, 2018. Dckt. 168. The court also set the date for any proposed amendments and supplemental pleadings to be filed and served at December 23, 2017.

**DEBTOR'S SUPPLEMENTAL PLEADINGS**

On December 23, 2017, Debtor filed a Supplemental Pleadings. Dckt. 171. Debtor asserted that as of December 23, 2017, he was current on Plan Payments and had provided the Chapter 13 Trustee with both corporate and personal tax returns for the 2016 tax year. Debtor also sought permission to sell his 2004 Mastercraft Xstar water craft, VIN ending in 1747, as a means to make the proposed Plan feasible. Additionally, Debtor states his Schedules I and J now accurately reflect his monthly earnings and the expenses associated with the separation from his estranged spouse.

**CHAPTER 13 TRUSTEE'S REPLY**

On January 5, 2018, the Chapter 13 Trustee filed a Reply to Debtor's Supplemental Pleadings. Dckt. 174. While the Chapter 13 Trustee admits Debtor is no longer in default, the Chapter 13 Trustee continues to assert his other objections. The Chapter 13 Trustee argues that Debtor does not specifically address the Means Test argument made in the Chapter 13 Trustee's objection. Further, the Chapter 13 Trustee continues to take issue with Debtor's corporation's income.

While Debtor has provided bank statements in support of the spousal support payment for August, September, and October of 2017, Debtor has failed to provide documentation of spousal support payment for May, June, and July of 2017.

Regarding Debtor's request to sell his water craft, the Chapter 13 Trustee is concerned that Debtor has not addressed the post-petition tax expense, or the status of other properties to be surrendered. Those possible additional expenses interfere with the Plan's feasibility.

The Chapter 13 Trustee also questions whether Debtor is prosecuting his case in good faith because Debtor has not yet reset a motion to sell the water craft, explaining previous representations, as well as addressing the Chapter 13 Trustee's other issues.

**JANUARY 23, 2018 HEARING**

At the January 23, 2018 hearing, the court continued the hearing on the Motion to Confirm the Amended Plan until March 6, 2018 at 3:00 p.m. Dckt. 178. The hearing was continued to allow the parties to conduct discovery.

**RULING**

In addition to the above, requests for Special Notice in this case were filed by: (1) Wells Fargo Bank, N.A., as Trustee (Dckt. 70); (2) HSBC USA, N.A., as Trustee (Dckt. 15); and (3) Synchrony Bank (Dckt. 10). The Certificate of Service for the present Motion (Dckt. 162) does not reflect service being made on those three requesting parties, and if made, not at the address as requested (Synchrony Bank notice having been sent to a post office box in Florida and not to counsel as directed).

Nothing further has been filed by any party. No Supplemental Schedules I and J have been filed by Debtor to state his actual, post-petition, pre-divorce, financial condition.

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 Cruz ("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.

**12.** **13-23157-E-13 PGM-1** | **HOSSEIN BAKTVAR AND LALEH MOGHADAM** **Peter Macaluso** | **CONTINUED MOTION TO COMPROMISE CONTROVERSY/ APPROVE SETTLEMENT AGREEMENT WITH TRULITE WSG, LLC** **1-3-18 [107]**

**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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2018. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 Motion for Approval of Compromise is xxxxxxxxxxxx.**

Hossein Baktvar and Laleh Moghadam, Chapter 13 Debtor, ("Debtor") request that the court approve a compromise and settle competing claims and defenses with Trulite WSG, LLC ("Creditor"). The claims and disputes to be resolved by the proposed settlement are related to Proof of Claim No. 23.

Debtor and Creditor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 111):

A. Debtor shall pay to Creditor $15,000.00 in full payment of its claim.

In the Motion, it is stated that the $15,000.00 has already been paid "from the working capital of their business." Motion, p. 2:7–8; Dckt. 107. Debtor's confirmed Chapter 13 Plan is for sixty months. The case having been filed in March 2013, it appears that the Plan is still in full force and effect during this settlement period and payment.

On the Petition, Debtor lists having several "AKAs and DBAs" in which Debtor does business. On Schedule B, Debtor lists having a sole proprietorship only, with no corporations, partnerships, limited liability companies, or other business entities listed as assets. Dckt. 1 at 14. On Schedule I, Debtor lists both debtor and co-debtor as being self-employed at their glass business. *Id.* at 33.

In his declaration, debtor Hossein Baktvar states under penalty of perjury that he has settled this adversary proceeding, prior to court approval, by making a $15,000.00 from monies in his business. Declaration ¶ 2, Dckt. 109. With this settlement, he states that he can then buy more materials in the future. Further, he states that he needed this money to work on future projects, and he "hopes" that he will not need such monies until he has "recouped these funds and/or get a deal on inventory as I paid [reflecting a past payment of the $15,000] him off." *Id.*

Schedule B does not show Debtor having an "extra" $15,000.00 in "working capital" lying around. The Motion and Declaration raise concerns that Debtor actually has $15,000.00+ in additional profits not disclosed to the court. Debtor's Plan, based on Debtor's dire finances committed to making only a 0.00% dividend to creditors holding general unsecured claims. But, Debtor did have enough projected disposable income (based on the financial information provided under penalty of perjury) to make the monthly payment on his Mercedes Benz, residence (a "necessary" $3,437.00 monthly payment), and Debtor's nondischargeable tax obligation to the California EDD. Plan, Dckt. 5.

**Dispute to Be Settled**

The Motion identifies the dispute being settled to be for Proof of Claim No. 23 filed in this case in the amount of $58,365.26. Proof of Claim No. 23 was filed by Western States Glass Corporation ("Creditor"). It was filed by Creditor's attorney. It is filed in the amount of $58,365.26, for goods sold, and as an unsecured claim.

The Attachments to Proof of Claim No. 23 do not include any list of the goods asserted to be sold to Debtor. Rather, they appear to relate to court costs, interest, process servers, and clerk fees. Proof of Claim No. 23, Attachments 1 and 2. It appears that there are no "goods" that make up the Claim No. 23.

The present Motion is not to approve a compromise with Western States Glass Corporation, the Creditor filing Proof of Claim No. 23 (it being filed under penalty of perjury, the court accepts as truthful the statement by Creditor's counsel that Western States Glass Corporation is the creditor).

It appears that this settlement actually relates to the Motion for Allowance of an Administrative Expense ("Expense Motion") filed by Trulite WSG, LLC ("Trulite"). Motion, DCN:JPT-1; Dckt. 67. In that Motion, Trulite alleges:

A. Debtor purchased glass from Trulite for Debtor's business operations.

B. These purchases were made after March 8, 2013, the date Debtor commenced the current bankruptcy case.

C. Debtor did not disclose to Trulite that Debtor was operating in a bankruptcy case.

D. The sales of glass to Debtor occurred during the period August 1, 2013, to November 26, 2013.

E. Trulite received a partial payment of $17,652.53 from the general contractor on the project when the glass was used based on Trulite's mechanic's lien. Trulite then computes the remaining amount of its unpaid balance to be $32,579.31 in principal and $3,755.54 in finance charges (18% per annum) as of May 7, 2014. It is asserted that an additional $10,769.92 in finances had accrued as of the filing of the Motion.

F. The sales were actually made to a corporation called Zagros, Inc., which the Expense Motion states was a corporation of Debtor's that had been suspended by the State of California. Trulite originally sued Zagros, Inc. for the debt, and in that case discovered the suspension of the corporation and Debtor's bankruptcy. The state court action against the suspended corporation was dismissed.

Expense Motion, Dckt. 67.

