UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

March 11, 2014 at 2:00 p.m.

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1. 11-48305-C-13 JOHN/DARLENE DOERR — MOTION TO CONFIRM PLAN
PGM-7 Peter G. Macaluso — 1-27-14 [183]
Thru #2

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 24, 2014. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, Creditor Wells Fargo Bank, N.A. ("Creditor") and the Chapter 13 Trustee have opposed confirmation of the plan.

CREDITOR'S OPPOSITION

Creditor objects to Debtors' Motion to Confirm the Fifth Amended Plan on the following grounds:

On November 5, 2013, the Debtors prevailed in their adversary proceeding to avoid (11 U.S.C. § 544) the lien of Creditor in the amount of $222,593.65. Even though Debtors avoided Creditor's lien, Creditor still objects on the basis that the plan fails to satisfy the Chapter 7

liquidation analysis of 11 U.S.C. § 1325(a)(4), which requires that Debtors propose a plan that pays the unsecured claims of creditors at least the amount that they would be paid in a Chapter 7 liquidation. Specifically, Creditor asserts that based on Wells Fargo's appraisal, the Debtors' residence located at 815 Braddock Court, Davis, California, has a value of not less than $417,000.00, and is subject only to a lien secured by a first deed of trust in the amount of $221,320.62.

1. Based upon the appraised value of $417,000.00, and the fact that the Wells Fargo lien was avoided for the benefit of the Debtors' estate, there is equity available to the unsecured creditors of the Debtors' estate of $195,679.381, which Debtor did not provide for in their plan. The appraisal and sworn declaration of the appraiser, Bruch Elisher, was filed in support of the objection. Creditor also objects to Debtors' valuation of their residence in any amount less than $417,00, which was Creditors' appraised value of the property as of December 6, 2011, since property values have increased since that time.

   Creditor asserts that now that its lien has been avoided, the obligation of the Debtors is to pay more to unsecured creditors than they had proposed in their Fourth Amended Plan where they proposed to pay into the Plan $59,406. Currently, not only does the Debtors' Fifth Amended Plan not match what they had proposed before the avoidance of the Wells Fargo lien, but their Fifth Amended Plan proposes almost $10,000 less after avoiding the Wells Fargo lien of $222,593.65.

2. Creditor opposes Debtors' utilization of their homestead exemption and not accounting for the avoided lien. Creditor argues that 11 U.S.C. § 544 provides that any transfer avoided, is preserved for the benefit of the estate. Since the court avoided the Creditor's lien of $222,593.65, the lien is preserved for the benefit of the estate. Under the current plan, the Debtors' proposed Fifth Amended Plan proposes a distribution that is approximately $195,679.38 less than a current liquidation analysis in a Chapter 7 liquidation, therefore not meeting the best interests of creditors standard set forth in 11 U.S.C. § 1325(a)(4). FN.1.

FN.1. In addition to the statutory provisions of 11 U.S.C. § 551 for the automatic preservation of an avoided lien or transfer for the benefit of the estate, the judgment in the adversary proceeding expressly states, "IT IS ORDERED that judgement is for plaintiff and the lien is avoided for the benefit of the estate." (Emphasis added) 12-02153 Dckt. 118.

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3. Creditor further objects on the basis that once the value of the Creditor's avoided lien has been properly scheduled for repayment to holders of unsecured claims, Debtors cannot feasibly complete their Plan as proposed.

4. Creditor also contends that the proceeding was filed in bad faith.

TRUSTEE'S OPPOSITION

Trustee opposes confirmation of the Plan on three grounds: (1.) that the plan fails to pay unsecured creditors what they are entitled to in the event of a Chapter 7 under 11 U.S.C. § 1325(a)(4); (2.) Debtor has not proven that they will be able to make the payments called for by the plan under 11 U.S.C. § 1325(a)(6); and that (3.) the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

Chapter 7 Liquidation

Debtors maintain that the effective plan date is December 6, 2011. Page 2, Motion to Confirm, Dckt. No. 183. Debtor takes this position, even though their plan, Dckt. No. 186, sets forth that the Plan will be effective upon confirmation. Debtors ignore the court's ruling on a prior but similar plan, that ruled "The plan is effective upon confirmation." Civil Minutes, Dckt. No. 176. Trustee argues that Debtors are ignoring 9th Circuit case law holding that postpetition appreciation in the property of the estate is required to insure the benefit of the estate. Gebhart v. Gaughan (In re Gebhart), 621 F.3d 1206, 1210 (9th Cir. 2010); Alsberg v. Robertson (In re Alsberg), 68 F.3d 312, 314-15 (9th Cir. 1995); Hyman, 967 F.2d at 1321; Schwaber v. Reed (In re Reed), 940 F.2d 1317, 1323 (9th Cir. 1991); In re Chappell (9th Cir. BAP 2010), 373 B.R. 73, 79.); Viet Vu v. Kendall (In re Viet Vu), 245 B.R. 644, 647-48 (9th Cir. BAP 2000).

Debtor refers to lay opinion and an appraisal with no docket reference to the appraisal, and the appraisal is not filed with the moving papers. Trustee objects to the consideration of this appraisal when Trustee cannot view the appraisal. Trustee also notes that the Debtor previously maintained that the value of the property was $180,000.00 (Declaration of Debtors in Support of the Motion to Value, Dckt. No. 22 at 1,) where they attempt to assert a value of $380,000 in this motion, so the lay opinion should not appear very convincing.

Debtors refer to an unopposed claim of exemption of $175,000.00 under California Code of Civil Procedure § 704.070, but does not explain what affect 11 U.S.C. § 551 has on the claim of exemption. Debtors do not address of the court's prior order that the lien is avoided for the benefit of the estate. Order, Bankr. E.D. Cal., Adv. No.: 12-02153, Dckt. 118, November 5, 2013.

Debtor has not proven that the plan pays unsecured creditors at least what they would receive in the event of a Chapter 7.

