

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 1, 2017 at 2:00p.m.

1.	17-23300 -C-13	VIDAL/CONSUELO GRAGEDA	OBJECTION TO CONFIRMATION OF
	DPC-1	Thomas Gillis	PLAN BY DAVID P. CUSICK
			6-28-17 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 28, 2017. Fourteen days' notice is required. That requirement is met.

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

The court's decision is to continue the Objection to August 29, 2017 at 2:00 p.m.
--

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

A. The plan relies upon a motion to avoid lien which has not been filed to date.

Debtors respond indicating that a Motion to Avoid Lien has been filed and set for hearing on August 29, 2017, and requests that the Objection be

continued to that date.

The court will continue the Objection to Confirmation to August 29, 2017 at 2:00 p.m. to coincide with the Motion to Avoid Lien.

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

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

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

IT IS ORDERED that the Objection is continued to August 29, 2017 at 2:00 p.m.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, parties requesting special notice, and Office of the United States Trustee on June 2, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 28-1 of HSBCC Bank USA, N.A. is sustained and the claim is disallowed.

Laqueta Martin, the Chapter 13 debtor ("Objector") requests that the court disallow the claim of HSBC Bank USA, N.A. ("Creditor"), Proof of Claim No. 28-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$702,061.11. Objector asserts that the creditor filed the claim after the applicable deadline for the time to file claims. The deadline to file claims was January 4, 2017 and the claim was filed on January 27, 2017.

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)*,

The creditor concedes that the proof of claim was filed after the deadline. However, the creditor points out that even if the objection is sustained, the creditor will still have a lien secured on property of the debtor and will still be able to exercise its nonbankruptcy rights outside of the chapter 13 plan.

As the creditor has pointed out, there is no argument that the claim was filed timely. As a result, the claim cannot share in chapter 13 plan payment distribution. The creditor may have other nonbankruptcy remedies to enforce its lien, however, chapter 13 plan payments are not one when the claim is not filed timely pursuant to the time requirements of FRBP 3002(c).

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of HSBC Bank USA, N.A., Creditor filed in this case by the chapter 13 debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 28-1 of HSBCC Bank USA, N.A. is sustained and the claim is disallowed.

3. [15-28606](#)-C-13 MARY LOU MURPHY
LR-4 Lauren Rode

MOTION TO VACATE DISMISSAL OF
CASE
7-5-17 [[101](#)]

DEBTOR DISMISSED: 06/02/2017

Tentative Ruling: The Motion to Vacate Dismissal of Case has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2017. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Vacate Dismissal of Case is denied.

Debtor, Mary Lou Murphy, requests that the court vacate dismissal of her case. Debtor's case was dismissed on June 2, 2017 following a hearing on the chapter 13 trustee's Motion to Dismiss. The reason for the dismissal was that the debtor was delinquent on plan payments.

Debtor asserts that she was delinquent on plan payments because she did not realize the true amount of her plan payments and did not know in time to cure the deficiency. Debtor additionally represents that she has the money to cure the delinquency now.

The court is inclined to grant the motion if and only if the debtor makes the required payments to the Trustee by the time of the hearing. The only dispute is the amount of delinquent funds, and provided that that delinquency is cured, the court is inclined to grant the motion and vacate dismissal. Until the court has proof of the payment, the motion will be 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 Vacate Dismissal, filed in this case by the chapter 13 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 Vacate Dismissal is denied.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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.

Kelly Guzman ("Debtor") seeks confirmation of the Modified Plan because of a reduction and interruption of income in the form of workers compensation benefits expiring. Debtor now receives Social Security disability income. Dckt. 54. The Modified Plan would decrease plan payments from \$625 monthly to \$254 monthly. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 27, 2017. Dckt. 62. Trustee argues that more detail may be needed in regard to certain expenses. Trustee notes that Debtor proposes an increase in pet care costs by \$100.00 monthly for flea treatments and skin care products, but Debtor does not disclose the number or type of pets. Trustee further notes that an increase of \$110.00 monthly is proposed to be paid toward an appliance loan, but that Debtor is not specific as to the type of appliance.

No further documentation has been provided by the debtor.

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

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

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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 June 17, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Because of the court's schedule, an actual hearing is required at a later date. The court will issue its ruling following the continued hearing from the parties' pleadings.

<p>The hearing on the Motion for Contempt is continued to August 29, 2017 at 2:00 p.m.</p>

Simon Fortes ("Debtor") moves for an order to show cause concerning violation of the automatic stay provided for under 11 U.S.C. § 362 by AT&T ("Creditor"). Debtor seeks declaratory and injunctive relief by the court to determine whether (a) debtors should be held harmless for the pre-petition liability arising from the demand for pre-petition claims in the amount of \$1,194.32, against the debtor with actual knowledge of the Chapter 13 Plan, intentionally not participating by filing a proof of claim, Confirmation & Discharge and (b) whether Creditor is in violation of § 1328 by seeking a claim and refusing to release the claim, and seeking personal liability from debtor in a total amount of \$1,194.32 regardless of the duty to release the claim. FN.1. Debtor additionally requests attorney's fees and costs.