**Dismissal of Expense Motion**

On December 22, 2017, Trulite filed its dismissal, "for valuable consideration received," of the Expense Motion. Dismissal, Dckt. 103.

**FEBRUARY 13, 2018 HEARING**

At the hearing on the Motion for Approval of Compromise on February 13, 2018, the court granted a continuance until March 6, 2018 at 3:00 p.m. to allow Debtor to file a supplemental Declaration. Dckt. 117.

**DISCUSSION**

Debtor has chosen not to file any supplemental declarations.

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

**Probability of Success**

Movant argues that both parties have mutually achieved a settlement and release of the claim. Movant does not actually address their probability of success in any litigation with Settlor.

**Difficulties in Collection**

Movant argues that there is no difficulty in collection because Movant was able to use working capital from their business to make the settlement payment.

**Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues that litigation has been avoided by the settlement.

**Paramount Interest of Creditors**

Movant argues that the settlement does not affect creditors because this settlement allows them to continue running their business and generating income.

**Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

**Consideration of Additional Issues**

The court is presented with a difficult situation. Here, Debtor operated its business, obtained product, and did not pay its expenses during the early stages of this case. Debtor obtained the product and appears to have had higher "profits" by not paying its current expenses.

Now, even though Debtor is purporting to fund the Chapter 13 Plan with Debtor's projected disposable income, Debtor has an "extra" $15,000.00 to pay Trulite. The statement that there was $15,000.00 of "working capital" lying around is not adequate.

At the hearing, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the circumstances surrounding the creation of this post-petition obligation, and the information concerning the ability of Debtor to have the "extra" $15,000.00 of "working capital" to have paid the settlement before it was approved by the court, the court determines **xxxxxxxxxxxxxxxxxxxxxxxx**.

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 Approve Compromise filed by Hoessein Baktvar and Laleh Moghadam, 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 the Motion for Approval of Compromise between Movant and Trulite WSG, LLC ("Settlor") is **xxxxxxxxxxxxx**.

**13.** **17-27958-E-13** **CHRISTOPHER/CHAUNDRA HEFFERNAN** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SYSTEMS AND SERVICES TECHNOLOGIES, INC.**
**APN-1** **Stephen Murphy** **1-18-18 [17]**

**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).**
**----------**

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 January 18, 2018. By the court's calculation, 26 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.

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

Systems & Services Technologies, Inc. ("Objector") as the loan servicer for creditor for Medallion Bank ("Creditor"), holding a secured claim (Proof of Claim No. 2) opposes confirmation of the Plan on the basis that the Plan proposes an interest rate for its claim that will not provide it with the present value of its claim. The Objection is stated on several grounds, which are:

A. Creditor has a secured claim in an unstated amount. The collateral for the claim is a 2011 Jayco Jay Select 29L

B. The original obligation was for $18,900.00, for which the interest rate for the financing was 17.95%.

C. Using a NADA Guide, Creditor asserts that the collateral has a value of $14,600.00. Exhibit C, Dckt. 19, which has been authenticated by Dana Dorssom, the "Compliance Officer" for Creditor. Declaration, Dckt. 21.

D. In looking at Exhibit C, the NADA Report actually states that the retail value for such collateral is in the range of $12,100 to $14,600—not just the $14,600 as alleged in the Motion or as stated by Ms. Dorssom under penalty of perjury.

E. In her Declaration, Ms. Dorssom offers no testimony of any obligation being owed to Creditor. (As discussed below, Proof of Claim No. 2 has been filed by Creditor in the amount of $16,601.99.)

F. Objector objects to the Plan stating that the secured claim is in the amount of $13,500.00. (Having filed Proof of Claim in the amount of $16,601.99, Objector and Creditor know that it is the value stated in the proof of claim that controls, not some value stated in the Plan. FN.1.)

G. Objector states that "Secured Creditor's security interest will be severely diminished on collateral which already depreciates at a rapid rate during the normal course of its use." Objection ¶ 4. No evidence is presented of there being such rapid depreciation of a vehicle or trailer home that is now nine model years old.

H. Objector states that it objects to a $250.15 per month payment because "the value of Secured Creditor's security will depreciate at a much higher rate than that at which Secured Creditor will receive adequate protection payments under the Plan." Again, Objector offers no basis for there being such rapid depreciation on this nine model year old trailer home.

I. Objector also asserts that the 4.25% interest rate, which is stated is not adequate to protect Creditor from the risk of non-payment, citing *Till vs. SCS Credit Corp.*, 541 U.S. 465 (2004). Objector does not provide the court with any basis for concluding that there is a risk of non-payment from Debtor who is otherwise presenting a feasible plan for which the payments must be made monthly through the Chapter 13 Trustee.

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FN.1. The Chapter 13 Plan to which Objector takes exception clearly states:

> "A. Proofs of Claim
> . . .
> 3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.|

Plan ¶ 3.02, Dckt. 5.

The Objector bases its objection on a grounds that is clearly erroneous raises the specter whether all of the grounds are merely a "form objection," made without regard to the actual facts and grounds relating to the claim and collateral.

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Creditor's objections are not well-taken. First, the fact that Debtor has listed in the Plan a $13,500.00 secured claim does not control because Debtor has not filed a motion pursuant to 11 U.S.C. § 506(a) to value the secured claim, the $16,601.09 amount of the secured claim in Proof of Claim No. 2 controls. That is true, at least for this case, notwithstanding Objector and Creditor appearing to waive that provision of the Plan and admitting that the $13,500.00 amount stated by Debtor in the Plan controls.

With a $14,600.00 secured claim, as admitted in the Objection, and assuming a 4.25% interest rate, the monthly payment on Creditor's Class 2 Claim as asserted in the Objection would have to be $270.53 over the sixty months of the Plan (a minor $20 per month difference than using the value listed by Debtor in the Plan, which over the life of the Plan would be only $1,200). With the $4,895.00 monthly plan payment and the claims as filed (with the other filed secured claims coming in at a lower value than stated in the Plan), there does appear to be adequate funding for this increased amount—if Debtor were to elect to forgo an 11 U.S.C. § 506(a) valuation, figuring that Creditor's admitted value of $14,600.00 value is "close enough" and the $1,200 different does not warrant the attorneys' fees and costs in prosecuting a valuation motion. FN.2.

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FN.2. Based on Objector's evidence, it appears that Debtor's statement of value at $13,500.00 in the Plan may well have been a good faith estimate, closer to the value than asserted by Objector. Objector provided the court with the showroom ready, highest possible value for a used trailer home. Experience shows that by the time a person is driven to file bankruptcy, his or her vehicles are not in "showroom ready" condition. It appears that Creditor may obtain such showroom ready valuation in light of the economically minor difference in the payment amounts.

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Objector next objects to the confirmation of the Plan on the basis that the Plan because it provides for adjusting the interest rate on its claim to 4.25% from the 17.95% originally extracted from Debtor. Though Objector may argue that the 17.95% interest rate was warranted because at the time of the loan Creditor was making a loan that was sure to default because Creditor knew Debtor was in financial extremis, Congress has remedied that with the Bankruptcy Code.

Debtor no longer has creditors picking at the financial flesh remaining on Debtor's financial bones. Creditors are not able to impose exorbitant interest rates as Debtor makes improvident financial decisions. Debtor is now locked into a reasonable payment plan that is financially feasible, subject to the close scrutiny of the Chapter 13 Trustee on a monthly basis. If there is a default, the Chapter 13 Trustee knows immediately. All creditors know immediately.