Ability to Make Payments

Trustee also asserts that Debtors have not proven that they will be able to make the payments called for by the plan under 11 U.S.C. § 1325(a)(6). Debtors' original plan, Dckt. No. 5, proposed $100,00 for 36 months and no less than 0% to holders of unsecured claims. The present plan proposes $150.00 for 9 months, $350.00 for 12 months, $754.00 for 39 months, and then a lump sum payment of $15,000 on or before the 60th month, with at least 14.5% to the holders of unsecured claims. Dckt. No. 186. Debtors do not give specific evidence of the ability to pay the lump sum, and instead, state,

> This lump sum will be from a combination of my husband's business as a private investigator, document server, which appears to be increasing this last few months, my regular

> cost of living increases at work, and/or a retirement loan, or a refinance of our real property. Page 2, Declaration of Debtors, Dckt. No. 185.

The court noted in its Civil Minutes in denying the last plan, on Dckt. No. 176, on page 3, that,

> The court is also skeptical of the plan relying on a lump sum payment to be drawn from a future refinance. Many unforseen factors and outside issues could impact the reliability of this projection. Debtors' reliance on refinance undermines the courts confidence in the feasibility of the plan.

Debtors have simply added additional factors, without specific evidence, to make it seem that Debtor will suddenly be able to make more than 15 extra monthly payments, as long as the court will let Debtors delay to the maximum time allowed by the law. Debtors have not provided sufficient evidence to show the ability to make the payments called for by the plan.

Plan Not Proposed in Good Faith

Debtors have proposed their 5th amended plan, and have ignored the rulings of the court as to the effective date of the plan, as to the preservation of an avoided transfer for the benefit of the estate, and as to the difficulty of proving the ability to pay a lump sum based on a refinance. Debtor continues to propose plans that do not comply with the court's prior rulings. Failure to propose a confirmable plan when Debtors are aware of the prior rulings appears to demonstrate bad faith under Factor #4 of In re Warren, 89 B.R. 87, 93 (9th Cir. 1987):

> (4) The accuracy of the plan's statements of the debts, expenses, and percentage of repayment of unsecured debt, and whether an inaccuracies are an attempt to mislead the court;

If Debtor is not going to propose a confirmable plan, and this Debtor has not demonstrated that they are willing to do so after five attempts, Trustee asks that the court consider denying confirmation without leave to amend.

DISCUSSION

Debtors' Chapter 13 Plan is deficient in a myriad of ways. The court notes that Debtors represented that their opinion of the fair market value of the property was $180,000.00 on the first Motion to Value the Secured Claim of Creditor, PGM-1. The adversary case between Debtors and Creditor was filed by Debtors to obtain a declaratory judgment that Debtors are the owner of the fee simple interest in the subject property, and that Creditor has no secured interest in the property adverse to Debtors because Creditor did not properly record a lien on Debtors' property. Debtors alleged that Creditor did not record the deed of trust in the correct county, and thus the recording was not reflected in the chain of title for the property at issue. ¶ 31, Dckt. No. 1, Adv. No.: 12-02153. The court decided in favor of the Plaintiff and ordered that the lien of Creditor is avoided for the benefit of the estate. Order, Bankr. E.D. Cal., Adv. No.: 12-02153, Dckt. 118, November 5, 2013. Debtors now apparently assert that

the value of the property is $380,000.

The different figures cited by Debtors for the fair market value of their residence, coupled with an authenticated appraisal performed by a licensed appraiser (whose declaration is attached as Exhibit "B" in support of Creditor's opposition), which includes a Uniform Residential Appraisal Report that includes an analysis of comparable properties and adjustments for the current condition of the subject property, concluding that the value of the property is no less than $417,000.00 (Exhibit A, Dckt. No. 198), casts doubt over Debtors' less credible, less persuasive lay opinion that the value of the property is alternately $180,000 or $380,000.00.

As Creditor and Trustee point out, Debtors also claim an exemption of $175,000.00 on the property under California Code of Civil Procedure § 704.070, but does not explain what affect 11 U.S.C. § 551 has on the claim of exemption. There is a prior court's order declaring that the Creditor's lien is avoided for the benefit of the estate. Order, Bankr. E.D. Cal., Adv. No.: 12-02153, Dckt. 118, November 5, 2013. 11 U.S.C. § 551 provides that any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate with respect to the property of the estate. 11 U.S.C. § 551. The avoided lien does not seem to have been preserved for the benefit of the bankruptcy estate by the Debtors, as the Plan still seems to proposes a distribution that is less than a distribution under a Chapter 7 liquidation test, therefore not meeting the best interests of creditors standard set forth in 11 U.S.C. § 1325(a)(4).

It is also unclear whether Debtors can make the payments called for by the plan under 11 U.S.C. § 1325(a)(6). Debtors propose paying a lump sum of $15,000 on or before the 60th month of the plan. Debtors do not provide details on how they propose to obtain the lump sum amount, except to state that the lump sum funds will be generated from Joint Debtor's private investigation and document service business, a retirement loan, a possible cost of living increase, and a speculative refinance of Debtors' home. This is not sufficient evidence of Debtors' ability to make and afford the plan payments.

The court also recognizes that this is Debtors' 5th Amended Plan, and that many mistakes committed in Debtors' previous plans have been repeated, and have not been properly corrected. Debtors have not incorporated the court's rulings in the drafting of their plan. Trustee has even alleged bad faith on Debtors' part.

Good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. In re Warren, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing In re Goeb, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and

percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

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

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing In re Brock, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting In re Estus, 695 F.2d 311, 317 (8th Cir. 1982))). Additionally, when considering Chapter 13 dismissal due to bad faith in its filing, bankruptcy courts consider: whether the debtor misrepresented facts in the petition or unfairly manipulated the Code; the debtor's history of filings and dismissals; and whether the debtor intended to defeat state court litigation; and —whether egregious behavior is present. In re Ellsworth, 455 B.R. 904, 917 (B.A.P. 9th Cir. 2011).