FN.1. The court notes that among the problems with the filing of this Motion is a request for declaratory and injunctive relief. Federal Rule of Bankruptcy Procedure 7001(9) states that an adversary proceeding includes "a proceeding to obtain a declaratory judgment" Here, Debtor did not file an adversary proceeding, but instead is relying on the motion practice outlined in Federal Rule of Bankruptcy Procedure 9014 and Local Bankruptcy Rule 9014-1 to seek relief. Declaratory relief is not permitted, nor is it proper, when seeking relief under such motion practice.

Debtor filed the instant bankruptcy case on November 2, 2016. Dckt. 1

Debtor proceeded to confirm a plan on January 13, 2017. According to Debtor's allegations in the Motion, AT&T sent debtor a collection notice even after being apprised of the pending bankruptcy.

APPLICABLE LAW

"Civil contempt is the normal sanction for violation of the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). 11 U.S.C. § 105 does not itself create a private right of action, but it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to sanction a party, a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction and order damages for the debtor if appropriate on the merits. *Id.* at 506-07.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 361 F.3d 539, 548-49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

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

A contempt proceeding by the United States Trustee or a party in interest in bankruptcy is a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.* Contempt proceedings for a violation of § 524 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding. *Id.*

A creditor who attempts to collect a pre-petition discharged debt in violation of the discharge injunction is in contempt of the bankruptcy court that issued the order of discharge. *Eady v. Bankr. Receivables Mgmt. (In re Eady)*, No. SC-08-1112-MoJuKw, 2008 Bankr. LEXIS 4696 (B.A.P. 9th Cir. 2008). In addition to the bankruptcy court's inherent power to impose an order for contempt only upon a showing of "bad faith," section 105 grants statutory contempt powers and a creditor may be liable under section 105 if it willfully violated the permanent injunction of section 524. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.3d at 509.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *In re Lehtinen*, 564 F.3d at 1058; see also 11 U.S.C. § 105(a).

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective

beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. *Bassett v. Am. Gen. Fin., Inc. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), *rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002).

DISCUSSION

A request for an order of contempt by the Debtor, United States Trustee or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283-85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to wilful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (an Congressionally created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946, (9th Cir. 2009).

11 U.S.C. § 362(k) authorizes an award of attorney's fees incurred in prosecuting an action for damages under the statute. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

Upon the filing of a bankruptcy petition, an automatic stay immediately arises. See 11 U.S.C. § 362(a). Among other things, it operates as a stay of "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case" pursuant to 11 U.S.C. § 362(a)(6). The court finds that there is little doubt that AT&T knew of the bankruptcy and continued to try to collect on a claim that arose before the commencement of the case. Therefore, AT&T violated the automatic stay. No motion for relief from the automatic stay was filed. Creditors have an affirmative duty to remedy an automatic stay violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). There has been no apparent attempt by AT&T to rectify the violation of the automatic stay.

Evidence of attorneys' fees can be submitted at the hearing.

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

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

The Motion for Contempt 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 hearing on the Motion for Contempt is continued to August 29, 2017 at 2:00 p.m.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2017. Forty-two days' notice is required. That requirement was met.

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

The court's decision is to continue the Motion to Confirm the Plan to August 29, 2017 at 2:00 p.m.

The Trustee opposes confirmation on the basis that:

A. The Plan relies upon Motions to Value collateral which have been continued to August 29, 2017.

The court will continue this matter to coincide with the hearings on the Motions to Value. Therefore, the hearing will be continued to August 29, 2017 at 2:00 p.m.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is

continued to August 29, 2017 at 2:00 p.m.

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is
granted, Debtor's Chapter 13 Plan filed on
June 17, 2017 is confirmed, and counsel for
the Debtor shall prepare an appropriate order
confirming the Chapter 13 Plan, transmit the
proposed order to the Chapter 13 Trustee for
approval as to form, and if so approved, the

Chapter 13 Trustee will submit the proposed
order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor may not be able to make plan payments. No amended Schedules I and J have been filed and the debtor is decreasing the plan payment from \$435.00 per month to \$200.00 per month because they have struggled making the plan payment.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 18, 2017. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 16-20002) was filed on January 1, 2016 and dismissed on June 7, 2017, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 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, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, debtor's previous case was dismissed when debtor lost unemployment and rental income. Now, the debtor has employment and renters that pay rent on time. The Chapter 13 Trustee does not oppose the motion.

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, unless terminated by 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 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

10. [17-23429](#)-C-13 DAVID/IMELDA HUE
DPC-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-5-17 [[20](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 5, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Debtors are delinquent \$825.00 in plan payments.

B. A claim has been filed showing that a debt of the debtors was co-signed and "Share Secured." At the 341 meeting, the debtor explained the origin of the loan, however the Trustee asserts that the claim may not be a claim secured by the debtor's property. Where the plan provides for interest, if the claim is unsecured then interest does not appear appropriate where unsecured claims are not being paid in full.