If there is a default, creditors with secured claims can quickly access this federal court in which the case is pending to obtain relief from the automatic stay. If the process to obtain possession through state court is too cumbersome due to the overwhelming case load in that court, the creditors know that the adversary proceeding process in the bankruptcy court (able to exercise exclusive federal jurisdiction over

all property of the debtor as of the commencement of the case and all property of the bankruptcy estate, 11 U.S.C. § 1334(e)) is very swift, the judges in the bankruptcy court having been specially appointed to promptly address such bankruptcy and bankruptcy-related issues.

Objector asserts that the prime rate, to allow for the time value of money, is 4.25%. Objection ¶ 7, Dckt. 17. No evidence is provided to support such a contention. Debtor has proposed a 4.25% interest rate in the Plan. The court may infer that Debtor was proposing the prime rate in the Plan.

In considering the *Till* factors and lack of evidence by Objector of any risk or rapid depreciation for this nine model year old trailer home, and taking into account that Debtor is now not only protected from creditor economic distributions by the Chapter 13 Plan, but is being closely monitored by both the Chapter 13 Trustee and creditors, the 4.25% interest is proper to provide for Creditor's secured claim. The Chapter 13 Plan and the federal court jurisdiction over the collateral provides Creditor additional protection for its interests in the collateral. Debtor cannot move or transfer the collateral without court authorization. If Debtor defaults, it is not just as to creditor, but all claims in this case. To save Debtor's home, Debtor must make the plan payment to the Chapter 13 Trustee, which includes the required payment to Creditor. Creditor is not subject to the risk that Debtor will selectively not pay Creditor and hide the collateral.

**FEBRUARY 13, 2018 HEARING**

At the February 13, 2018 hearing, the court continued the hearing for the Creditor's Objection to Confirmation of Plan until 3:00 p.m. on March 6, 2018. Dckt. 23. The continuance was granted to allow Debtor to file supplemental documents regarding taxes.

**RULING**

Objector and Creditor have not provided the court with a basis to deny confirmation. Creditor has admitted to having a secured claim in the amount of $14,600.00, which the court accepts. The objection to confirmation of the Plan on this basis is overruled. FN.3.

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FN.3. The rejection of this Objection may be but a Pyrrhic victory for Debtor, given the grounds for Objecting presented by the Chapter 13 Trustee.

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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 Objection to the Chapter 13 Plan filed by Systems & Services Technologies, Inc. ("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 to Confirmation of the Plan is overruled.

| | | | |
|---|---|---|---|
| **14.** | **17-27958-E-13 DPC-1** | **CHRISTOPHER/CHAUNDRA HEFFERNAN Stephen Murphy** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-17-18 [13]** |

**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).**
**----------**

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 17, 2018. By the court's calculation, 27 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.**

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

A. Christopher Heffernan and Chaundra Heffernan ("Debtor") may not have provided for all secured claims in Class 1;

B. Debtor's stated attorney's fees are conflicting;

C. Debtor has additional unreported expenses; and

C. Debtor listed an automobile and travel trailer incorrectly as Non-Purchase Money Security Interest.

The Chapter 13 Trustee's objections are well-taken.

**Objection Grounds 1**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, Debtor's Plan provides for Freedom Mortgage Corp. in Class 1 of the Plan. On Schedule D, Debtor list Freedom Mortgage as claim 2.2 for $257,716 and claim 2.3 for $7,450. The Chapter 13Trustee is unable to determine if both claims are provided in Class 1 of the Plan or if both claims shall be paid through the Plan.

Freedom Mortgage Corp. has clarified this issue, filing its claim for $257,563.56, which amount controls unless the court issues an order valuing the secured claim at a different amount. Proof of Claim 11; Plan ¶ 3.02, Dckt. 5. Proof of Claim 11 states that there is a $7,951.04 arrearage. The Class 1 treatment for the Freedom Mortgage Corp claim is structured to pay a pre-petition arrearage of $14,517.00, over stating the arrearage amount. The Plan adequately provides for the claim of Freedom Mortgage Corp.

**Objection Grounds 2**

The Plan indicates attorney's fees totaling $5,500, but the information conflicts with the Disclosure of Compensation of Attorney for Debtor form, which reports fees totaling $6,000.

The Plan provides for the payment of $2,000.00 of attorney's fees through the Plan. It appears that Debtor and counsel may have agreed to reduce the payment of the remaining balance to make the Plan work.

**Objection Grounds 3**

At the First Meeting of Creditors, Debtor Christopher Heffernan admitted to having a $1,000 per month expense not listed on Schedule J. Because the expense is not reported on Schedule J and because Debtors' disposable income on the document is $4,905, and the Plan payment is $4,895, it appears the Debtor does not have sufficient income to fund the plan.

**Objection Grounds 4**

Debtor provided for payment of two secured claims in Class 2B, a 2013 Honda Pilot and 2014 Jayco travel trailer. The claims are listed as non-purchase money security interests. Debtor indicated both claims are original purchase agreements. Therefore, Debtor incorrectly claimed those vehicles as Non-Purchase Money Security Interest, when those claims are entitled to Purchase Money Security Interest payments prior to confirmation.

**FEBRUARY 13, 2018 HEARING**

At the February 13, 2018 hearing, the court continued the hearing for the Chapter 13 Trustee's Objection to Confirmation of Plan to 3:00 p.m. on March 6, 2018. Dckt. 24.

**RULING**

With respect to the claim secured by the Honda Pilot, Proof of Claim No. 7 for the obligation secured by that vehicle has been withdrawn. January 24, 2018 filed Notice of Withdrawal of Claim. The creditor having affirmatively withdrawn its claim and informing the court there is no secured claim to be paid.

As to the claim of Medallion Bank secured by the Jayco trailer, Proof of Claim 2, in its Objection to Confirmation the Bank has made an admission that its secured claim is $14,600.00, higher than the amount stated in the Plan but less than the amount stated in Proof of Claim 2. In the order confirming the Plan, the court can authorize the Chapter 13 Trustee to immediately make any pre-confirmation disbursements to Medallion Bank for its purchase money claim.

Finally, the additional $1,000.00 per month expense is for child support to debtor Christopher Heffernan's former spouse. In looking at Debtor's expenses shown on Schedule J, there does not appear to be any "fat" in the budget to cover this expense. In fact, such budget looks unrealistically lean. For two adults and four children (ages 12 to 20), Debtor lists a monthly food expense of only $790, transportation expense of only $350, clothing expense of only $50, and no payment of any state, federal, or self-employment taxes on Debtor's monthly net income. Schedules I and J, Dckt. 1 at 33–36.

It is on the final objection that Debtor's plan flounders. In considering this point, there are further feasibility issues that arise when considering the expense information (and lack of any tax payment information).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed. FN.1.

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FN.1. Though the court found ways to address the various objections raised by the Chapter 13 Trustee, that does not diminish the value of such objections. First, all were valid grounds that had to be addressed by the parties and the court. Second, even if overruled, they demonstrate the close scrutiny that the Chapter 13 Trustee applies to these cases and that confirmation is not merely a perfunctory process if the debtor is able to slip it by creditors. As this court has commented before, the U.S. Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010), has made it clear that the court is to grant relief to a party only when it is warranted on the facts and the law.

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

**15. 17-25985-E-13 MRL-2** | **DANIEL MARTINEZ** **Mikalah Liviakis** | **MOTION TO CONFIRM PLAN** **1-6-18 [61]**

**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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 08, 2018. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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).

