

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 21, 2018, at 2:00 p.m.

1.	17-24000 -C-13	LYNDA STOVALL	CONTINUED OBJECTION TO NOTICE
	PGM -3	Peter Macaluso	OF MORTGAGE PAYMENT CHANGE
			4-3-18 [81]

Final Ruling: No appearance at the August 21, 2018 hearing is required.

Debtor, Lynda Stovall, having filed a Notice of Withdrawal of Debtor's Objection to Notice of Mortgage Payment Change, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on August 16, 2018, Dckt. 119; no prejudice to the responding party appearing by the dismissal of the Objection; Debtor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by HSBC Bank, USA, National Association ("Creditor"); **the Ex Parte Motion is granted, Debtor's Objection is dismissed without prejudice, the court removes this Objection from the calendar.**

2. [18-23700](#)-C-13 DANIEL/HASIBA CLAYBERGER OBJECTION TO CONFIRMATION OF
[TGM](#)-1 Gerald Glazer PLAN BY WELLS FARGO BANK
6-29-18 [\[12\]](#)

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, Debtor's Attorney, and the Chapter 13 Trustee on June 29, 2018. Fourteen days' notice is required. That requirement was 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 sustain the Objection .

Secured Creditor, Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that the Debtors' Plan is unclear. Specifically, Creditor states that the Debtors' Plan allows for sufficient payment of the prepetition arrearages to Creditor but defers payment until 2025. Creditor directs the court to Section 3.10.1 of the Plan through which Debtor proposes not paying Credit through Plan, but directly, with the payments deferred to 2025.

Review of Plan

Class 1 of the Plan provides for the secured claim of "Specialized Loan" to be paid the regular \$879.39 post-petition current installment, with a 0.00 payment on the pre-petition arrearage stated to be \$16,041.50. Plan ¶ 3.07(c), Dckt. 5. The \$0.00 is designated with a "***." This ties back to the Section 7,

nonstandard provisions, which states that the dividend on the arrearage is \$0.00 for the first six months of the plan, then \$350 a month until the arrearage is paid in full. *Id.*, page 5.

But then for Class 4, “Specialized Loan” is shown as having a claim for which the payment of “prin on residence” is deferred until 2052. *Id.* at 4, ¶ 3.10.1.

Proof of Claim No. 2 has been filed for Creditor, Specialized Loan Servicing, LLC is shown as the place to where notices and payments are to be sent. There is no other claim filed that is identified involving Specialized Loan Servicing, LLC or for any secured claim in excess of \$5,000.

The Attachment to Proof of Claim No. 2 lists a principal balance of \$127,750.05, interest/fees/escrow, and a deferred amount of \$48,700.00, for a total debt of \$188,339.50. The pre-petition arrearage is stated to be \$15,659.46.

It appears that the Plan contains a clerical error, listing two different treatments for the one secured claim Creditor. On Schedule D, Debtor lists “Specialized Loan Servicing” having two claims, with the same loan number. The second claim is for a balloon payment due in 2052.

At the hearing, counsel for Debtor explained **XXXXXXXXXXXXXXXXXXXX**

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 secured creditor Wells Fargo Bank, N.A. 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.

* * * *

3. [18-20403](#)-C-13 SHONTELL BEASLEY MOTION TO CONFIRM PLAN
 [PGM](#)-1 Peter Macaluso 7-5-18 [[90](#)]
 DEBTOR DISMISSED: 07/13/2018

Final Ruling: No appearance at the August 21, 2018 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

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

4. [18-23503](#)-C-13 MICHAEL YANG
[APN](#)-1 Diana Cavanaugh

OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
7-5-18 [\[20\]](#)

Thru #5

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, Debtor's Attorney, the Chapter 13 Trustee, and the U.S. Trustee on July 5, 2018. Fourteen days' notice is required. That requirement was 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 sustain the Objection.

Secured creditor, Toyota Motor Credit Corporation, opposes confirmation of the Plan on the basis that:

- A. The direct monthly payments should be \$636.91 and the Debtor's Plan provides for direct monthly payments of \$636.00; and
- B. There are \$1,488.47 in pre-Petition arrears that are not provided for in the Debtor's Plan.

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 Toyota Motor Credit Corporation 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.

* * * *

5. [18-23503](#)-C-13 MICHAEL YANG
[DPC-1](#) Diana Cavanaugh

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-24-18 [[25](#)]

* * * *

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 24, 2018. Fourteen days' notice is required. That requirement was 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 sustain the Objection.