C. Debtors did not list all assets on their schedules including a deduction for life insurance and a 401K.

D. Debtor received monies for 2016 tax refunds but that income is not reported on the debtors' schedules.

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

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

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

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

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

11. [17-23231](#)-C-13 NEAL GEISLER
DPC-1 Mary Anderson

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-28-17 [[16](#)]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

- A. Debtor is delinquent \$2,432.00 in plan payments.
- B. Debtor has only made payments 3 times in the past 12 months and the Trustee is uncertain if the debtor's income is accurately reported. Debtor has not provided tax returns or paystubs and bank statements.
- C. Debtor's plan and declaration conflict regarding refinancing of the debtor's property.

Debtor's Reply

Debtor responds that he will be current on or before the hearing and requests additional time to meet with counsel to address the Trustee's concerns.

The court is not convinced that a continuance will be fruitful in this case. The debtor is delinquent and the debtor needs to provide the Trustee with certain documentation. Additionally, the debtor's plan and declaration have conflicts. The debtor has provided no declaration indicating why a continuance will help solve these issues.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 21, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. The plan proposes to make monthly payments of \$608.00 to First Franklin Financial Corporation's 2nd Deed of Trust provided for in Class 2. The Creditor has not accepted these terms in writing. The plan essentially is proposing to change the long term debt without paying it in full.

B. Plan does not provide all of the debtor's projected disposable income for the applicable commitment period and the Plan is not debtor's best effort. The plan proposes 0% dividend to unsecured creditors, and the debtor claims a deduction of \$645.67 on Schedule I for "retirement loan" without describing the loan and determining whether the loan is reasonably necessary for the maintenance and support of the debtor or a dependent. Schedule I says that the retirement will end in 15 months but no provision seeks to increase plan payments after that time.

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

objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor has not explained what happened leading to this proposed modification. Debtor has not made payment since January of 2017 and the modified plan simply looks to forgive the current delinquency under the plan. There is a retirement loan, but the record does not state when the loan will be repaid. There are a few extra expenses, however there is no information regarding the reason for modification of the current plan.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee opposes confirmation on the basis that:

- A. Debtors filed Supplemental Schedules I and J which may have omitted dependents. Childcare and education expenses still exist on those schedules.
- B. Debtors propose to add \$2,154.32 in post-petition arrears to Class 1 where the Trustee's records reflect the debtors' mortgage payments are current.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor has not explained several changes on Schedules I and J. Debtor has increased deductions for Tax/Medicare/Social Security by \$280.00 without explanation. Debtor has increased transportation expenses and an expense for \$350 for "transportation for debtor wife to work/nurse" has been added.

B. The Modified Plan does not appear to be the debtors' best effort as it does not allow for payments for the next 2.5 months.

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

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

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

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

appearing,

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

17. [16-26759](#)-C-13 LEONARDO/RAAMI BERGADO
BLG-4 Chad Johnson

OBJECTION TO CLAIM OF PINNACLE
CREDIT SERVICES, LLC, CLAIM
NUMBER 9
6-15-17 [[68](#)]

Thru #20

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 15, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b) (1) (A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 9-1 of Pinnacle Credit Services, LLC is sustained and the claim is disallowed in its entirety.

Chapter 13 debtors request that the court disallow the claim of Pinnacle Credit Services, LLC ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$1,314.63. Objector asserts that the statute of limitations is 4 years, and the debt was charged off on 5/8/2011.

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 debt is beyond the statute of limitations. The creditor has not

filed a response.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Pinnacle Credit Services, LLC, Creditor filed in this case by Leonardo and Raami Bergado, Chapter 13 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 objection to Proof of Claim Number 9-1 of Pinnacle Credit Services, LLC is sustained and the claim is disallowed in its entirety.

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on June 15, 2017. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Midland Funding, LLC for the sum of \$2,472.25. The abstract of judgment was recorded with Solano County on February 19, 2014. That lien attached to the Debtor's residential real property commonly known as 2715 Marcel Lane, Fairfield, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$355,000.00 as of the date of the petition. The unavoidable consensual liens total \$280,888.76 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Midland Funding, LLC, Solano County Superior Court Case No. FCM138334, recorded on February 19, 2014, with the Solano County Recorder, against the real property commonly known 2715 Marcel Lane, Fairfield, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on June 15, 2017. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of CACH, LLC for the sum of \$2,371.25. The abstract of judgment was recorded with Solano County on January 23, 2013. That lien attached to the Debtor's residential real property commonly known as 2715 Marcel Lane, Fairfield, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$355,000.00 as of the date of the petition. The unavoidable consensual liens total \$280,888.76 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of CACH, LLC, Solano County Superior Court Case No. FCM128432, recorded on January 23, 2013, with the Solano County Recorder, against the real property commonly known 2715 Marcel Lane, Fairfield, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

20. [16-26759](#)-C-13 LEONARDO/RAAMI BERGADO
BLG-7 Chad Johnson

MOTION TO AVOID LIEN OF CACH,
LLC
6-15-17 [[77](#)]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on June 15, 2017. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of CACH, LLC for the sum of \$2,371.25. The abstract of judgment was recorded with Solano County on February 5, 2013. That lien attached to the Debtor's residential real property commonly known as 2715 Marcel Lane, Fairfield, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$355,000.00 as of the date of the petition. The unavoidable consensual liens total \$280,888.76 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