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

Daniel Martinez ("Debtor") seeks confirmation of the Modified Plan because of additional secured claims. Dckt. 61. The Modified Plan provides for monthly payments of $2,450.00 per month for nine months and $1,280 per month for fifty-one months. Dckt. 65. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 20, 2018. Dckt. 73.

The Chapter 13 Trustee asserts that Debtor is $2,450.00 delinquent in plan payments, which represents one month of the $2,450.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 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).

Debtor proposes being allowed nine months to start and an additional ninety days to complete a sale of his residence and that creditors shall be paid in full from escrow based upon updated payoffs. The plan appears to defer payments to the Class 1 mortgage arrears until the property is sold, though it does not specifically state such. The Plan also does not specify that the Chapter 13 Trustee is to be the disbursing agent for Class 1 debts.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not

necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). No declaration has been filed that Debtor's mother will be able to contribute $1,200.00 per month for the sixty-month term of the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

**CHAPTER 13 CREDITOR'S OPPOSITION**

Wells Fargo Bank N.A. ("Creditor") holding a secured claim filed an Opposition on February 20, 2018. Dckt. 76.

Creditor asserts Debtor is delinquent $3,224.12 in estimated pre-Petition arrears. As such, Secured Creditor further objects to Debtor's Plan in that Debtor lists the amount of pre-petition arrears as $2,500.00. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor's successful completion of his Chapter 13 Plan, as proposed, depends solely upon his sale of real property which, Creditor contends, does not meet the confirmation requirement that Debtor will be "able to make all payments under the Plan and to comply with the Plan." 11 U.S.C. § 1325(a)(6). Moreover, the record is devoid of any evidence that Debtor has contacted a realtor, placed the subject real property on the market, or has had any contact with any potential purchasers. Debtor has offered no analysis or information regarding the condition and marketability of the subject real property. Thus, the Plan may not be confirmed.

Debtor values the property to be sold at $410,000. Schedule A/B, Dckt. 1 at 11. Creditor has filed Proof of Claim No. 5, asserting the secured claim (as of the commencement of this case) for $333,307.98 secured by this Property. Creditor has filed Proof of Claim No. 3 asserting an additional $36,528.24 secured by this Property pursuant to an home equity line of credit. These are generally consistent with the amounts stated on Schedule D. Dckt. 1 at 19–20. On Schedule D, Debtor also lists the California Hosing Finance Agency having a claim secured by the Property, with that claim being in the amount of $31,000. *Id.* at 19.

Just considering Creditor's claims, the value to the estate and Debtor from the sale of the Property could be calculated as follows:

FMV.....$410,000
Costs of Sale (Est. 8%).....($ 32,800)

WFB, POC 5.....($333,307)
WFB Post Petition Arrearage.....($ 2,500) (Plan ¶ 3.07)
WFB HELOC.....($36,528)

Est. Net Sales Proceeds.....$4,865

Though $4,865 is a significant amount, it is not a substantial equity cushion to protect the rights of Creditor during the proposed marketing period. Debtor's Plan requires monthly payments of $2,450.00 for the first nine months of the Plan (October 2017 through June 2018), and then it drops to $1,280.00 per month for months ten through sixty of the Plan.

Debtor is to be given nine months from January 2018 to market the Property, and then extend it another three months to complete the sale, if necessary. The Plan appears to provide for a monthly Plan payment of $1,967.73 to Creditor, with $193 to be applied to the post-petition arrearage and $1,774.13 for the current post-petition monthly payment.

Debtor now states that this monthly income is $4,235 (Supplemental Schedule I, Dckt. 64, showing family assistance of $1,200 per month) and expenses of $1,785 for the first nine months, and then increasing to $2,965 per month to allow an additional $1,180 per month for Debtor to rent an apartment. *Id.*

However, while listing $3,035 per month in income from his business (real estate agent), Debtor's Schedules I and J do not make any provision for federal income taxes, state income taxes, Social Security taxes, and other taxes. Debtor's finances do not "pencil out."

The provisions providing for payment of Creditor's claim do not appear to reasonably provide for such claim, but instead a gamble that real estate prices will rise over the next twelve months (the nine-month period commencing with the current plan, not the commencement of the case), with all of the risk placed on Creditor. Proof of Claim No. 5 states that the current monthly payment, including escrow for property taxes and insurance, is $1,728.82.

Assuming that provides for using the $1,280.00 monthly payment (less the Chapter 13 Trustee's fees), there is more than a $500 per month arrearage being created. Over the initial nine month marketing period, that would be $4,500 further defaults on the required post-petition payments.

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

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

**16.** **17-27888-E-13** **MEEGAN WILLIAMSON** **MOTION TO VALUE COLLATERAL OF**
**SLE-1** **Steele Lanphier** **SOUTHWEST AIRLINES FCU**
**2-6-18 [27]**

**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's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 06, 2018. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Value Collateral and Secured Claim of Southwest Airlines FCU ("Creditor") is denied.**

The Motion filed by Meegan Williamson ("Debtor") to value the secured claim of Southwest Airlines FCU ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Ford Escape ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,845.00 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).

The lien on the Vehicle's title secures a purchase-money loan incurred on November 01, 2015, to secure a debt owed to Creditor with a balance of approximately $13,584.86. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

**CHAPTER 13 TRUSTEE'S OBJECTION**

David Cusick ("the Chapter 13 Trustee") files an opposition because 11 U.S.C. § 1325(a) prohibits the application of 11 U.S.C. § 506 when the debt was incurred fewer than 910 days from the date of filing.

Here, the purchase money lien was obtained within the 910 day period. As directed by the Supreme Court, a federal judge is to grant relief that is warranted based on the evidence and the law. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The secured claim may not be valued. 11 U.S.C. § 1325(a). 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 Value Collateral and Secured Claim filed by Meegan Williamson ("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 denied.

**17.** **17-27888-E-13** **MEEGAN WILLIAMSON** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
**DPC-1** **Steele Lanphier** **1-17-18 [23]**

**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).**
**----------**

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 17, 2018. By the court's calculation, 27 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.**

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

A. The Plan relies upon a motion to value collateral, and

B. Meegan Williamson ("Debtor") failed to provide tax returns.

The Chapter 13 Trustee's objections are well-taken. A review of the docket shows that a motion to value has been filed, and is set for hearing on March 6, 2018. While that file could be cause to continue the hearing on this Objection, there is an additional, independent ground for denying confirmation.

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); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

**FEBRUARY 13, 2018 HEARING**

At the February 13, 2018 hearing, the court continued the hearing for the Objection to Confirmation of Plan until March 6, 2018 at 3:00 p.m. to allow it to be heard in conjunction with Debtor's Motion to Value.

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

**18. 17-25403-E-13 BYLLIE DEE** **MOTION TO VACATE**
**Pro Se** **2-13-18 [80]**

**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 and Counsel for Movant on February 13, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The pro se Debtor filed this Motion on February 13, 2018. Dckt. 80. The Notice portion of this document does not specify whether it is being filed as provided by Local Bankruptcy Rule 9014-1(f)(1) or (f)(2) and what opposition (oral or written) is required. In light of the 21 days notice, the court will treat this as having been set pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which oral opposition may be presented at the hearing. The alternative would be to deny the motion without prejudice due to the failure to properly notice the hearing.

The Motion to Vacate was adequately 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 Vacate is denied.**

Byllie Dee ("Debtor") filed the instant case on August 15, 2017. Dckt. 1. On August 29, 2017, Debtor filed a Chapter 13 Plan. Dckt. 9. David Cusick ("the Chapter 13 Trustee") filed an objection to the plan. Dckt. 15. On November 07, 2017, Debtor filed an amended Chapter 13 Plan. Dckt. 33. On November 15, 2017, the court ordered the Objection to Confirmation of the Plan sustained. Dckt. 41.