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

A. The Debtor is not current in his payment to creditor Toyota Motor Credit;

B. The Debtor's Schedule I lists contribution from a partner in the amount of \$2,300.35 per month but no evidence has been provided to the Trustee to support this income; and

C. The Debtor's marital status is in question because the Debtor's Form 122C-1 and his Statement of Financial Affairs are inconsistent, one stating Debtor is married, the other that Debtor is not married. This puts at issue whether there is community property, debts, and income.

These are grounds for denying confirmation.

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 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 May 29, 2018. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee initially opposed confirmation on the basis that:

A. Debtor may not have the ability to pay where debtor was delinquent in the amount of \$11,730.73 under the terms of the confirmed plan and the modified plan seeks to increase plan payments by \$300 per month.

B. The debtors' notice does not comply with Rule 9014-1 where the notice does not contain information regarding pre-hearing dispositions. Debtors' notice is defective

C. The debtor filed updated Schedules I and J; however, Debtor filed them as exhibits to the motion rather than supplemental or amended Schedules I and J.

On August 6, 2018, the Trustee filed a Status Report in connection with the filed Objection stating that:

A. The Debtors' Supplemental Schedules I and J along with copies of the Debtors' pay remittances and 2017 tax returns indicate that the Debtors are able to make the proposed payments. The Trustee notes that for unsecured claims to receive 100% under the current plan, the Debtors need to contribute approximately an

additional \$6,500.00. The Trustee proposes either increasing monthly plan payments or paying in sufficient tax refunds to accomplish this.

B. The Trustee does not believe the post-petition arrears for Class 1 creditor Wells Fargo Home Mortgage provided for in the Plan can be paid by the Trustee without a claim or order of the court. The Trustee states that Wells Fargo Home Mortgage was granted a relief from the Automatic Stay on May 15, 2018, the Debtor did not file an opposition to the Motion, and per Section 5.03 of the confirmed plan, the creditor is now treated as a Class 3 creditor “unless the court orders otherwise.”

C. The Trustee states that the Debtors cured the previous notice issue.

Debtor’s Response:

Debtors’ response, filed without any supporting evidence or declaration, states that the Debtors propose to pay into the plan the additional \$6,500.00 needed to pay the general unsecured creditors from their tax refunds.

The Debtors argue that the Wells Fargo Home Mortgage’s failure to object to their treatment in the proposed Plan serves as a statement of non-opposition.

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

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

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

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

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

* * *

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 July 5, 2018. 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 xxxx the Motion to Confirm the Plan.

Chapter 13 Trustee's Opposition:

The Trustee opposes confirmation on the basis that adequate protection payments proposed to the Debtor's mortgage with Wells Fargo Bank, N.A. ("Creditor") do not provide adequate protection. The Debtor's Plan proposes ongoing monthly payments to Creditor that appear to be deficient by approximately \$1,000.00. The Debtor's Plan provides for payment of pre-petition arrearages to be deferred until resolution of a State Court action involving the Debtor and Creditor.

Secured Creditor, Wells Fargo Bank, N.A.'s, Opposition:

Creditor opposes confirmation on the basis that the Debtor's Plan does not provide for payments of pre-petition arrearages until the resolution of a pending state court action, impermissibly modifying its rights as a secured creditor. Creditor also asserts that because the Debtor's Plan does not provide for monthly contractual payments by proposing only adequate protection payments, it is not properly being treated as a Class 1 creditor because this treatment modifies its claim.

Debtor's Reply:

Debtor argues that the Plan provides for adequate protection of Creditor's claim. Debtor asserts, without support, that adequate protection payments need only be 2% of the unpaid balance. Debtor claims that 2% of the balance is \$1,364.71 and that the Plan proposes payments of \$1,400.00.

Discussion

The Debtor's argument that the Plan need only provide for 2% of the unpaid balance may be a reference to certain cases finding that pre-confirmation adequate protection payments need only provide for a nominal percentage of the value of the collateral. *See, e.g., Hampton v. Capital One Auto Fin.*, 383 B.R. 560, 563 (Bankr. S.D. Ga. 2008) (pre-confirmation adequate protection payments at 1%); *In re Hill*, 397 B.R. 259, 265 (Bankr. M.D.N.C. 2007) (same). However, the Trustee and the Creditor dispute that the Debtor's payments provide adequate protection for the subject secured property. The Court notes that it has issued an Order granting the Debtor the authority to employ counsel to represent the Debtor in an on-going law suit seeking damages against the Creditor for violations of California's Homeowner's Bill of Rights. *See* Dckt. 33, Exhibit B, Attorney-Client Fee Agreement.