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

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

The Motion to Avoid Judicial Lien

pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of CACH, LLC, Solano County Superior Court Case No. FCM128432, recorded on February 5, 2013, with the Solano County Recorder, against the real property commonly known 2715 Marcel Lane, Fairfield, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

- A. Debtors appear to try to add a claim for mortgage arrears of \$5,747.83 to be paid via the plan but not the ongoing payment. Trustee does not believe Debtors have shown that they will be able to make the plan payment as they have defaulted on the ongoing payments, not explained why, and still propose to make the ongoing payments directly rather than through the Trustee.
- B. The plan directs the Trustee to make \$3,000.00 in payments on or before June 25, 2017 but this is not included in the terms of the confirmed plan.
- C. The modified plan requires other payments to be made prior to June 25, 2017 but the Trustee is unable to make such payments as disbursements are made only on the last working day of the month.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtors' declaration is not sufficient as it does not provide evidence to prove all the components of § 1325(a). Trustee lists several areas where the debtors should provide additional facts and/or evidence.

Debtors filed a supplemental declaration. However, that declaration is merely a statement of legal conclusions and does nothing to answer the concerns of the Trustee. Debtors state that they provided the Trustee with certain documentation. If that documentation is sufficient to appease the Trustee's concerns, the court will grant the motion. However, the court does not find that the declaration sufficiently answers the Trustee's concerns, and the Motion will be denied.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 13, 2017. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is denied.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 17-22134) was filed on March 31, 2017 and dismissed on April 18, 2017, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 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, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, debtor was very ill during the pendency of the previous bankruptcy case. While the debtor is still ill, he is now able to participate in the gathering of documents required for the chapter 13 case. The attorney for the debtor failed to properly calendar the time for the filing of the balance of the petition.

The Trustee opposes the motion on the basis that the plan is not confirmable. The plan requires contribution from Lisa Salacies of \$4,100.00 per month, however there is no information provided bout the ability or willingness of Lisa Salacies to contribute such amount. Furthermore, Schedule J reflects \$750.00 per month as expenses with \$0 for medical expense whereas the debtor specifically is described as having significant medical problems.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has not provided evidence of a plan that can be confirmed. Although the problem concerning the filing of documents appears to be fixed, there is no evidence that a plan can be confirmed in this case.

The motion will be denied.

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

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

The Motion to Extend the Automatic Stay 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 denied and the automatic stay is not extended beyond 30 days from the filing of the instant case.

Thru #25

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2017. Forty-two days' notice is required. That requirement was met.

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

The court's decision is to continue the Motion to Confirm the Plan to coincide with the Motion to Value (see Matter #25).
--

The Trustee opposes confirmation on the basis that:

A. The Plan relies upon the Motion to Value (see Matter #25).

The court is continuing the Motion to Value, as a result this matter will be continued to the same date and time as the Motion to Value.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued.

25. [17-20765](#)-C-13 DAVID SIMS
PGM-3 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
BOSCO CREDIT, LLC
6-19-17 [[63](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 19, 2017. Twenty-eight days' notice is required. That requirement was met.

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

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 3615 6th Ave, Sacramento, California. The Debtors seeks to value the property at a fair market value of \$240,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$423,494.79. Bosco Credit LLC's second deed of trust secures a loan with a balance of approximately \$121,996.29. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor's Objection

Bosco Credit LLC states that it received two payoff quotes from Ocwen (the holder of the 1st Deed of Trust) indicating that the debtor could pay off the entire debt with a payment of either \$75,899.56 or \$150,891.66

depending on the payoff quote. Creditor asserts that the modification of the senior lien holders loan was prejudicial to the Creditor and therefore the Creditor's lien has priority over the modified portion of the senior lien holder's lien.

The court notes that there is a genuine dispute as to material facts. The court will set a briefing schedule and set the matter for hearing. The court will take supplemental briefing by 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 Value Collateral filed
by 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
continued and a briefing schedule will be set.

26. [17-23270](#)-C-13 ALAN PURCELL AND KERRY
DPC-1 PILLEY-PURCELL
David Ritzinger

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-21-17 [[18](#)]

Thru #27

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 21, 2017. Fourteen days' notice is required.

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

The court's decision is to continue the Objection to a time after the evidentiary hearing is set in the Motion to Value (Matter #27).
--

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

A. The plan relies upon a Motion to Value (see Matter #27).

The court notes that the Motion to Value will be set for an evidentiary hearing. The Objection to Confirmation will be continued to a hearing date after the evidentiary hearing.

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

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

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

IT IS ORDERED that Objection to confirmation of the Plan is continued to a time after the time for the evidentiary hearing to be set in Matter #27.