On October 04, 2017, the Chapter 13 Trustee filed a Motion to Dismiss the Case due to failure to make a plan payment, failure to provide tax information, failure to provide pay stubs, and failure to provide a social security number. Dckt. 19. At the hearing on February 21, 2018, the court continued the hearing on the Motion to Dismiss until March 21, 2018. Dckt. 82.

On February 13, 2018, the court granted Shellpoint Mortgage Servicing's Motion for Relief from Stay. On the same day, Debtor filed this instant Motion to Vacate, claiming that the Shellpoint Mortgage Servicing, Inc., point of contact representative "did not timely file debtor's Opposition to Shellpoint Mortgage Servicing bankruptcy attorney's Motion for Relief from Stay." Dckt. 80 at 3:14–16.

Debtor seeks to have the order granting Shellpoint Mortgage Servicing's Motion for Relief from Stay vacated, per Federal Rule of Civil Procedure 60(b).

**APPLICABLE LAW**

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

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

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine whether it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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

**DISCUSSION**

As an initial matter, Debtor alleges "Debtor was informed by Shellpoint Mortgage Servicing, Inc. that debtors loan modification would be complete before the February 13, 2018 hearing. Debtor was also informed that making monthly payments and or payments towards arrears because it would cause delay in completing figures necessary to finalize loan modification documents. Shellpoint Mortgage Servicing, Inc point of contact representative for my loan informed me that they would inform the bankruptcy attorney of the loan modification in process. Debtor based on the representations of Shellpoint Mortgage Servicing's point of contact rep did not timely file debtor's Opposition to Shellpoint Mortgage Servicing bankruptcy attorney's Motion from Relief of Stay." Dckt. 80 at 3:8–16.

This pleading does not meet the requirements of Rules 60(b). Debtor's statement in the Memorandum of Points and Authorities does not show mistake, surprise, or excusable neglect. Debtor shows a tactical strategy to continue the bankruptcy proceeding by filing inappropriate pleadings as a means to extend the litigation. As the court noted in its February 21, 2018 Civil Minutes, this appears to be "a lying-in-wait strategy intended to delay prosecution of the case and deflect any judicial determination of the parties rights." Dckt. 82.

Debtor's "grounds" appear to sound in his "believing" that a loan modification would be completed. Debtor does not offer evidence that such a loan modification was granted or represented as to having been granted. Rather, his testimony under penalty of perjury consists in pertinent part of:

> "5. Debtor, then tried on many occasion to get the correct arrears amount from lender, Chase Home Loan but was unsuccessful. On or about August 3, 2017 debtor received a phone call from a relative in Bastrop, Louisiana informing of a notice of foreclosure being advertised in the Bastrop Daily Enterprise Newspaper classified ads."
>
> "6. Debtor felt the representatives from Chase Home Loan had purposefully withheld information by not releasing the amount of arrears. Debtor had requested many times and was unsuccessful. Debtor filed case number 17-25403 immediately and in the heat of the moment trying to protect property from being foreclosed upon."
>
> "8. Chase Home Loan and Shellpoint Mortgage Servicing, Inc. did not file a Proof of Claim in case number 15-42180 [N.D. Cal Bankr. Case]. (Exhibit C) However, a Notice of Mortgage Payment Change was filed docket# 91 on July 12, 2016."
>
> "9. Debtor was instructed by the court (N.D. Bankr. Case No. 15-42180) to retain counsel before next hearing date on or about 04/19/20 16. Debtor complied to show the court good faith effort in prosecuting case. (Exhibit D) However, the attorney

failed to effectively prosecute the case which led to case being dismissed. (Exhibit E)"

"10. Debtor complied with the court's request to obtain legal counsel. Debtor trusted the attorney, yet the attorney misdeeds led to case being dismissed. Debtor would not have had to file any other cases had the attorney performed their due diligence."

Declaration, ¶¶ identified above, Dckt. 80.

The Declaration provides explanations, blaming others, why Debtor has failed in his prior bankruptcy cases. The events relied on occurred years before the Motion for Relief from the Stay in this case. Debtor offers no credible basis for the court concluding that there was mistake, excusable neglect, or other grounds for setting aside the order modifying the automatic stay in this case.

In granting relief from the automatic stay, the court's findings include the following as stated in the Civil Minutes from the February 13, 2018 hearing:

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Movant pleads that Debtor has filed multiple bankruptcies (the first four of which were in the Northern District of California) that have delayed Creditor from acquiring relief, including:

"A. Case No. 11-47631

1. Filed: July 19, 2011, as James Lawson
2. Chapter 13
3. Discharge Date: May 1, 2014

B. Case No. 15-42180

1. Filed: July 13, 2015, as Byllie Dee
2. Chapter 13
3. Dismissal Date: May 9, 2016
4. Reason for Dismissal: Failure to make plan payments

C. Case No. 15-43169

1. Filed: October 15, 2015, as Byllie Dee
2. Chapter 13
3. Dismissal Date: November 4, 2015
4. Reason for Dismissal: Failure to file information

D. Case No. 16-42054

1. Filed: July 22, 2016, as Byllie Dee
2. Chapter 13
3. Dismissal Date: November 17, 2016
4. Reason for Dismissal: Unstated (other reason)

E. Case No. 17-25403 (the present case)

1. Filed: August 15, 2017, as Byllie Dee
2. Chapter 13

. . .

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

Debtor filed his Amended Plan on November 7, 2017. Dckt. 33. The proposed monthly plan payments require $750.00 per month for sixty months. A Class 1 Claim is listed, with a $12,000 arrearage. Amended Plan, ¶ 2.08(c). No provision is made for paying the arrearage, with a current regular monthly payment of $378.00 listed for payment through the Plan. For a $12,000 arrearage, amortized over sixty months, a payment of at least $200.00 per month would be required.

The Amended Plan further provides for a monthly payment of $200.00 per month to Appollo Auto Finance, for a $12,000 secured claim with a 10% interest rate. Amended Plan ¶ 2.09(d). Assuming that the interest rate were more reasonably set at 4.5% in the plan, the $12,000 repaid over sixty months would require a monthly payment of principal and interest of $223.72 (not the $200 stated in the Amended Plan).

The Amended Plan further provides for payment of a priority unsecured claim to Bob's Towing in the amount of $7,570. Amended Plan ¶ 2.13. No reason is given for Bob's Towing having a priority unsecured claim as provided under the Bankruptcy Code. Looking at the Amended Statement of Financial Affairs, this

> appears to be an obligation relating to the attachment of Debtor's 1977 Rolls Royce with a value of $20,680.00. Statement of Financial Affairs, Question 10, Dckt. 42. In reality this may be a secured claim, which will have to be paid in full (oversecured) and may require interest. But on the principal amount alone requires a monthly payment of $126.00.
>
> The above payments total $928.00 (rounded), plus there would be an additional $75.00 per month for Chapter 13 Trustee's fees (estimated at 8%), requiring a monthly plan payment of at least $1,003.00.$253.00 per month more than provided for in the Amended Plan.
>
> On Schedule I filed by Debtor, he lists having $4,450.00 per month in wage income. Dckt. 10 at 25. He lists no withholding for federal income taxes, state income taxes, or Social Security. On Schedule J, no payments for federal and state taxes are provided. Id. at 28. On the Amended Statement of Financial Affairs, Question 4, Debtor states having received $6,700 in income for 2017 year to date (Schedule I stating that he had been employed for two months as of the commencement of this case) and $10,300.00 in 2016, with no information provided for 2015. Dckt. 42 at 16. Debtor goes further to state that he received $6,700.00 in "donations" for 2017 and $10,300 for "donations" in 2016. No donation income is listed on Schedule I.
>
> In light of the series of cases filed; the non-productive prosecution of the prior case and this case; Debtor not setting a hearing for confirmation of the proposed Amended Plan (Notice of Hearing states that date and time "TBD," Dckt. 47; the financial inadequacy of the Amended Plan; and the financial information provided under penalty of perjury concerning Debtor's income and expenses (Schedules I and J), the court determines that relief pursuant to 11 U.S.C. § 362(d)(4) is proper. This bankruptcy case is part of a scheme to delay and hinder Movant from enforcing its rights in the Property."