The Plan incorporates the on-going state court litigation as a plan term, with Debtor proposing an adequate protection payment while using the automatic stay to prevent a foreclosure in lieu of obtaining an injunction in the state court action. The use of the automatic stay in lieu of an injunction is not prohibited, but the Debtor must provide "adequate protection payments" to take the place of the bond or other security to be given as a condition of a preliminary injunction under Federal Rule of Civil Procedure 65(c) and Federal Rule of Bankruptcy Procedure 7065.

Here, the Creditor's claim has been filed in the amount of \$482,356.11. Proof of Claim No. 2. In the Attachment to Proof of Claim No. 2, the principal and interest portion of the payment is stated to be \$2,007.56, plus an additional \$596.55, for a total of \$2,604.11 for the asserted monthly payment. In Proof of Claim No. 2 Creditor asserts the claim is fully secured.

On Schedule A/B and Schedule D, Debtor lists Creditor's claim as being oversecured, with the Property securing the claim having a value of \$398,730.00. Dckt. 10 at 3, 11. On Amended Schedule J Debtor lists a monthly expense of \$466.00 for property taxes and \$50.00 for property insurance. Dckt. 24 at 6.

Assuming that Debtor sets aside the \$516.00 a month for the property taxes and insurance, the "adequate protection payment" needs to cover the "costs" of delay and risk to Creditor in being enjoined from exercising its rights given that Debtor is "self-escrowing" the insurance and property taxes monies monthly.

A review of Schedule I shows that Debtor's net monthly income from her self-employment is \$1,500 a month, which equals \$18,000 a year. Dckt. 24 at 5, Amended Schedule I. Debtor lists additional income of \$2,600 a month, which equals \$31,200 a year, from "parents helping until income increases." *Id.* The court does not see the Declaration of Debtor's parents confirming their \$30,000 a year support for the 60 months of the plan, which totals more than \$150,000, and their ability to fund the plan for the five years.

While Debtor states that there is the ongoing litigation, Debtor does not advise the court of the value, if any, to the litigation against Creditor or what claim Creditor will have if Debtor succeeds in the

litigation. It appears that Debtor believes that Creditor will have some claim, with the \$1,400 monthly adequate protection payment to be applied to Creditor's secured claim.

Using the Microsoft Excel loan calculator, a \$1,400 a month payment, at 5% interest, if amortized over a thirty-year period, represents payments on a principal loan amount of \$260,000 – which is about 54% of the amount asserted by Creditor in Proof of Claim No. 2. Debtor contends that the claim is only \$398,730.00, possibly showing the net amount after accounting for succeeding in the state court litigation. For this reduced amount, the adequate protection payment is an amount computed on a principal balance of the amount of claim stated by Debtor.

Using the \$398,730 amount of the claim as stated by Debtor, amortizing it over 30 years at 5% interest yields a principal and interest payment of \$2,140 a month.

The adequate protection payment is effectively a self-funded bond to cover potential harm caused by the injunction (automatic stay) imposed by this court which is used by the Debtor in her state court litigation. Where a debtor disputes that the creditor has any claim, all of the adequate protection payment can be held in a blocked account or by the Chapter 13 trustee pending conclusion of the litigation. If the debtor is correct and creditor has no claim, the monies in the blocked account can then be paid into the plan. If creditor does have a plan, then the payments are applied to the secured claim, which benefits both the debtor and creditor.

Debtor's proposed adequate protection payment is insufficient to fund the secured claim if it were completely reamortized over thirty years at only 5% interest. If Debtor is wrong and loses the litigation, there is nothing in the "adequate protection payment" to cover the Creditor's damages for being delayed an indeterminate amount of time during the state court litigation.

Based on the evidence provided, the \$1,400 a month proposed payment is not adequate protection for Creditor's claim. The \$2,140.00 amount is not unreasonable and provides adequate protection. Creditor has a claim, just the ultimate amount is in dispute. Even if it is for a larger amount over a shorter period of time, the \$2,140 protects Creditor given the equity in the collateral as set forth in Creditor's Proof of Claim No. 2.