27. [17-23270](#)-C-13 ALAN PURCELL AND KERRY
DPR-1 PILLEY-PURCELL
David Ritzinger

MOTION TO VALUE COLLATERAL OF
WELLS FARGO DEALER SERVICES
6-22-17 [[22](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 22, 2017. Twenty-eight days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2008 Ford Expedition. The Debtor seeks to value the property at a replacement value of \$7,500.00 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 lien on the vehicle's title secures a purchase-money loan incurred in 2012, more than 910 days prior to the filing of the petition, with a balance of approximately \$10,496.00.

The Creditor, Wells Fargo Bank, N.A., objects to the Motion to Value asserting that the replacement value is \$9,075.00 after using NADA to determine the value.

The court finds that there is a genuine dispute as to material facts, and an evidentiary hearing will be set.

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

holding that:

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

The Motion to Value Collateral filed by 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 to Value will be set for an evidentiary hearing.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

- A. The debtors served the various documents after the 3 day window provided for in the local rules. It took the debtor nearly 10 days to serve some of the filed documents.
- B. The modified plan was filed before evidence was provided to the court to support the modified plan.
- C. Debtors have not provided any information on the vehicle that will be rented from a family member, who the family member is, and whether the vehicle is owned free and clear or if it is financed.
- D. The modified plan additionally includes another \$140.00 reduction in monthly plan payments that is not explained.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 7, 2017. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 16-26329) was filed on September 22, 2016 and dismissed on March 30, 2017, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 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, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, the debtor's previous plan failed because the debtor had unexpected auto repairs that made her fall behind on monthly payments. Debtor is in a better financial position now as credit card debts have been paid off.

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 court does note that while the debtor has just 1 prior case in the previous 12 months, the debtor does have 4 total previous cases in this district. All 4 were dismissed for failure to make plan payments. The debtor has rebutted the presumption of good faith, and has introduced an explanation for why the debtor will make plan payments in this case, but the court does have reservations and will be keeping a close eye on the status of this case.

The motion is granted and the automatic stay is extended for all purposes, unless terminated by 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 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2017. 28 days' notice is required. This requirement was met.

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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The court's decision is to continue the Objection to August 22, 2017 at 2:00 p.m.
--

Debtors object to the Notice of Mortgage Payment Change filed by Igloo Series II Trust on April 3, 2017. The debtor asserts that the Notice of Mortgage Claim be disallowed due to:

- A. Igloo's failure to file and serve upon debtor, debtor's attorney, and Chapter 13 trustee, a notice itemizing all fees, expenses and charges as required by Rule 3002.1.
- B. Igloo is now attempting to collect \$2,560.00 in "escrow shortage" despite acknowledging that Debtor has cured all pre-petition arrears and made all post petition monthly payments.
- C. Igloo has failed to provide any reasonable basis for the increase in escrow from \$390.33 per month to \$515.15 per month.

Creditor's Response

Creditor asserts that the escrow cushion is appropriate as the Creditor kept

reserve funds in case the insurance and taxes are higher than expected, as turned out to be the case here. Creditor asserts that the debtor is attempting to impermissibly modify payments to the Creditor.

Debtors' Reply

Debtor asserts that the Creditor's response did not specifically respond to the debtor's allegations. Most significantly, debtor points out that the Creditor did not explain its non-compliance with Bankruptcy Rule 3002.1(c). Furthermore, the additional \$179.35 per month increase is unexplained as well.

Debtor additionally requests \$7,634.80 in attorneys fees and costs.

Discussion

There appears to be genuine dispute regarding material facts in this matter. The court will continue the matter to allow for discovery and supplemental briefs if necessary.

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 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 is continued to August 22, 2017 at 2:00 p.m.

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on May 19, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the

Chapter 13 Trustee will submit the proposed
order to the court.

32. [17-23377](#)-C-13 BRIAN MAYS
DPC-1 Scott Shumaker

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-6-17 [[31](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 6, 2017. Fourteen days' notice is required.

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

The court's decision is to overrule the Objection.

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

A. Plan is not the debtor's best effort. Debtor deducts \$1,000.00 for child support, however child support will end on February 9, 2019 when his son turns 18. Therefore, the plan should increase plan payments effective June 2019.

B. Debtor's plan proposes to pay a portion of his annual bonus into the plan. The Trustee does not understand why only a portion of the debtor's annual bonus will be paid into the plan.

Debtor agrees with the Trustee and will make those changes in the order confirming. Therefore, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 31, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

33. [13-20180](#)-C-13 UVALDO GOMEZ AND
DPC-2 JOSEPHINE PAGAN
Thomas Gillis

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
6-27-17 [[74](#)]

Tentative Ruling: The Motion to Determine Final Cure and Mortgage Payment Rule 3002.1 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2017. Twenty-eight days' notice is required. That requirement was met.

The Motion to Determine Final Cure and Mortgage Payment Rule 3002.1 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 6, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's decision is to set a briefing schedule.

The Trustee brings this motion to determine the Final Cure and Payment due to the mortgage, Claim #11. Trustee had paid \$59,442.38 in payments on the ongoing mortgage payment and \$9,021.45 in payments on the pre-petition arrears claim in this case. Trustee notes that the mortgage changed several times throughout the case. Trustee requests that the court issue a briefing schedule to determine if the default has been cured and the amount of payments required if it has not been cured.