Civil Minutes, Dckt. 79.

Debtor offers no basis for any of the above to be in error. Rather, Debtor, who is an experienced bankruptcy litigant now in two different Federal Districts, states that he chose not to reply, believing that he had a loan modification. Debtor offers no evidence showing a basis for any such good faith belief or mistake.

Debtor offers the statement that he did not learn of the order granting relief from the stay until February 12, 2018, when Debtor came to the courthouse. Declaration, Dckt. 80 at 9. The court's records show that the documents opposing granting relief from the automatic stay were filed at 3:08 p.m. on February 12, 2018. Then, on February 13, 2018 at 12:26 p.m. and 12:28 p.m., Debtor filed his twenty-page opposition to the Chapter 13 Trustee's Motion to Dismiss (Dckt. 78), and twenty-seven-page Motion to Vacate (Dckt. 80), respectively. If prepared on fewer than twenty-four hours' notice, such would be quite a feat for an unsophisticated pro se party, in this case. If actually prepared them in fewer than twenty-four

hours, that demonstrates a high level of legal skill and knowledge by Debtor. Additionally, Debtor filed his Motion to Vacate at 3:08 p.m. on February 13, 2018, right at the time the court was calling the calendar on which the Motion for Relief from Stay appeared, with no order granting such relief having yet been entered.

That filing of pleadings and legal skill belies Debtor's general contention of mistake, excusable neglect, or other grounds for relief. Rather, it appears to be part of a litigation strategy being implemented by Debtor through these multiple bankruptcy cases.

**Opposition Filed by Debtor**

Though Debtor professes there to be error, mistake, or other grounds to vacate the order and his failure to appear at the February 13, 2018 hearing, Debtor demonstrates he knew of and was able to respond to the Motion—Debtor filed his opposition to the Motion on February 12, 2018. The court's records show that was filed at 3:08 p.m.

The twelve-page Opposition (Dckt. 74) includes a Memorandum of Points and Authorities and Debtor's Declaration. In his Declaration, Debtor's testimony consists of asking the court to deny the Motion. Dckt. 74 at 11. A review of the extensive Points and Authorities asserts disputes as to:

> (1) whether Debtor has made any payments since June 1, 2011 (a $1,189.36 disputed amount). *Id.* at 3:19–26;
>
> (2) Debtor disputes that he post-petition defaults are $22,077.52, asserting that the post-petition defaults are only $14,196.17. *Id.* at 4:1–4.5;
>
> (3) Debtor cannot propose a plan because "Movant has never given debtor an accurate amount for the outstanding balance owed to creditor." *Id.* at 4:6–9.5;
>
> (4) Debtor has requested the information many time since January 2017. *Id.* at 4:10.5–11.5;
>
> (5) Debtor strongly disagrees with the amount of the claim as stated by MTGLQ Investors, L.P. in its Proof of Claim. *Id.* at 4:20–23.5;
>
> (6) Debtor disputes that Creditor has the rights in the note for which the foreclosure is sought. *Id.* at 5:14–26. Debtor seeks to have this court adjudicate the underlying rights in the note as part of these summary law and motion proceedings. FN.1.

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FN.1. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief.

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(7) The dispute being the underlying substantive ownership dispute is further stated in detail. *Id.* at 7:1–8:15.

(8) There is no basis for the court to find that Debtor is prosecuting this, and prior bankruptcy cases, in bad faith. *Id.* at 8:16.5–9:25.

Debtor offers nothing to provide a credible basis for the court changing its conclusions from the original hearing on the Motion. Rather, Debtor's Opposition demonstrates that his "fight" is not with respect to relief from the automatic stay, but a fight in the California Superior Court or the United States District Court (whether in the District Court or an adversary proceeding in the Bankruptcy Court) adjudicating any rights attacking the asserted ownership of the note and the right to foreclose by MTGLQ Investors, L.P.

The Opposition and Motion to Vacate demonstrate that the multiple bankruptcy cases are merely a sideshow to the actual litigation, if any, that should be prosecuted in good faith if Debtor believes what he asserts with respect to the note and deed of trust. The Opposition and Motion to Vacate demonstrate that the bankruptcy filings are done not for purposes of prosecuting a good faith Chapter 13 Plan, but just stay the foreclosure without any adjudication of the real "rights" that might be in dispute. FN.2.

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FN.2. This court has been welcoming to debtors who have used a Chapter 13 or Chapter 11 Plan as a vehicle to facilitate litigation in the Superior Court, District Court, or an adversary proceeding, using the automatic stay in lieu of obtaining a preliminary injunction. However, in such situations, the debtor must fund the plan with adequate protection payments, which over time, create a fund from which the court can compensate the attacked party if it turns out the stay was wrongful as to that other party's rights. *See In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), *aff'd*, *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

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In the Motion to Vacate, Debtor fails to address the findings of the court that the bankruptcy case is for naught, Debtor not being able to fund the Plan (based on the financial information provided under penalty of perjury). Additionally, though stating he has significant monthly income, Debtor purports to state that he does not have to pay federal income taxes, state income taxes, self-employment taxes, Social Security, and other tax obligations that encumber other income earners. At the hearing on the Motion to Dismiss his case, Debtor could not articulate a grounds by which his annual income of $53,400.00 was "tax-free" income. Civil Minutes, Dckt. 82. As addressed by the court at the hearing on the Motion to Dismiss, Debtor's statement of expenses on Schedule J are not credible—with Debtor purporting to have no expenses over the next five years (Debtor proposing a sixty-month plan) for:

Clothing
Laundry
Dry Cleaning
Personal Care Products
Personal Care Services
Medical
Dental

Entertainment
Recreation

*Id.* at 4–5. The court also did not find it credible that Debtor's monthly transportation expense of $350 was reasonable for his 2007 Maserati and 1977 Rolls Royce. *Id.* The court further noted that Debtor failed to provide the required financial information on the Statement of Financial Affairs. *Id.* at 6.

Debtor has failed to show that he has a "meritorious defense" to the Motion for Relief from the Automatic Stay. Debtor does not want relief from the stay granted, but has not shown that he can prosecute a bankruptcy plan to properly provide for such a claim. The Motion focuses on Debtor's prior, unsuccessful bankruptcy cases. The grounds include Debtor being in default for seventy-nine regular monthly mortgage payments for the period June 1, 2011, through December 1, 2017. While Debtor argues about the exact amount in default, there is no opposition to there being substantial defaults.

Debtor's conclusion, stated in paragraph fifteen of his Declaration focuses on what he is trying to do—litigate a dispute with MTGLQ, Investors, L.P. over the debt, not engage in a proper Chapter 13 reorganization. Dckt. 80 at 11, stating:

> "15. I respectfully request that the Court set aside the judgment or order that were entered against me and so that I can have my day in Court so this case can be decided on the merits, as the law favors."