At the hearing, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~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.~~

8. [18-22208](#)-C-13 TERRY PARKER AND TONYA OBJECTION TO CLAIM OF FIRST
[PGM-1](#) TYUS-PARKER FRANKLIN MORTGAGE LOAN TRUST,
Peter Macaluso CLAIM NUMBER 6
7-5-18 [[50](#)]

INSUFFICIENT NOTICE PROVIDED.

The Proof of Service for this Motion indicates that it was served by **First Class Mail** does not include service on either First Franklin Federal Savings and Loan Association, the named creditor whose claim is the subject of the Objection, or U.S. Bank, N.A., as Trustee, the creditor filing the claim in this case. Proof of Claim No. 6.

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

“h) **Service of process on an insured depository institution.** Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

In addition to not serving First Franklin Federal Savings and Loan and U.S. Bank, N.A. as Trustee, the court notes that any such service must comply with Federal Rule of Bankruptcy Procedure 7004(h), by certified mail. The correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. Either service was not made to those addresses, or service was not addressed to an officer by name or “Attn: Officer for Service of Process.” Service was not made by certified mail. Service has not been adequately made on the federally insured financial institutions in this case.

The court’s decision is to deny the Objection to Claim 6-1 without prejudice.

Debtors’ Objection to First Franklin Federal Saving and Loan Association’s Claim 6-1 seems to suggest that the debt identified in the proof of claim may no longer exist. The Court notes that Debtors’ Objection does not clarify whether Debtors are arguing that First Franklin Federal Savings and Loan

Association's claim is encompassed in another claim that has already been filed or whether it may be deficient for another reason.

Further, Debtors Objection is silent about whether the "modified" loan has been properly scheduled by the Debtors and whether Claim 5-1, filed by U.S. Bank Nation Association, accurately asserts a claim for that debt. It appears that U.S. Bank, N.A., Trustee, is the creditor.

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

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

The Objection to Claim filed by the Debtors having failed to properly serve the creditor,

IT IS ORDERED that the Objection to Claim No. 6-1 is denied without prejudice.

9. [13-34210](#)-C-13 TIMOTHY/SARAH MAYHEW MOTION TO MODIFY PLAN
[DEF-2](#) David Foyil 6-26-18 [[53](#)]

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.

Incorrect 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, 2018. **The form of the notice provided does not comply with Local Bankruptcy Rules because the notice information required under Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) was not included.** Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has not been properly 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 deny the Motion to Confirm the Modified Plan without prejudice.

The Trustee's response states that the Debtors' payments are current and that the proposed plan provides for sufficient payments. However, Debtors' notice is defective because the notice required by Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) was not included.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having failed to comply with Local Rule 9014-1(f),

IT IS ORDERED that Motion to Confirm the Modified Plan is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT NOTICE

The Motion to Confirm the Modified Plan is granted .

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Modified Chapter 13 Plan filed on June 26, 2018 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

10. [18-23612](#)-C-13 JARED/LINDSAY ILDEFONZO OBJECTION TO CONFIRMATION OF
[DPC-1](#) Eric Vandermey PLAN BY DAVID P. CUSICK
7-17-18 [\[16\]](#)

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 17, 2018. Fourteen days' notice is required. That requirement was 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 sustain the Objection.

The Trustee opposes confirmation of the Plan on the basis that the Debtors' have understated their income on Schedule I and overstated their tax deductions on Form 122C. Accordingly, the Trustee asserts that the Debtors' proposed plan payments do not represent all of their disposable income.

The Trustee presents evidence that Debtor's actual income is \$11,422.42, not the \$10,230.00 stated on Schedule I.

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

* * * *

* * * *

Tentative Ruling: The Motion to Confirm the Debtor's First Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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, 2018. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the First Amended 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 Chapter 13 Trustee objects to the confirmation of the Debtor's First Amended Plan for the following reasons:

A. The Debtor altered the form plan in section 2.01 listing multiple payment amounts and dates;

B. There appear to be inaccuracies in Debtor's Schedules I and J:

1. The Debtor's Schedule I and Amended Schedule I do not reflect Debtor's Social Security Income;
2. The originally filed Schedule I lists Debtor's non-filing spouse as employed and the amended schedule lists her as retired;
3. The Debtor's Amended Schedule J does not explain the changes in the expenses, or provide the basis for, expenses relating to: childcare, assistance to mother, gifts to family members, and increases in vehicle payments.