Creditor's Response

The Creditor, Wells Fargo Bank, N.A., asserts that the debtor is still delinquent in the amount of \$3,782.40. Creditor asserts that because the property is a rental, the noticing requirements of FRBP 3002.1 are not applicable. Therefore, despite the fact that no notice of payment change was filed, Creditor asserts that debtor must adjust the plan payment to pay the ongoing mortgage to Wells Fargo.

Discussion

The court will set a briefing schedule to allow the Trustee time to determine if all of the information provided by the Creditor is correct.

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 Determine Final Cure and Mortgage Payment 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 a briefing schedule will be set.

34. [13-27880](#)-C-13 HORMOZ RAD AND PARVANEH
PGM-3 VAKILI
Peter Macaluso

OBJECTION TO CLAIM OF ECAST
SETTLEMENT CORPORATION, CLAIM
NUMBER 2
6-1-17 [[49](#)]

Thru #37

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

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

Below is the court's tentative ruling.

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

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

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 2-1 of eCast Settlement Corporation is overruled.

Debtors, Hormoz Rad and Parvaneh Vakili, request that the court disallow the claim of eCast Settlement Corporation ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$3,657.93. Objector asserts that the date of last payment was October 22, 2008 and therefore the statute of limitations for this claim has expired. Additionally, debtor's counsel requests attorney fees in the amount of \$675.00.

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

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

Trustee's Response

Trustee responds that he has made payments to the creditor in the amount of \$129.85 and therefore the statute of limitations may have tolled upon the most recent payment. Trustee also asserts that any order requiring the Trustee to recover such funds would be opposed.

Creditor's Response

Creditor responds that the debtor filed a previous case on May 17, 2011. That case was dismissed June 5, 2013. This instant case was filed just 5 days later. Pursuant to § 108(c) since the statute of limitations had not run at the time of the May 17, 2011 bankruptcy, and since 30 days had not passed between the filing of the two bankruptcies, then the statute of limitations has not run on the debt.

Based on the evidence before the court, the creditor's claim is not disallowed. The debtor has not overcome the prima facie validity of the creditor's claim. The statute of limitations has not run due to the prior bankruptcy and quick filing of the instant bankruptcy after the prior bankruptcy was dismissed. Therefore, the Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of eCast Settlement Corporation, Creditor filed in this case by chapter 13 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 objection to Proof of Claim Number 2-1 of eCast Settlement Corporation is overruled.

35. [13-27880](#)-C-13 HORMOZ RAD AND PARVANEH OBJECTION TO CLAIM OF WELLS
PGM-4 VAKILI FARGO BANK, N.A., CLAIM NUMBER
Peter Macaluso 6
6-1-17 [[53](#)]

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

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

Below is the court's tentative ruling.

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

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

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 6-1 of Wells Fargo Bank, N.A. is overruled.

Debtors, Hormoz Rad and Parvaneh Vakili, request that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$699.04. Objector asserts that the date of last payment was October 28, 2008 and therefore the statute of limitations for this claim has expired. Additionally, debtor's counsel requests attorney fees.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623

(9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Trustee's Response

Trustee responds that he has made payments to the creditor in the amount of \$15.96 and therefore the statute of limitations may have tolled upon the most recent payment. Trustee also asserts that any order requiring the Trustee to recover such funds would be opposed.

Discussion

The debtor filed a previous case on May 17, 2011. That case was dismissed June 5, 2013. This instant case was filed just 5 days later. Pursuant to § 108(c) since the statute of limitations had not run at the time of the May 17, 2011 bankruptcy, and since 30 days had not passed between the filing of the two bankruptcies, then the statute of limitations has not run on the debt.

Based on the evidence before the court, the creditor's claim is not disallowed. The debtor has not overcome the prima facie validity of the creditor's claim. The statute of limitations has not run due to the prior bankruptcy and quick filing of the instant bankruptcy after the prior bankruptcy was dismissed. The Creditor has not responded and their default will be entered. However, pursuant to FRCP 55 as incorporated by FRBP 7055 which is made applicable by FRBP 9014, the court may only enter default judgments affording relief to the parties to which they are actually entitled. As the statute of limitations has not run pursuant to § 108(c), the Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Creditor filed in this case by chapter 13 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 objection to Proof of Claim Number 6-1 of Wells Fargo Bank, N.A. is overruled.

36. [13-27880](#)-C-13 HORMOZ RAD AND PARVANEH OBJECTION TO CLAIM OF WELLS
PGM-5 VAKILI FARGO BANK, N.A., CLAIM NUMBER
Peter Macaluso 7
6-1-17 [[57](#)]

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

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

Below is the court's tentative ruling.

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

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

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 7-1 of Wells Fargo Bank, N.A. is overruled.

Debtors, Hormoz Rad and Parvaneh Vakili, request that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 7-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$2,278.68. Objector asserts that the date of last payment was July 18, 2013 and therefore the statute of limitations for this claim has expired. Additionally, debtor's counsel requests attorney fees.