Debtors have struggled with including accurate statements of debts in their Chapter 13 Plan, a marker of bad faith under Factor 4 of In re Warren. It is not difficult to understand why Debtors' creditors and the Trustee would assert that Debtors have unfairly manipulated the Bankruptcy Code, and that Debtors have been prosecuting their case in bad faith. Debtors have continually failed to cure the defects of their amended plans, and ignored court rulings in drafting new Chapter 13 Plans.

This case was filed in December 6, 2011. No Chapter 13 Plan has yet been confirmed, after five attempts, over a span of over two years, to propose plans that have not complied with 11 U.S.C. §§ 1322 and 1325(a). Debtors have continually failed to cure the defects of their amended plans, and ignored court rulings in drafting new Chapter 13 Plans. Debtors have ignored court rulings on what needs to be addressed in order to achieve plan confirmation. This case is at serious risk of being dismissed for the Debtors' inability to effectuate a plan. A debtor's failure to timely file a Chapter 13 plan is cause for conversion or dismissal. 11 U.S.C. § 1307(c)(3); see In re Elkin, 5 B.R. 21, 22 (Bankr. S.D. Cal. 1980). The Chapter 13 Trustee has filed previous Motions to Dismiss the Case for prejudicial delay to Debtor's creditors; should Debtors' next proposed plan fail confirmation for the same reasons outlined above, and in the court's previous orders denying confirmation, the court will consider either denying confirmation without leave to amend, or dismissing the case altogether.

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

holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

2. 11-48305-C-13 JOHN/DARLENE DOERR — CONTINUED MOTION TO DISMISS CASE
TSB-1 Peter G. Macaluso — 1-22-14 [179]

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

Correct 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 22, 2014. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 2:00 p.m. on April 22, 2014. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moved to Dismiss Debtors' Bankruptcy Case because Debtor's Motion to Confirm was heard and denied on December 10, 2013. Trustee initially requested the case be dismissed unless Debtors file and serve an amended plan and motion to confirm an amended plan no later than February 5, 2014, or Debtors file a response no later than February 5, 2014 explaining the reason for the delay and why it was reasonable.

FEBRUARY 19, 2014 HEARING

Debtors responded and stated that they filed, set, and served a Motion to Confirm for March 11, 2014. Debtors are current pursuant to the proposed plan and are prosecuting their case. The court determined that Debtors had provided an adequate response to Trustee's concerns and were sufficiently prosecuting their case, as an amended plan was filed January 27, 2014 with a Motion to Confirm. The court determined that cause did not exist to dismiss Debtors' case and the Motion to Dismiss was denied without prejudice.

At this juncture, however, it is unclear whether Debtors can achieve confirmation of a feasible plan that complies with the provisions of 11 U.S.C. § 1322 and 1325(a).

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1307(c)(1).

After having reaped the benefits of Chapter 13 and all of its protections, just dismissing the is case at this juncture may not be proper or in the best interests of all creditors. While Wells Fargo Bank, N.A. may well be anxious to have the case dismissed so that it can correct its lien recording error that led to the lien being avoided, such may not be in the best interests of the estate and creditors. While the Debtors may now be anxious to have this case dismissed, having exhausted 27 months of bankruptcy protection, and start a new case, such may not be in the best interests of creditors and the estate.

Further, when considering dismissals, the court should consider whether a dismissal with prejudice is warranted. Such a motion has not been filed, and in connection with this motion that issue is not before the court. But in light of what has transpired in this case and the large non-exempt equity in the property for creditors holding general unsecured claims, any request to dismiss should inform the court, creditors, Debtors, and other parties in interest the calculation for such relief not being requested as part of the motion to dismiss.

The court sets the motion for further hearing to address the issue whether dismissal or conversion to Chapter 7 is in the best interests of creditors and the estate. This affords not only the Trustee to address the issue, but other creditors, the Debtors, and the U.S. Trustee. Without considering the Wells Fargo Bank, N.A. unsecured claim created by avoiding its lien, approximately $80,000.00 in priority and general unsecured claims have been filed.

The court continues the hearing on the Motion to Dismiss to 2:00 p.m. on April 22, 2014. On or before March 21, 2014 the Chapter 13 Trustee shall file and serve on all parties in interest a notice of continued hearing and a Supplemental Pleading addressing whether the case should be dismissed or converted. On or before April 4, 2014 the Debtors and other parties in interest shall file a Response to the Trustee's Supplemental Pleadings. On or before April 15, 2014 all parties in interest may file a Reply, if any, to the Responses filed by the Debtors and other parties in interest.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court,

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

IT IS ORDERED that the hearing on the Motion to Dismiss to 2:00 p.m. on April 22, 2014. On or before March 21, 2014 the Chapter 13 Trustee shall file and serve on all parties in interest a notice of continued hearing and a Supplemental Pleading addressing whether the case should be dismissed or converted. On or before April 4, 2014 the Debtors and other parties in interest shall file a Response to the Trustee's Supplemental Pleadings. On or before April 15, 2014 all parties in interest may file a Reply, if any, to the Responses filed by the Debtors and other parties in interest.

3. 13-36122-C-13 CHARLES/JODI THARP MOTION TO CONFIRM PLAN
AEB-2 Andrew E. Bakos 1-15-14 [26]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 15, 2014. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. That requirement was met.

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

The court's tentative decision is to grant the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee objects to Debtors' Motion on the basis that no specific date for the lump sum to be paid into the plan was listed on the plan. Debtor's Plan states in Section 1.02, that

> $9,600.00 from 2012 income tax refunds to be paid to the Trustee within 6 months of confirmation.

Trustee is unable to input this amount into the system as the Plan has not yet been confirmed, and Trustee has no way of knowing when the Plan will be confirmed. The Trustee would not object to Debtor stating a specific date for the lump sum to be paid into the Plan in the order confirming.

Debtors' Reply

Debtors respond by stating that the refund will be paid no later than June 15, 2014. No amended plan is currently anticipated.