Debtor's Response:

The Debtor disagrees that the plan payments listed in section 2.01 of the Amended Plan should be treated as a modification. The Debtor states that his non-filing spouse retired post-petition but pre-confirmation. Debtor offers no response to the Chapter 13 Trustee's contention relating to the omission of Debtor's Social Security Income. The Debtor argues that many of the changes in expenses reflect a reduction in discretionary spending.

Debtor requests additional time to file an explanation of expenses raised in the Chapter 13 Trustee's Opposition if needed.

Debtor's Supplemental Response:

On August 16, 2018, Debtor filed a declaration stating that:

- A. His monthly income includes wages (approximately \$1,800) and Social Security payments (approximately \$1,439).
- B. His Social Security payments will be reduced to \$0 effective October 3, 2018 for ten months to as a result of an overpayment related to his 2017 taxes.
- C. His non-filing spouse retired in July and that her current income has been reduced to \$7,666.11.
- D. His anticipated monthly teaching expenses are \$65 a month.
- E. His amended schedules reflect a reduction in payments to his Mother-In-Law from \$500 to \$100 because his non-filing spouse's income has reduced and other family members increased their contributions;
- F. The increase related to the payments of the non-filing spouse's personal property was a computational error; however, no statement concerning the correct amount is included in the declaration.

The Court notes that numbered paragraph 2 of Debtor's declaration, addressing the employment status of the non-filing spouse, references an attachment, but no attachment was filed on or after the date of the declaration.

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.

* * * *

12.	18-23524 -C-13 DPC-1	MARIO LOPEZ AND LEAH ALBERTO Lucas Garcia	AMENDED OBJECTION TO DISCHARGE BY DAVID P. CUSICK 7-2-18 [21]
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Thru #13

Final Ruling: No appearance at the August 21, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 2, 2018. 28 days' notice is required. This requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained .
--

The Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on July 2, 2018. Dckt. 21.

The Objector argues that Mario A. Lopez and Leah P. Alberto ("Debtors") are not entitled to a discharge in the instant bankruptcy case because the Debtors previously received a discharge in a Chapter 7 case.

The Debtors filed a Chapter 7 bankruptcy case on May 22, 2015 Case No. 15-24142. The Debtors received a discharge on September 8, 2015. Case No. 15-24142, Dckt. 27.

The instant case was filed under Chapter 13 on June 5, 2018.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on September 5, 2015, which is less than four-years preceding the date of the filing of the instant case. Case No. 15-24142, Dckt. 27. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 18-23524), the case shall be closed without the entry of a discharge and Debtors shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained.

IT IS FURTHER ORDERED that, upon successful completion of the instant case, Case No. 18-23524, the case shall be closed without the entry of a discharge.

13. [18-23524](#)-C-13 MARIO LOPEZ AND LEAH
[DPC-2](#) ALBERTO
Lucas Garcia

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-24-18 [[24](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 24, 2018. Fourteen days' notice is required. This requirement was 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. At the hearing -----.

The court's decision is to sustain the Objection.
--

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

A. Debtors' paystubs indicate that the Debtors are receiving gross income in excess of what was reported on their Schedule I;

B. The Plan does not provide for an increase in plan payments upon the satisfaction of debts during the life of the plan;

C. The amount listed on Schedule I for Mario Al Lopez's repayment of retirement loan debt appears to be overstated as the amount is inconsistent with the information provided to the Trustee; and

D. Debtors' disposable income should be increased to reflect actual gross income and expenses.

The Trustee asserts that Debtor is over median annual income. For Debtor Mario, Schedule I lists gross monthly income of \$3,850.00. However, Debtor's paystubs reflect monthly income of \$4,903 a month. For Debtor Leah, Schedule I lists gross monthly income of \$2,900, but her paystubs reflect monthly gross income of \$3,679.65.

On Schedule I, Debtor lists a \$864.00 monthly deduction for the repayment of retirement loans, which will be repaid during the life of the Plan. However, Debtor does not provide for this additional disposable income to be paid into the Plan.

The Trustee further directs the court to Debtor's post-petition paystubs which reflect that the monthly loan repayment amounts total \$298.71, not the \$864.00 listed on Schedule I.