The "case" discussed in the preceding paragraphs of the Declaration are that: (1) Shellpoint should have been processing a loan modification application; (2) his attorney's "misdeeds" in the Northern District Bankruptcy case caused it to be dismissed; (3) because Debtor disputes the arrearage he cannot proceed with a Chapter 13 Plan; and (4) Chase Home Loans "purposefully withheld" information concerning the amount of the arrearages. Nothing about how Debtor is advancing a Chapter 13 Plan, paying money into a Plan, making payments for the estimated amount of the secured claim; or otherwise addressing the obligation as permitted under the Bankruptcy Code.

The proposed Second Amended Plan (Dckt. 73) is funded with only $352.27 per month, to make payment on Debtor's Maserati, with nothing for the secured claim that was the subject of the Motion for Relief from the Automatic Stay. It does not appear that the $325.27 payment is sufficient to pay the Chapter 13 Trustee's fees, the Class 2 Claim secured by the Maserati, and the Class 5 claim secured by the Rolls Royce. There is no reorganization or plan as permitted under Chapter 13 being prosecuted.

Debtor has failed to show grounds warranting relief pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024 with respect to the prior order of the court granting relief from the automatic stay.

The good news for Debtor is that such order does not constitute an adjudication of the parties underlying rights. Debtor remains free to commence his action in the Superior Court (or equivalent in Louisiana if that is the proper court) or District Court to vindicate the rights and interests he may believe he has against Creditor. But, rather than the sideshows of bankruptcy cases that are not (and based on his statements under penalty of perjury in the Schedules and Statement of Financial affairs cannot be)

prosecuted in good faith through a Chapter 13 Plan, Debtor must get to the "main event" and litigate the real issues that he asserts are in dispute.

In light of the foregoing, the Motion to Vacate Judgment is denied, and the order to granting Creditor's Motion for Relief from Stay stands.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Byllie Dee ("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 denied.

# FINAL RULINGS

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|---|---|---|---|
| **19.** | **16-25208-E-13 DPC-5** | **WILLIAM MARKLEY AND SANDRA GORDON-MARKLEY Len ReidReynoso** | **OBJECTION TO CLAIM OF CHRYSLER CAPITAL, CLAIM NUMBER 4-1 1-17-18 [86]** |

**Final Ruling:** No appearance at the March 6, 2018 hearing is required.

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Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 17, 2018. By the court's calculation, 48 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). 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 Proof of Claim Number 4-1 of Chrysler Capital is sustained.**

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Chrysler Capitol ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $20,645.26. Objector asserts that this claim is based on the equitable doctrine of laches. Objector states that $17,637.85 have been disbursed, insufficient funds exist to pay the claim and other claims in full.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof

of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The doctrine of laches is an equitable doctrine that bars claims that are otherwise timely if there is unreasonably delay in bringing a claim. According to the Declaration of Yvette Sanders, on August 30, 2016, creditor filed the original claim which was after Debtor received an escrow payment of $57,316.89. On February 24, 2017, Debtor was refunded $19,316.39. On March 14, 2017, Chrysler Capital filed an amended claim, but the Chapter 13 Trustee alleges that due to the disallowance of their late claims, there are not sufficient funds to pay the allowed claims in full.

Based on the evidence before the court, Creditor's claim is disallowed after the $17,637.85, which has already been paid to Creditor. 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 Chrysler Capitol, Creditor filed in this case 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 Objection to Proof of Claim Number 4-1 of Chrysler Capitol ("Creditor") is sustained, and the claim is disallowed after the $17,637.85, which has already been paid to Creditor.

**20. 18-20119-E-13 DPC-1** | **CHEREESE CAMACHO** **Richard Jare** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **2-5-18 [17]**

**Final Ruling:** No appearance at the March 6, 2018 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, Debtor's Attorney, and Office of the United States Trustee on February 5, 2018. 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") filed the instant Objection to Chereese Camacho's ("Debtor") discharge on February 5, 2018. Dckt. 17.

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 January 12, 2016. Case No. 16-20167. Debtor received a discharge on June 14, 2016. Case No. 16-20167, Dckt. 34.

The instant case was filed under Chapter 13 on January 8, 2018.

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 June 14, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 16-20167, Dckt. 34. 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. 18-20119), 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") 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. 18-20119, the case shall be closed without the entry of a discharge.

**21.** **17-25221-E-13** **TOMMIE RICHARDSON** **CONTINUED MOTION TO CONFIRM PLAN**
**PGM-1** **Peter Macaluso** **11-14-17 [32]**

**Final Ruling:** No appearance at the March 6, 2018 hearing is required.
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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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 56 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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 Hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on March 27, 2018.**

Tommie Richardson ("Debtor") seeks confirmation of the Amended Plan because a property was being foreclosed upon. Dckt. 35. The Amended Plan proposes payments of $600.00 for sixty months with a 100.00% dividend to unsecured claims and a lump sum payment in month sixty from the "sale of real property, adversary, or over-bid from foreclosure of real property." Dckt. 34. 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 18, 2017. Dckt. 38. 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); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Additionally, Debtor admitted at the Meeting of Creditors that the federal income tax returns for the prior four tax years have not been filed. Filing of the returns is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). In the Chapter 13 Trustee's prior Objection to Confirmation (Dckt. 21), the Chapter 13 Trustee noted that Debtor's pleadings are not consistent about whether he receives pension funds, how much he receives, how long he has been receiving them, what his wife earns in wages, and whether he has received rental income. An accounting of Debtor's funds has not been provided yet. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Attorney's fees may not be reported accurately in this case. Prior documents, such as the Rights and Responsibilities, indicate that Debtor paid $500.00 before filing and that $4,000.00 is owed. Now, Debtor reports that $500.00 was paid and that $3,000.00 is owed.

The Chapter 13 Trustee is also concerned about the accuracy of documents about Debtor's real property. While the Chapter 13 Trustee is not concerned about the plan itself (because it proposes a 100.00% dividend), he is concerned that Debtor's interest in real property has not been made fully clear. The Chapter 13 Trustee objected previously on this ground because there was no information about when the property was purchased, how much was paid for the property, and whether Debtor and his non-filing spouse were married at the time. Debtor has not addressed those concerns although raised previously.

Also previously, the Chapter 13 Trustee noted that all debts may not be listed because the Chapter 13 Trustee received a letter dated June 26, 2017, about a "Cal State 9 Credit Union" loan and checking account. The Chapter 13 Trustee was not able to find anything that matched, however. He provided a copy of the letter to Debtor, who has not provided any additional information.

**DEBTOR'S REPLY**

Debtor filed a Reply on January 2, 2018. Dckt. 42. Debtor promises to file, serve, and set for hearing a new amended plan.

**JANUARY 9, 2018 HEARING**

At the January 9, 2018 hearing, the court granted a continuance for the Motion to Confirm the Amended Plan to be heard on January 30, 2018 at 3:00 p.m. Dckt. 50. This continuance was set to allow the Debtor to make the required lump sum payment.

**DEBTOR'S SUPPLEMENTAL RESPONSE**

Debtor filed a Supplemental Response on January 30, 2018. Dckt. 62. Debtor states that on January 3, 2018 and January 17, 2018, the office of Wright, Finlay, & Zak, representing the foreclosure trustee, in order to collect the proceeds from the foreclosure sale of Debtor's property, located at 1902-1904 Filbert Street, Oakland, California. Debtor intends to use the excess proceeds to pay the Plan at one-hundred percent.