Debtors have responded with the date that Debtors anticipate the lump sum will be paid. The Trustee's singular objection having been resolved, the court determines that the amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on January 15, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. 14-20024-C-13 LE AIRHEART MOTION TO CONFIRM PLAN
CAH-2 C. Anthony Hughes 1-23-14 [19]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 23, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee, however, opposes confirmation of Debtor's Plan on the basis that Debtor is delinquent $1,540.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,540.00 is due on March 25, 2014. The case was filed on January 2, 2014, and the plan in Section 1.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. Debtor has paid $0.00 into the plan to date.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

5. 12-36135-C-13 HILARY BARBOZA MOTION TO MODIFY PLAN
EJS-1 Eric John Schwab 2-3-14 [21]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2014. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on February 3, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. 14-20638-C-13 MARK TRIEBWASSER
EJS-1 Eric John Schwab

MOTION TO EXTEND DEADLINE TO FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION
2-6-14 [9]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on February 6, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Extend the Time to File Schedules, Statements, and Chapter 13 Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion to Extend the Time to File Schedules, Statements, and Chapter 13 Plan is denied. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor seeks an order extending the deadline to file all necessary schedules and required information for this Chapter 13 bankruptcy caes. Debtor states needs additional time to gather the necessary business documents and expense reports to generate an accurate financial statement for the Trustee and the court. Debtor requests that the time to file all necessary documents be extended to March 11, 2014.

Debtor has not, however, made the requisite showing of why Debtor is entitled to an extension of time to file schedules, statements, and a Chapter 13 Plan, and why cause exists for the court to do so under Federal Rule of Bankruptcy Procedure 1007, has not properly followed the procedures of this court to make a request for such an extension.

Federal Rule of Bankruptcy Procedure 1007(c) provides that all of the schedules, statements and other necessary documents must be filed within 14 days after filing the petition. The court has the authority to extend the deadline for cause shown and on notice to the United States Trustee. Fed. R. Bankr. P. 1007(c). The practice of this court has been to grant a 14-day extension for a debtor to file, absent a filing not appearing to be in good faith, upon an *ex parte* motion. Here, however, Debtor has filed this as a noticed motion under Local Bankruptcy Rule 9014-1(f)(1), not following the *ex parte* procedure used by the court in considering requests for extension to file. Additionally, the bankruptcy case was filed on January 24, 2014, with the documents becoming due by January 31, 2014. With

the normal 14-day extension, Debtor's documents would have become due under Federal Rule of Bankruptcy Procedure 1007(c) by February 18, 2014, allowing for the holidays during this time period.

As of March 10, 2014, the date that the court is reviewing the docket, the Debtor has still not yet filed the documents that have come due. This is in contravention to Debtor's promises in his Motion to Extend, whereby Debtor makes the request to file all necessary documents by March 11, 2014. In substance, by filing the Motion on February 6, 2014, and not setting it for hearing until March 11, 2014 (a whopping 46 days after the case, when the motion could have been set on 14-days notice), the Debtor is attempting to grant himself a *de facto* extension. Debtor is attempting to obtain an attorney generated extension of time, circumventing the court's duties in the proper administration of cases and documents filed or to be filed with the court. This is not proper.

Moreover, no reason is shown for why these Debtors need more than two months to file the basic documents disclosing their assets, creditors, and financial information. Debtor directs the court's attention to the Declaration of Counsel, attached in support of the Motion, Dckt. No. 11, to determine the factual circumstances as to why Debtor is requesting additional time to file his bankruptcy documents. It is not the court's responsibility to sift through Debtor's pleadings and evidence to determine why Debtor is seeking the relief requested. The Motion states that Debtor is requesting extension of time to file "all necessary documents," without citing to any legal authority. Failure to cite legal authority justifying the relief sought is a ground for denial of the motion. LBR 9014-1(d)(5), 1001-1(g). This is not a sufficient showing of cause under Federal Rule of Bankruptcy Procedure 1007.

Indulging the Debtor's request to assume the responsibility of reviewing the Debtor's supplemental pleadings, the court notes that the evidence is still deficient in its merits, and suffers from the procedural defect of not being a sworn statement that declarant certifies to be true and correct, and drawn from his personal knowledge of the facts of the case (this issue is further discussed below). Counsel's declaration, filed as Dckt. No. 11 on February 6, 2014, merely repeats the empty assertions of the need to obtain an extension of time contained in the Motion: Counsel simply states there has been "significant creditor activity," including a bank levy and unlawful detainer. No information is provided shedding light on any of these events.

The court cannot determine how these alleged circumstances would affect Debtor's ability to file their bankruptcy paperwork, and constitutes cause for the court to waive the provisions of 11 U.S.C. § 521(i)(1), which provides for the automatic dismissal of a case where an individual debtor in a Chapter 13 or 7 case fails to file all of the information required for their bankruptcy case within 45 days after filing the petition. Debtor fails to provide adequate information on the reasons for why Debtor is in need of additional time to assemble his schedules, statements, and Chapter 13 Plan.

DECLARATION OF ERIC J SCHWAB

Counsel's declaration does not contain a separate endorsement paragraph, stating that the declaration is made under the penalty of perjury. The requirements for what constitutes an adequate declaration are

set out in 28 U.S.C. § 1746, which provides:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> > (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> > (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Counsel is advised that his firm should update its declaration forms to be in unqualified compliance with § 1746 as the next time this court, or other judges sitting in this District may well find the declaration to be insufficient and deny the motion without prejudice and without a hearing.

The court has no evidence before it to determine if cause is sufficient to extend the deadline to file. If the Debtor can prosecute a case, prepare the basic documents required, and advance a Chapter 13 Plan, he can file a new bankruptcy case. Based on the lack of competent evidence before the court on Debtor's need for an extension of deadlines to file the required bankruptcy paperwork, and the Motion's failure to conform to the requirements of Federal Rule of Bankruptcy Procedure 9013, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Time to

File an Objection to Discharge filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Extension of Deadlines is denied.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 6, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Confirm the Modified Plan, as amended by the Debtor in his Response and confirmed by the Trustee in his Reply. No appearance at the March 11, 2014 hearing is required.