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 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 July 9, 2018. 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 Chapter 13 Trustee opposes the Debtor's Motion to Confirm the First Modified Plan on the basis that the Debtor's Declaration requires supplementation. Specifically, the Chapter 13 Trustee identifies the following issues with the Debtor's declaration:

1. The Debtor's claimed changes in month-to-month finances in paragraph 3 of the Debtor's declaration are unexplained;
2. The Debtor makes no statement whether the claimed changes in month-to-month finances will hinder her ability to pay the proposed plan payments;
3. The Debtor's statement in paragraph 5 of her declaration does not appear to be based on personal knowledge; and
4. Debtor does not state whether she actually filed any required state or federal tax returns, whether any of those tax returns were filed post-petition, or whether any of the post-petition tax returns were recently filed.

The Opposition focuses on Debtor's Declaration and identified shortcomings therein. Some of this consternation appears to result from Debtor testifying to some conclusions, rather than current facts. (Such as Debtor testifying as to her legal opinion, stating that she believes her plan complies with 11 U.S.C. § 1325. Additionally, Debtor "dictates" her factual finding and legal conclusion that the plan satisfies the "liquidation test," but does not provide testimony as to how she computes the value of her assets, the liabilities, and what would be the financial result of a Chapter 7 liquidation) Debtor does affirmatively state that her monthly income is \$4,100 and her expenses are (\$2,410), resulting in her being able to fund a \$1,690 monthly plan payments. (The court rounds the amounts to whole dollar amounts.)

Debtor's original Schedules I and J were filed on May 1, 2018. Dckt. 1. On Schedule I Debtor states under penalty of perjury that her monthly income is \$4,100. This consists of \$2,040 in net monthly income from her business, \$365 in Food Stamps benefits, and \$1,695 in IHHS income. *Id.* at 21-22. Debtor includes the required statement of gross income and expenses for her business. *Id.* at 23-28.

On original Schedule J Debtor lists the expenses for herself and two teenage children. *Id.* at 29-30. Neither on original Schedule I or Schedule J are any provision for payment of self-employment taxes, or for any state or federal income taxes, except for \$195 of withholding from the IHHS income.

On May 31, 2018, Debtor filed Amended Schedules I and J. Dckt. 21. Debtor's monthly income is still stated to be \$4,100. Debtor's expenses on Amended Schedule J increase slightly, decreasing the net monthly income to fund the plan to \$1,690. *Id.* at 30.

A Second Amended Schedule J was filed by Debtor on July 12, 2018. The net monthly income is still stated to be \$1,690. Dckt. 39 at 2.

Even on Second Amended Schedule J Debtor does not provide for self-employment taxes, or state or federal income taxes, other than any amounts within the \$195 a month withholding from the IHHS income.

While the Debtor's reference to there being some pre-petition changes in her finances that led to the bankruptcy might not, on their own, be fatal, the Trustee has identified sufficient financial issues putting in doubt that the present Plan is feasible.

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.

15. [16-28228](#)-C-13 DORIS ALLEN MOTION TO MODIFY PLAN
[BLG-4](#) Chad Johnson 7-10-18 [[78](#)]

Final Ruling: No appearance at the August 21, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee July 10, 2018. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted .

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. The Chapter 13 Trustee's opposition was withdrawn on August 14, 2018. Dckt. 88. No opposition to the Motion was filed by the creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Modified Chapter 13 Plan filed on July 10, 2018 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

* * * *

Final Ruling: No appearance at the August 21, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee July 19, 2018. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted .

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. The Chapter 13 Trustee's opposition was withdrawn on August 13, 2018. Dckt. 180. No opposition to the Motion was filed by the creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Modified Chapter 13 Plan filed on July 9, 2018 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

* * * *

* * * *

Tentative Ruling: The Motion to Confirm the 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). 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 6, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Modify 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

A. Debtor's pre-petition retirement loan appears to be fully paid, allowing for a plan payment increase of \$435.39;

B. Debtor filed Schedules I and J in which Schedule I is marked amended and Schedule J is marked both amended and supplemental causing confusion about Debtor's current financial situation; and

C. Debtor is delinquent due to a mortgage adjustment. Debtor did not increase plan payments as required. The Trustee disputes Debtor's statement in the declaration claiming that he was not aware of the increase. The Trustee states notice was provided to Debtor and Debtor's counsel on July 21, 2017 alerting

them of the September 25, 2017 increase. The Trustee received the correct increased plan payment in September. However, all payments received after November 2017 have been insufficient.