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

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

Trustee's Response

Trustee responds that he has made payments to the creditor in the amount of \$80.89 and therefore the statute of limitations may have tolled upon the most recent payment. Trustee also asserts that any order requiring the Trustee to recover such funds would be opposed.

Discussion

The debtor filed a previous case on May 17, 2011. That case was dismissed June 5, 2013. This instant case was filed just 5 days later. Pursuant to § 108(c) since the statute of limitations had not run at the time of the June 10, 2013 filing, the statute of limitations has not run on the debt.

Based on the evidence before the court, the creditor's claim is not disallowed. The debtor has not overcome the prima facie validity of the creditor's claim. The statute of limitations has not run due to the prior bankruptcy and quick filing of the instant bankruptcy after the prior bankruptcy was dismissed. The Creditor has not responded and their default will be entered. However, pursuant to FRCP 55 as incorporated by FRBP 7055 which is made applicable by FRBP 9014, the court may only enter default judgments affording relief to the parties to which they are actually entitled. As the statute of limitations has not run pursuant to § 108(c), the Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Creditor filed in this case by chapter 13 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 objection to Proof of Claim Number 7-1 of Wells Fargo Bank, N.A. is overruled.

37. [13-27880](#)-C-13 HORMOZ RAD AND PARVANEH OBJECTION TO CLAIM OF PORTFOLIO
PGM-6 VAKILI RECOVERY ASSOCIATES, LLC, CLAIM
Peter Macaluso NUMBER 14
6-5-17 [[62](#)]

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

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

Below is the court's tentative ruling.

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

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

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 14-1 of Portfolio Recovery Associates, LLC is overruled.

Debtors, Hormoz Rad and Parvaneh Vakili, request that the court disallow the claim of Portfolio Recovery Associates, LLC ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$2,964.12. Objector asserts that the date of last payment was January 27, 2010 and therefore the statute of limitations for this claim has expired. Additionally, debtor's counsel requests attorney fees.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623

(9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Trustee's Response

Trustee responds that he has made payments to the creditor in the amount of \$80.89 and therefore the statute of limitations may have tolled upon the most recent payment. Trustee also asserts that any order requiring the Trustee to recover such funds would be opposed.

The debtor filed a previous case on May 17, 2011. That case was dismissed June 5, 2013. This instant case was filed just 5 days later. Pursuant to § 108(c) since the statute of limitations had not run at the time of the May 17, 2011 bankruptcy, and since 30 days had not passed between the filing of the two bankruptcies, then the statute of limitations has not run on the debt.

Based on the evidence before the court, the creditor's claim is not disallowed. The debtor has not overcome the prima facie validity of the creditor's claim. The statute of limitations has not run due to the prior bankruptcy and quick filing of the instant bankruptcy after the prior bankruptcy was dismissed. The Creditor has not responded and their default will be entered. However, pursuant to FRCP 55 as incorporated by FRBP 7055 which is made applicable by FRBP 9014, the court may only enter default judgments affording relief to the parties to which they are actually entitled. As the statute of limitations has not run pursuant to § 108(c), the Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Creditor filed in this case by chapter 13 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 objection to Proof of Claim Number 14-1 of Portfolio Recovery Associates, LLC is overruled.

38. [16-24486](#)-C-13 GLEN RILEY
UST-1 Matin Rajabov
DEBTOR DISMISSED: 01/23/2017

MOTION FOR REVIEW OF FEES
6-27-17 [[40](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 27, 2017. Twenty eight days' notice is required. That requirement is met.

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

The court's decision is to continue the Motion to August 22, 2017 at 2:00 p.m. and issue an Order to Show Cause.

Chapter 13 Trustee requests that the court review the fees paid to the debtor's attorney Matin Rajabov in connection with this bankruptcy case. Trustee asserts that Rajabov received \$3,000 in fees before the case was filed and agreed to the "no look" \$4,000 fee. Rajabov did not appear at the first meeting of creditors. Nor did Rajabov appear at the continued meeting of creditors. Rajabov did not respond to the Trustee's plan objection nor did the Rajabov appear at the hearing on the plan objection. No amended plan was filed, and no plan has ever been confirmed in this case. The Chapter 13 Trustee filed a motion to dismiss and Rajabov did not respond to the motion nor appear at the hearing on the motion to dismiss.

The court will continue this matter and issue an order to show cause to Matin Rajabov in order to determine the correct amount of fees that should be disgorged.

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

The Motion for Review of Fees 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 Motion for Review of Fees is continued to August 22, 2017 at 2:00 p.m.

IT IS FURTHER ORDERED that Matin Rajabov SHOW CAUSE in writing, by August 15, 2017, as to the reasonable value of his services in the above-captioned case.

39. [17-23086](#)-C-13 KELLY HARWELL
DPC-1 Mohammad Mokarram

MOTION FOR DENIAL OF DISCHARGE
OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
6-21-17 [[14](#)]

Final Ruling: No appearance at the August 1, 2017 hearing is required.