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

This case was continued from February 25, 2014. The Chapter 13 Trustee objected to confirmation of Debtor's Modified Plan because Trustee is uncertain whether Debtor can make the payments required under the plan. 11 U.S.C. § 1325(a)(6). Debtor had not filed current statements of income and expense. The Debtor did file copies of the statements with its original petition, but Debtor had moved since filing of the petition. A change of address appears at Dckt. 34, but the current rent expense had not been reported.

Substitution of Counsel

The court noted that in a loss to the Sacramento legal community Debtor's original attorney of record had recently passed away. The court decided to continue the hearing to permit Debtor the opportunity to file the updated information requested by Trustee. On February 21, 2014, Debtor filed a substitution of counsel, to make Aaron Koenig Debtor's counsel of record in the case. The court issued an order that Koenig be substituted in as attorney of record in place of Debtor's deceased attorney, John A. Tosney. Order, Dckt. No. 49.

Debtor's Response to Trustee's Objection to Confirmation

Debtor states that he has filed amended schedules, and provided a declaration in regards to the changes in income and to his expenses. The Amended Schedules are attached to this Response as Exhibits "C" and "D."

Debtor states that Debtor's monthly disposable income has increased to $329.96. Therefore, Debtor requests confirmation of his modified plan, provided that the order confirming authorizes monthly plan payments to the Trustee of $300 for the first 27 months of the plan, and $329.96 for the remaining term of the plan. Dckt. No. 52.

Trustee's Reply to Debtor's Response

Trustee states that he would have no objection to confirmation if Debtor includes in the order confirming plan, that plan payments are $300 for the first 27 months, and then commencing March 25, 2014, the payment shall be $329.96 for the remaining 33 months of the Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 6, 2013, with the amendments that plan payments are $300.00 for the first 27 months, and then commencing on March 25, 2014, the payment shall be $329.96 for the remaining 33 months of the plan, is confirmed.
>
> **IT IS FURTHER ORDERED** that counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

8. 13-21455-C-13 JOEY WONG MOTION TO MODIFY PLAN
JAD-4 Jessica A. Dorn 1-28-14 [79]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2014. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on January 28, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9.	11-43271-C-13 PJR-12 Thru #10	CORINNE SAUVE Philip J. Rhodes	OBJECTION TO CLAIM OF ALLY FINANCIAL, CLAIM NUMBER 1 2-5-14 [216]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 4, 2014. By the court's calculation, 35 days' notice was provided. 44 days' notice is required. That requirement was not met.

Tentative Ruling: This Objection to a Proof of Claim was not properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1. Local Bankruptcy Rule 3007-1(b) requires that the objecting party filing an Objection to Proofs of Claim must file and serve the objection at least forty-four (44) days prior to the hearing date, unless the objecting party elects to give the notice permitted by Local Bankruptcy Rule 3007-1(b)(2).

The objecting party has not indicated that the Objection was set for hearing on 30 days' notice, pursuant to the alternative noticing procedure set out by Local Bankruptcy Rule 3007-1(b)(2). The Notice of Hearing simply advises potential respondents to file written responses on or before February 25, 2014. The court also notes that although the Proof of Service reflects that the Notice, Objection Request for Judicial Notice with Exhibits, and Declaration of Debtor were filed on February 4, 2014, Dckt. No. 220, the Notice of Hearing is dated on February 5, 2014. Dckt. No. 217.

Regardless, because the pleadings and supporting documents for the Objection to Claim were served on February 4, 2014, 35 days prior to the hearing, proper notice under Local Bankruptcy Rule 3007-1 was not provided.

The Objection to Claim of Ally Financial is dismissed without prejudice. No appearance required.

DEFECTS OF SERVICE

Service has not been effected as required by Fed. R. Bankr. P. 7004(b)(3). Federal Rule of Bankruptcy Procedure 7004(b)(3) requires that copies of pleadings must be made to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or the law to receive service of process, if the entity served is a domestic or foreign corporation, partnership, or other unincorporated association. Fed. R. Bank. P. 7004(b)(3), 9014.

The respondent creditor in this case, Ally Financial, Inc., is listed on the California Secretary of State business search as an active corporation doing business in Southfield, Michigan. (http://kepler.sos.ca.gov/). As a corporation, the copy of Debtor's Objection should have been made to an officer, managing or general agent, or any other authorized agent of Ally Financial, Inc. pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(3). The Proof of Service, however, shows that Ally Financial was not served at the attention of an officer or authorized agent.

Moreover, the Proof reflects that Ally Financial was served at a P.O. Box address in Roseville (differing from the address listed in the Business Entity Detail on the California Secretary of State website). Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Thus, the Objection is dismissed on the additional defective service.

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 Ally Financial filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Claim of Ally Financial is dismissed without prejudice.

10.	11-43271-C-13 PJR-12	CORINNE SAUVE Philip J. Rhodes	OBJECTION TO CLAIM OF PLACER COUNTY TAX COLLECTOR, CLAIM NUMBER 5 2-5-14 [221]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 4, 2014. By the court's calculation, 35 days' notice was provided. 44 days' notice is required. That requirement was not met.

Tentative Ruling: This Objection to a Proof of Claim was not properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1. Local Bankruptcy Rule 3007-1(b) requires that the objecting party filing an Objection to Proofs of Claim must file and serve the objection at least forty-four (44) days prior to the hearing date, unless the objecting party

elects to give the notice permitted by Local Bankruptcy Rule 3007-1(b)(2).

The objecting party has not indicated that the Objection was set for hearing on 30 days' notice, pursuant to the alternative noticing procedure set out by Local Bankruptcy Rule 3007-1(b)(2). The Notice of Hearing simply advises potential respondents to file written responses on or before February 25, 2014, with the court. Dckt. No. 225. The court also notes that although the Proof of Service reflects that the Notice, Objection Request for Judicial Notice with Exhibits, and Declaration of Debtor were filed on February 4, 2014, Dckt. No. 225, the Notice of Hearing is dated on February 5, 2014. Dckt. No. 222.