Debtor's Response:

Debtor responds to the Chapter 13 Trustee's objection as follows:

A. Debtor's response states that paycheck deductions for two different retirement loans identified as 401k loan 2 and 3 in the amounts of \$203.98 and \$126.28, respectively. Debtor claims the total loan repayments equal the claimed \$435.39 retirement loan repayments. However, the Trustee and this court note that the amount in fact totals \$330.26 not \$435.39.

B. Debtor's counsel inadvertently filed Schedule J as both amended and supplement. The Schedule J was intended to be a supplemental filing.

C. Debtor modifies his initial argument to state the basis for delinquency is inability to pay, not lack of notice.

Trustee's Reply:

The Trustee replied to Debtor's response as follows:

A. While the Trustee disputes Debtor's addition, the Trustee confirms that some of Debtor's bi-weekly pay stubs from April 30, 2018 through July 8, 2018 show deductions for 401k loans 2 and 3 in the stated amounts totaling \$330.26 per paycheck totaling repayments of \$660.51 per month, not \$435.39.

However, the Trustee also notes that the Debtor's paystubs reflect fluctuating repayment amounts for 401k loans 1 through 3 which may indicate the Debtor paid off the original loans and borrowed additional funds.

The Trustee's Opposition and evidence raise serious concerns regarding Debtor's good faith, both in proposing this Plan and prosecuting this case.

In Responding to the Opposition, Debtor has failed (or refused) to provide any testimony to provide evidence to support the Response. Rather, Debtor's counsel makes arguments in responding.

First, Debtor's counsel argues that the Trustee's information from the First Meeting of Creditors that the retirement loan was to be paid off May 28, 2017, is incorrect. Response ¶ 1, Dckt. 64. Then, counsel argues that "according to the July 24, 2018 paycheck the debtor is currently having deductions" of specified amounts. Debtor does not offer as evidence such "paycheck," but merely counsel's argument.

Given the number of times the court has addressed with Debtor's counsel the need to have evidence to support counsel's arguments, the court is confident if such evidence existed, it would have been provided. If Debtor had testimony to support counsel's arguments, Debtor's declaration would have been provided. No such evidence has been provided in response to the Trustee's Opposition.

While more technical, counsel's Response blames his office's computer program for filing amended schedules incorrectly stated to be amended (dating back to the start of the bankruptcy case) and supplemental (taking into account post-petition changes). This too is an issue that has been addressed multiple times, with counsel and his office having many months, if not years, to file properly prepared amended or supplemental schedules. The court does not find counsel's argument persuasive - or credible.

In the Declaration of Debtor filed in support of the Motion (Dckt. 53), he testifies under penalty of perjury that he could not make the increased plan payment to account for the increase in the post-petition monthly mortgage payment.

Having been directed to this Declaration by the Debtor, the court notes that it demonstrates a lack of knowledge of what the plan provides. Debtor states that he does not know how his plan provides for paying his secured claim, but only parrots the possible treatment for secured claims under 11 U.S.C. § 1322, which includes surrender of the property securing the claim. Declaration ¶ 12, Dckt. 53. Quite possibly Debtor believes that he is surrendering the property and has no desire to make any payments to creditors holding secured claims.

Again, this is a point addressed on a number of prior occasions with Debtor's counsel. If Debtor had actual knowledge of the payments he is committing to secured claims in this case, the court is confident that Debtor's counsel would have insured that Debtor's testimony under penalty of perjury would have included testimony supporting that fact, rather than parroting the Bankruptcy Code. Debtor has no good faith belief or understanding in what his plan provides.

The Trustee filed a Supplemental Response, supported by evidence, addressing Debtor's counsel's arguments. The Trustee directs the court to a paystubs, provided as Exhibits by the Trustee, which show 401k loan payments were \$660.51 a month, not the \$435.39 stated by Debtor. Further, testimony is provided by the Chapter 13 Trustee (Declaration, Dckt. 67) as to the fluctuating amount of payments on the 401k loans (sometimes \$0.00), from which the Trustee argues that Debtor has paid off and then possibly obtained new loans post-petition.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

DARREN HORN
Mark Briden

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
6-18-18 [21]

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 24, 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. At the hearing -----.