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

Correct Notice Provided.

The Proof of Service states that the Motion for Denial of Discharge and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 21, 2017. 28 days' notice is required. That requirement is met.

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

The Motion for Denial of Discharge is granted.

Chapter 13 Trustee brings this motion for an order to determine that Debtor is not entitled to a discharge in this case. Debtor filed a Chapter 13 bankruptcy case on August 22, 2013 (13-31068) that was converted to chapter 7 on November 25, 2015. Debtor received a discharge in that case on March 15, 2016. Debtor is not eligible to receive a discharge in this case as they received a discharge within the previous four years.

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 Denial of Discharge 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 Motion is granted and the debtor, Kelly Harwell, is ineligible for a discharge in case number 17-23086.

Thru #42

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 28, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Debtor has a deed of trust that is not provided for under the plan where the debtor intends to remain in the house secured by the deed of trust.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and

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

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

41. [17-23287](#)-C-13 ROBERT AMADOR
RMP-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DITECH FINANCIAL, LLC
6-15-17 [[17](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 15, 2017. Twenty eight days' notice is required. That requirement is met.

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

The court's decision is to sustain the Objection.

Ditech Financial, LLC opposes confirmation of the Plan on the basis that the plan fails to provide for the pre-petition arrears on Creditor's secured claim.

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

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

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

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

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

42. [17-23287](#)-C-13 ROBERT AMADOR
RTD-1 Mikalah Liviakis

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
6-26-17 [[20](#)]

SCHOOLS FINANCIAL CREDIT
UNION VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 26, 2017. 14 days' notice is required. That requirement was met.

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

The Motion for Relief From the Automatic Stay is granted.

Schools Financial Credit Union seeks relief from the automatic stay with respect to the real property commonly known as 12121 Gold Pointe Lane, Gold River, California. The moving party has provided the Declarations of Theresa Estorga and Roxanne Daneri to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

The Estorga Declaration states that the Debtors have not made 2 post-petition payments, with a total of \$1,767.82 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$388,263.18 (including \$133,025.09 secured by movant's junior trust deed),

as stated in the Estorga Declaration, while the value of the property is determined to be 390,000,000, as stated in Schedules A and D filed by Debtor.

The Chapter 13 Trustee filed a statement of nonopposition. Dkt. 32.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor's Supplemental Brief

Debtor filed a supplemental brief indicating that an amended plan had been filed that intended to cure the arrearages of the creditor.

Creditor's Supplemental Brief

The Creditor's supplemental brief indicates that (1) the adequate protection payments proposed by the debtor in his amended plan are not sufficient to cure the arrearages on the Creditor's claim, (2) the plan is unconfirmable, and (3) cause exists to grant relief from stay.

The court does not find that the amended plan will satisfy the arrearages owed to the Creditor. Furthermore, the debtor has 2 other plans set for confirmation that have not been withdrawn.

The court shall issue a minute order terminating and vacating the automatic stay to allow Schools Financial Credit Union, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the 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 for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11

U.S.C. § 362(a) are vacated to allow Schools Financial Credit Union, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 12121 Gold Pointe Lane, Gold River, California.

IT IS FURTHER ORDERED that the co-debtor stay provisions of 11 U.S.C. § 1301(a) are vacated to allow Schools Financial Credit Union, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 12121 Gold Pointe Lane, Gold River, California.

No other or additional relief is granted.

43. [17-23491](#)-C-13 DANIEL/MARILYN COLLINS
DPC-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-28-17 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 28, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

- A. The plan may fail liquidation unless interest is provided to unsecured claims as the plan provides for 100% distribution to unsecured creditors.
- B. Debtor was involved in a real estate transaction immediately before filing, so the Trustee requests some additional information from the debtor regarding the sale.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 17, 2017. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-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 secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2013 Chevy Volt. The Debtor seeks to value the property at a replacement value of \$10,900.00 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 lien on the vehicle's title secures a purchase-money loan incurred in 2014, more than 910 days prior to the filing of the petition, with a balance of approximately \$26,689.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$15,675.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The Trustee pointed out that the service was made to Wells Fargo Bank, N.A. rather than Wells Fargo Bank, National Association.

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 filed by 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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a purchase money security interest recorded against the debtor's 2013 Chevy Volt is determined to be a secured claim in the amount of \$10,900.00, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 25, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, AmeriHome Mortgage Company, LLC, opposes confirmation of the Plan on the basis that:

A. The creditor is owed arrears in the amount of \$24,906.63 whereas the plan only proposes to provide for arrears of \$19,000.00.

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 20, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

- A. Debtor is delinquent in plan payments in the amount of \$1,200.00.
- B. Plan fails to provide a monthly dividend to pay the debtor's attorney fees.
- C. The Internal Revenue Service filed a secured claim in an amount exceeding the amount listed by the debtor on the plan.
- D. The student loan being paid outside the plan incorrectly is listed as an executory contract in the plan with arrears.

U.S. Bank, N.A. additionally opposes confirmation of the plan on the basis that the plan fails to provide for arrearages of the creditor.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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