Regardless, because the pleadings and supporting documents for the Objection to Claim were served on February 4, 2014, 35 days prior to the hearing, proper notice under Local Bankruptcy Rule 3007-1 was not provided.

The Objection to Claim of the Placer County Tax Collector is dismissed without prejudice. 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.

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 Placer County filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Claim of the Placer County Tax Collector is dismissed without prejudice.

11. 14-20573-C-13 ROBERT NEWHALL
SAC-1 Scott A. CoBen

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
2-10-14 [15]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 10, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be $3,600.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 10454 Lomita Avenue, Felton, California. The Debtor seeks to value the property at a fair market value of $275,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $271,400.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $99,500. Therefore, the respondent creditor's claim secured by a junior deed of trust is under-collateralized. The creditor's secured claim is determined to be in the amount of $3,600.00. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 10454 Lomita Avenue, Felton, California, is determined to be a secured claim in the amount of $3,600.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $275,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 23, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee, however, opposes confirmation of the plan on multiple grounds.

1. Debtors' Plan may not have been proposed in good faith under 11 U.S.C. § 1325(a)(3), and the action of Debtors filing this petition may not have been in good faith.

   Schedule D reflects that Debtor bought a 2013 Toyota Highlander on October 13, with a balance of $19,915.00. Dckt. No. 1 at page 13, and a 2014 Toyota Tundra on November 13 with a balance of $29,000. Dckt. No. 1 at page 1. A claim has been filed, showing that the first transaction was a lease entered into on October 12, 2013, which called for 36 payments and first payment of $617.42, due on October 12,2013. The claim reflects a 1998 Lexus ES 300, which was traded in and valued at $700.00. Claim No. 2, Page 5. The lease term is $617.42 per month for 36 months, for total payments of $22,227.12. The claim also reflects that there will be a residual value of $22,011.00 at the end of the lease term.

   Another claim has been filed, showing that the second transaction was a purchase entered into on November 3, 2013, calling for 83 payments with the first payment of $501.90, due on October 3, 2013. Claim NO. 5. The claim also reflects that a 2005 Acura TL with 91,732 miles was traded in and valued at $7,250.00.

   It appears that Debtors made no attempt to moderate their expenses,

and instead chose to purchase a brand new full size truck at $36,000.00, and leased a new SUV with an ending cost of over $40,000.00, should the Debtor retain the vehicle beyond the 36 month lease term. Debtors' declaration indicates that they purchase/leased the vehicles after meeting with counsel. Debtors provide no information showing that they attempted to shop around, or why they purchased/leased vehicles at the costs and expenses that they chose.

A. Petition: Debtor traded away a vehicle apparently worth at least $7,250.00, the Acura, and a vehicle worth at least $700.00, the Lexus, and incurred $48,916.00 of new debt in the sixty days prior to filing. The first payment on one of the vehicles was not due until after filing the petition. Debtors have not demonstrated why the purchase and lease of two brand new vehicles was reasonable and necessary.

B. Plan: Debtors' Plan states: "Debtors; will pay $1 for month one, $680.00 from months 2-30. Debtors' will pay off their 401k loan and will increase the plan payment of $935 from months 31-36. Debtors' will pay off their lease and increase the plan payment to $1375 from months 37-60 or they will seek to modify their plan and secure court approval to finance another vehicle." Dckt. No. 27. This would be an increase of only $440.00 in the 37th month when the lease payment is $617.42. It appears that Debtors do not intend to increase plan payments. If Debtors do not increase the plan upon conclusion of the lease, the plan will not pay 72% to unsecured claims. The plan will pay approximately 42% if the payment remains $975.00 for the last 30 months of the plan.

C. Factors: Debtors cannot confirm a plan unless their bankruptcy petition is filed in good faith. § 1325(a)(7). The Debtors have the burden of proof on each element of confirmation by a preponderance of the evidence. *U.S. v. Arnold and Baker Farms* (*In re Arnold and Baker Farms*), 177 B.R. 648, 654 (9 Cir. BAP 1994) (judg't aff'd 85 F3d 1415 (9th C.A. 1996), cert. denied 519 U.S. 1054 (1997).) "Good faith" is essentially an element of a debtor's qualification to be in chapter 13 in the first place. See *Marrama v. Citizens Bank of Massachusetts* (*In re Marrama*), 549 U.S. 365, 373 (2007).

Good faith factors as defined by *Fidelity & Casualty Company of New York v. Warren* (*In re Warren*), B.R. 87 (9th Cir. BAP 1988) include consideration of the amount of the proposed payments and the amounts of the debtors' surplus, and the motivation and sincerity of the debtor in seeking Chapter 13 relief. Trustee states that Debtor has disposable income that is not being paid into the plan. The motivation and sincerity of Debtors in pursuing Chapter 13 relief where they replace not one, but two cars 60 days before filing, appears to contravene the factor of sincerity in debtor seeking relief.

2. Debtors' Plan is not Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are above median income. Line 59 of Form 22C

lists monthly disposable income of $595.51. Dckt. No. 28. Based on the applicable commitment of 60 months, the holders of unsecured claims would be entitled to $35,730.00. Although the plan proposes to pay 72% or approximately $57,594.00 to general unsecured claims, this is based on Debtors proposing to increase their plan upon payoff of their auto lease in 36 months. In Section 6.1 of the plan, Debtors indicate that they will pay off their lease and increase the plan payment from $935.00 to $1,375.00 for the remainder of the plan, or they will modify their plan "and secure court approval to finance another vehicle."

Debtors are failing to propose all disposable income into the plan, by only proposing to increase the plan by $440.00 when the lease payment is $617.42 per month, 11 U.S.C. § 1325(b). It appears that the plan should increase by $617.00 to $1,552.00 in the 36th month.