**JANUARY 30, 2018 HEARING**

At the January 30, 2018 hearing, the court continued the hearing on the Motion to Confirm the Amended Plan to 3:00 p.m. on March 6, 2018. Dckt. 64.

**RULING**

Debtor's position suffers from several major failings. First, Debtor wants to file an amended plan, but then he asks in the Reply for the court to confirm the current plan. Dckt. 42. More significantly, the proposed plan manifests bad faith (not merely a lack of good faith) by Debtor. Under the Plan before the court (Dckt. 34), at some time in the next five years, when Debtor decides when it is in his best interests (without regard to his duties under the Bankruptcy Code), he may sell the real property and pay creditors. The only creditor being paid will be Wells Fargo Bank, N.A., for Debtor's 2014 Jaguar and Debtor's counsel. Though this case was filed in August 2017, Debtor has not even filed a motion to employ a real estate broker to sell the real property.

The lump sum payment to be made sometime during the sixty months of the Plan is stated to be made from "sale of real property, adversary, or over-bid from foreclosure of real property. Plan ¶ 1.02, Dckt. 34. No adversary proceedings have been filed by Debtor.

On Schedule A/B, Debtor lists the Oakland property as having a value of $1,000,000. Dckt. 13 at 3. On Schedule D, Debtor states that the Oakland property is encumbered by liens to secure the following claims: (1) Caliber Home Loans in the amount of ($333,006). *Id.* at 12. Thus, it would appear that the bankruptcy estate has $650,000 of recoverable equity in the Oakland Property.

However, on the Statement of Financial Affairs, Debtor states that a foreclosure of the $1,000,000 Oakland Property occurred on July 17, 2017. Statement of Financial Affairs Question 10, Dckt. 13. The present bankruptcy case was filed on August 8, 2017, one month later.

There is no adversary proceeding to vacate the foreclosure or any action being made to recover the $1,000,000 asset.

On Schedule A/B, Debtor lists a second property, the Graeton Circle, Mather, California Property. *Id.* at 4. Debtor states that he is not on title, but that this is community property. Though community property, Debtor states that his interest has a value of only $1.00. *Id.* Schedule A/B also provides the following information about the Mather Property: "FMV $300,000 - Secured Claim of $392K." *Id.* With that information, there is no value for creditors in this case.

As further stated by the Chapter 13 Trustee, Debtor has provided conflicting, inconsistent statements under penalty of perjury as to his income. *See* Chapter 13 Trustee's Opposition, Dckt. 38 at 2:5.5–18. The Chapter 13 Trustee provides evidence that Debtor had rental income through April 2017, but such information was not disclosed on the Statement of Financial Affairs. *Id.* at 2:13–22.5.

In denying confirmation of the prior Plan, the court addressed some of Debtor's financial contentions. Civil Minutes, Dckt. 27. The court discussed Debtor's failure to provide for litigation to try

to reverse the foreclosure sale in the prior Plan. The court's comments in connection with the prior Plan were pointed and direct:

> The conduct of Debtor shows a pattern of intentional misrepresentation and misstatement under penalty of perjury. Given that Debtor is represented by counsel, it appears clear that he knew of his obligations to be truthful and accurate and either intentionally hid such assets from his attorney, or the scheme to hide the assets is broader than merely Debtor.

*Id.* at 4. The current Plan does not provide for any more specific terms for a plan or demonstrate any action being taken by, or even to be taken by, Debtor.

**22. 17-26735-E-13 DPC-2** | **GEORGE ALM** **Robert Huckaby** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **1-29-18 [48]**

**Final Ruling:** No appearance at the March 6, 2018 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, Debtor's Attorney, and Office of the United States Trustee on January 29, 2018. By the court's calculation, 36 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") filed the instant Objection to George Alm's ("Debtor") discharge on January 29, 2018. Dckt. 48.

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 13 bankruptcy case on July 20, 2016. Case No. 16-24717. On March 28, 2017, this case was converted to Chapter 7. Debtor received a discharge on August 14, 2017. Case No.16-24717, Dckt. 111.

The instant case was filed under Chapter 13 on October 11, 2018.

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 August 14, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 16-24717, Dckt. 111. 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. 17-26735), 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") 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.17-26735, the case shall be closed without the entry of a discharge.

**23.** **18-20040-E-13** **ARARAT GALSTYAN** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
**DPC-1** **Mark Shmorgon** **2-7-18 [26]**

**Final Ruling:** No appearance at the March 06, 2018 hearing is required.
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David Cusick ("the Chapter 13 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 January 03, 2018, is confirmed.**

Counsel for Ararat Galstyan ("Debtor") shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**24.** **17-27966-E-13** **CATHERINE COOK** **OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE**
**DPC-1** **Michael Noble** **1-17-18 [17]**

**Final Ruling:** No appearance at the March 6, 2018 hearing is required.
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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, Debtor's Attorney, Creditor, and Office of the United States Trustee on January 17, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Notice of Mortgage Payment Change is sustained.**

David Cusick ("the Chapter 13 Trustee") objects to the Notice of Mortgage Payment Change filed by Arvest Central Mortgage Company, ("Creditor") on January 9, 2018. He objects that the Notice

asserts a new, post-dated payment due date of January 1, 2018. Instead, the Chapter 13 Trustee argues that Federal Rule of Bankruptcy Procedure 3002.1(b) requires the new payment date to be at least twenty-one days after the notice. Additionally, the Chapter 13 Trustee argues under the same rule that a notice can only be filed by a creditor that has filed a claim, which this Creditor has not.

Creditor submitted a Notice of Withdrawal of Notice of Mortgage Payment Change on January 19, 2018.

Creditor then submitted a second Notice of Mortgage Payment Change on January 26, 2018, without a Docket Number, after submitting Proof of Claim 2-1 on January 25, 2018. While this second Notice of Mortgage Payment Change is effective in that Creditor has filed a Proof of Claim, it does not cure the Chapter 13 Trustee's objection that it failed to allow twenty-one days' to pass after the notice before the change became effective. The second Notice of Mortgage Payment Change still asserts a new, post-dated payment due date of January 1, 2018.

Because Creditor fails to allow twenty-one days to pass between the Notice of Mortgage Payment Change and the effective date of the change, Creditor's Notice of Mortgage Payment Change does not comply with Federal Rule of Bankruptcy Procedure 3002.1(b). On those grounds, the Objection to Notice of Mortgage Payment Change 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 Notice of Mortgage Payment Change 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 Objection to Notice of Mortgage Payment Change is sustained.

**25. 17-21490-E-13 TOU VANG AND KA MOUA MOTION TO MODIFY PLAN**
**MRL-4 Mikalah Liviakis 1-4-18 [73]**

**Final Ruling:** No appearance at the March 6, 2018 hearing is required.
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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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 06, 2018. By the court's calculation, 59 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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).

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 defaults of the non-responding parties in interest are entered.

**The Motion to Confirm the Modified Plan is granted.**

Tou Vang and Ka Moua ("Debtor") seek confirmation of the Modified Plan because Debtor's income has changed. Dckt. 75. The Modified Plan provides for monthly payments of $525.00 per month for the first 9 months then $610.00 per month for the remaining 51 months of the plan. Dckt. 76. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on February 20, 2018. Dckt. 83. The Chapter 13 Trustee does not oppose the Motion and notes that Debtor is current under the proposed plan, which remains a 100% plan.

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 Tou Vang and Ka Moua ("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 06, 2018, 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.