3. Debtors' declaration in support of the Motion to Confirm provides insufficient evidence in support of confirmation and merely states the components of 11 U.S.C. § 1325(a). Debtors bear the burden of proof in meeting the requirements of confirmation. *In re Wolff*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982)). For example, debtors should provide factual evidence regarding their ability to make the plan payments based on their employment, what is being provided to the creditors in the case, what led to the bankruptcy, what caused the need to file multiple amended plans, what assets Debtors have, how they compute a Chapter 7 liquidation analysis, and the distribution to be made under the Chapter 13 Plan, etc.

4. Debtors filed an Amended Schedule J, reducing various expenses, on January 23, 2014. Debtors failed to explain the changes to their household expenses, and how they are able to reduce expenses for household items like home repair/ maintenance, food, and clothing or why the initial budget was incorrect. Dckt. No. 26.

REPLY TO TRUSTEE'S OBJECTION TO MOTION TO CONFIRM PLAN

On March 4, 2014, Debtors filed a reply to the Trustee's Objection to the Motion to Confirm Plan. Debtor state that the "need to have reliable transportation to get to work" during the five year plan, or they cannot make their plan payments. Declaration of Debtors, Dckt. No. 46.

Debtors state that prior to contacting counsel, they "knew that they needed at least one new car." ¶ 1, Motion, Dckt. No. 45. Joint Debtor Lisa Abila describe Debtors' financial difficulties in more detail in her Declaration, stating that Debtors' income was reduced "due to State budget problems from 2009 to 2010." Debtor makes vague references to "get[ting] back" Debtors' income in 2010, and that during the period of reduced income that they encountered from 2009 to 2010, they used all of their savings and credit cards to "get by," and paid for their daughter's college income. Debtor states that Debtors provided assistance to their Abila's and were "forced to file bankruptcy" in light of approaching retirement with no savings and too many bills. Declaration of Debtor, Dckt. No. 46. This explanation of why Debtors filed their bankruptcy and their work history peripherally addresses Trustee's concerns that Debtors did not provide sufficient factual evidence, regarding their financial circumstances and their ability to make payments. This information, however, should have been filed in Debtors' original declaration accompanying their Motion to Confirm.

Debtors also provide copies of their W-2 tax forms for the years of 2008-2012, which they state shows the fluctuation in income during the years of 2008-2012. Debtor asserts that because of the Debtors' financial difficulties, they had no down payment and bad credit when they purchased the vehicles, and could not get preapproved for a loan. This apparently left Debtors with "new vehicles as [their] only option." ¶ 3, Declaration, Dckt. No. 46. Debtors further attribute the purchase of their Toyota Tundra and Highlander to a more free two year maintenance contract and the "reliability of Toyota" compared to other manufacturers. *Id.*

DISCUSSION

In their Reply, Debtors further assert that these vehicle payments are very close to some undefined "IRS standard" for the reasonableness of car payments (citing no authority for such a standard or if it is a reference to the § 707(b) expenses), and that Trustee is unfairly complaining that Debtors are reducing their expenses to make the plan payments. Trustee, however, is not questioning why Debtors are reducing their expenses, but rather *how* Debtors have reduced their expenses by $120 out of their monthly budget, when it is the duty of Debtors to accurately represent their expenses at the time of the first instance of the filing of the petition, and to employ their best efforts in keeping expenses low and contributing all disposable income into the plan to maximize plan payments.

Furthermore, the court finds Debtors' response to Trustee's concerns regarding the feasibility of the plan, on the basis that Debtors would only be paying an increase of $440.00.00 when the lease of one of the vehicles expires, to be unsatisfactory. The Trustee points out that upon expiration of the lease, the lease payment of $617.42 will be freed up to be paid into the plan. Debtors respond by stating that the $177 difference in the proposed increase plan payment, and the money made available by the expiration of the lease, will be used for "alternate transportation after losing the leased vehicle." The language of Debtors' Plan, however, did not include this explanation of their intention to use the $177 difference to pay for alternate transportation, and the language of their Plan, which proposes that either the plan payments will be increased, or Debtors will seek court approval to finance another vehicle. The court agrees with Trustee's contention that the increased plan payment is speculative, and that if Debtors do not increase the payments after the lease ends, the plan will pay approximately 42% if the payment remains $975.00 for the last 30 months of the plan.

Lastly, Debtors have not provided a good faith explanation of why Debtors, who are in grave financial distress and have been driven to seek the extraordinary relief of the Bankruptcy Code, are compelled to purchase and lease not only one, but two new cars: a 2013 Toyota Highlander on October 13, 2013 with a balance of $19,915.00, a 2014 Toyota Tundra on November 13, 2013 with a balance of $29,000. Debtors state that they are in need of transportation to travel to work to be able to fund their plan, but provide no explanation of why it was necessary for Debtors to purchase and lease two recent vehicles that will suffer rapid depreciation after a purchase or lease. It is commonly known that during the first three years a car suffers the greatest depreciation. It is likely that if Debtor were to buy or lease a 2010 or 2011 vehicle, instead of leasing a new or almost new 2013 vehicle, or purchasing a brand new 2014 vehicle, Debtors' plan payments would be significantly less.

The court is also alarmed that the transactions for both vehicles were made within a 2-month period before Debtors filed for their Chapter 13 bankruptcy. Debtors traded an Acura apparently worth at least $7,250.00 to incur $48,916.00 of new debt in the sixty days prior to filing of the petition on November 23, 2013. This was done after consultation with counsel, who should have advised Debtors that this lease and purchase of two brand new vehicles, less than 60 days before the commencement of their case, is not in the best interests of Debtors, and casts suspicion on Debtors' intent to reorganize their finances in good faith. Debtors have not demonstrated that the purchase of the lease of the vehicles a necessary, and why incurring new debt $48,916.00 in a plan that proposes to pay only $1 for month one, and $680 for months 2-30, $935 for months 31-36, and speculatively $1,735 from months 37-60 for the duration of the plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

13. 13-35889-C-13 LA KEISHA MATLOCK
MRG-1 Pro Se
Thru #14

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
1-28-14 [31]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 28, 2014. By the court's calculation, 35 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Capital One Auto Finance ("Creditor") opposes confirmation of Debtor's Chapter 13 Plan. On January 10, 2014, Creditor filed its Proof of Claim in the amount of $20,738.32, including arrearage in the amount of $798.58. The claim is secured by personal property commonly described as: 2005 Mercedes E500, vehicle identification number ending in the last four digits, #2989. According to NADA Guides, the reference guide most commonly used for valuation data by Creditor in determining the value of this type of collateral, the clean retail value of the Property is $13,075.00.

Creditor asserts that pursuant to 11 U.S.C. § 1325(a)(5)(B), the value of the property to be distributed is less than the allowed amount of Creditor's claim. In her Plan, Debtor has provided for Creditor's claim under Class 2 with a secured claim amount of $9,973.00. However, at the time of the filing of this Objection, the motion to value property under § 506(a) had not been filed, ruled on nor granted determining the allowed value of Creditor's claim.

Creditor also argues that pursuant to 11 U.S.C. § 1325(a)(5)(B), the plan fails to provide sufficient payments to Creditor for adequate protection. Debtor has provided an interest rate of only 4.00% on Secured Creditor's claim. However, the original interest rate on Secured Creditor's claim is 18.90%. Debtor fails to provide adequate protection on Creditor's

secured claim. Creditor requests that the Court look to the national prime rate at the time of this objection and adjust the interest rate upwards to 6.00% to reflect specific factors including the nature of the loan, the quality of the Secured Creditor's security, and the risk of default; or such other rate of interest as determined by the Court at the confirmation hearing.

Under 11 U.S.C. § 1325(a)(6), the Plan does not provide for how Debtor will be able to make all payments under the Plan and to comply with the Plan. According to the plan, Debtor will make monthly payments of $972.00 for 60 months to the Trustee. However, according to the Debtor's Schedules, Debtor has a monthly net income of -$169.00 and states under penalty of perjury that she is expecting a decrease in income after the current job is completed. Creditor argues that this amount is insufficient to fund the plan and is unfeasible once Secured Creditor's claim, an additional $13,075.00, is fully provided for.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on February 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

2. Debtor is $972.00 delinquent in plan payments, and the next scheduled payment of $972.00 is due February 25, 2014. The case was filed on December 20, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has filed $0.00 into the plan to date.

3. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of Capital One Auto Finance on a 2005 Mercedes, but has failed to file a Motion to Value Collateral to date.

4. On or about January 24, 2014, the court issued an Order to Show Cause, Dckt. No. 29, for Debtors failure to pay filing fees pursuant to the order, granting leave to pay the fees in installments. Dckt. No. 7. Debtor has not yet paid the installment fee of $70.00 due by January 21, 2014. The Order to Show Cause, however, was discharged on February 19, 2014, upon the court's determination that the Debtor had paid the fees upon which the order was based. Civil Minutes, Dckt. No. 46.

5. Trustee also notes a number of defects with Debtor's Petition. The Petition fails to list Debtor's residential address, and lists only a post office box for mail. The petition also fails to adequately disclose prior cases. Two cases are listed as "unknown" case numbers. A PACER search reveals a total of five cases filed by Debtor: 08-38851m 09-40556, 10-38946, 13-25864, and the instant case.

6. Trustee also highlights additional defects with the actual plan.

   a. Secured/Priority Debtors Classified Improperly: Debtor's Section 2.08 of the Plan lists Class 1 Debts to the US Department of the Treasury and California Franchise Tax Board. These debts are listed on Debtor's Schedule E as priority debts. A review of the claims filed in the case show that the Internal Revenue service, Court claim No. 8, filed a claim for $950.00 secured, $1,465.70 priority, and $1,465.70 priority, and $13,893.70 general unsecured, for a total claim of $16,309.40. Franchise Tax Board (Court Claim No. 9), filed a claim for $6,840.25 priority and #3,890.81 general unsecured, for a total claim of $10,631.06. The secured portion of the IRS claim should be classified as a Class 2 debt in section 2.09, and the priority portions of both claims should be provided for as Class 5 debts in section 2.13 of the plan.

   b. Purchase Money Security Not Indicated: Section 2.09 of the Plan lists two secured debts for vehicles to GM Financial and Capital One Auto Finance. The plan fails to indicate if these debts are secured by a Purchase Money Security Instrument, and therefore are entitled to receive adequate protection payments pursuant to 11 U.S.C. § 361(1).

   c. Unsecured Total Incorrect: Section 2.15 of the plan indicates that Debtor proposes to pay no less than 0% of unsecured debts totaling $0. A review of Debtor's Schedule F indicates that there are unsecured debts of $24,445.00.

7. Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total $950.00 and Debtor proposes to pay 0% to unsecured creditors. According to Schedules B and C, all Debtor's personal property is non-exempt. Schedule C indicates the law providing exemption as 11 U.S.C. § 522(b)(2), which is not a proper exemption code. Trustee's Objection to Exemptions (TSB-2) is set for hearing on March 25, 2014.

8. The plan is not Debtors' best efforts under 11 U.S.C. § 1325(b).

Schedule J indicates negative net income. Debtor's budget, however, includes payments which are provided for in the plan. Line 17a lists a car payment of $615.00. Line 17b lists a car payment of $798.00. Both of Debtor's vehicles are provided for in Class 2 of the Plan. Adjusting the schedule for this error causes the monthly net income to be $1,244.00, while Debtor proposes a plan payment of only $972.00 per month.

9. Debtor has not properly completed all question on the Statement of Financial Affairs, Dckt. NO. 11. Item #1 fails to list Debtors' 2013 income. This form requires all income for the two years prior to filing. Item Nos. 7, 11, 14, and 15 are not filled out and not marked as "none."

Based on the manifold concerns raised by Trustee, some of which overlap with those expressed by the Creditor Capital One Auto Finance in Creditor's Objection to Confirmation of Plan, MRG-1, Debtor's Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court will also consider dismissing this case if a new plan is not filed by Debtor within a reasonable time. The objection is sustained and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.