The court's decision is to sustain the Objection.

On June 18, 2018, the Chapter 13 Trustee filed an opposition to the Plan. The July 17, 2018 hearing was continued to August 21, 2018. On August 2, 2018, the Debtor filed additional declarations. On August 10, 2018, the Chapter 13 Trustee filed a Status Report stating that the Debtor satisfied the Trustee's original concerns. However, the Chapter 13 Trustee stated in the Status Report that the Debtor is delinquent in plan payments.

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

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

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

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

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

19. [18-23642](#)-C-13 KAE SAELOR
Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY PHH MORTGAGE
CORPORATION
6-26-18 [[15](#)]

Final Ruling: No appearance at the August 21, 2018 hearing is required.

The Objection to Confirmation of Plan is deemed moot due to a subsequent plan being filed on July 19, 2018; therefore, the earlier plan filed on June 11, 2018 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.

IT IS ORDERED that the Objection is dismissed as moot.

20. [18-23643](#)-C-13 ERIC IUNI
[DPC-1](#) Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-17-18 [[13](#)]

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 17, 2018. Fourteen days' notice is required. That requirement was 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 sustain the Objection.

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

A. The Debtor failed to appear and be examined at the First Meeting of Creditors held on July 12, 2018. Trustee's July 13, 2018 Docket Entry Report.

The Trustee further reports that the Debtor did not appear at the August 16, 2018 continued First Meeting of Creditors. Trustee's August 17, 2018 Docket Entry Report.

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

* * * *

21. [18-24252](#)-C-13 SARA ALVA
[PSB-1](#) Pauldeep Bains

MOTION TO AVOID LIEN OF TRACY
ROHLIK
7-18-18 [[13](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien 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)(1) Motion - No Opposition Filed.

Incorrect 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 July 18, 2018. **The notice provided appears to have a clerical error informing the parties of the incorrect deadline to file a response, improperly listed July 7, 2018 instead of August 7, 2018.** 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 Judicial Lien is XXXXXXX.

A judgment was entered against the Debtor in favor of Tracy Rohlik for the sum of \$137,707.15. The abstract of judgment was recorded with the County of Sacramento on December 4, 2015. That lien attached to the Debtor's residential real property commonly known as 6432 18th St., Rio Linda, California. The Chapter 13 Trustee does not oppose Debtor's Motion to Avoid Judicial Lien.

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 \$360,000 as of the date of the petition. The unavoidable consensual liens total \$310,381.28 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$75,000 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).

~~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 Citibank (South Dakota) N.A., Solano County Superior Court Case No. FCM116197, Document No. 201100049865, recorded on June 6, 2011, with the Solano County Recorder, against the real property commonly known 232 Parkview Terrace, Vallejo, 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 21, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2018. 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 22, 2018 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.

23. [18-23353](#)-C-13 MARTHA DAVIS OBJECTION TO CONFIRMATION OF
[JHW](#)-1 August Bullock PLAN BY TD AUTO FINANCE LLC
6-15-18 [\[17\]](#)

Final Ruling: No appearance at the August 21, 2018 hearing is required.

TD Auto Finance LLC (“Creditor”) having filed a Notice of Withdrawal of Motion, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on August 13, 2018, Dckt. 27; no prejudice to the responding party appearing by the dismissal of the Objection; Creditor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Martha Davis (“Debtor”); **the Ex Parte Motion is granted, Creditor’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on May 29, 2018, is confirmed.**

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

24. [12-41157](#)-C-13 GREGORY/MONICA PATTERSON CONTINUED MOTION TO DETERMINE
[PLC](#)-18 Peter Cianchetta MORTGAGE PAYMENT RULE 3002.1
4-12-18 [[157](#)]

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 April 12, 2018. 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).

The court's decision is to grant the Motion.

Debtors bring this motion to determine the Final Cure and Payment due to the mortgage. The Notice of Final Cure Payment showed the amount of interest jumped from \$419.53 to \$723.52 without any accounting. There was no allocation to principle on the payment. Debtors ask the court determine the interest rate is 4.245 until the Creditor Wells Fargo Bank, N.A. provides proper notice.

Creditor's Response

The Creditor, Wells Fargo Bank, N.A., argues that the Motion to Determine Final Cure is not timely because it should have been filed by March 27, 2018 and no order was entered extending time. However, creditor will use the 4.245% interest rate until a new Notice is filed to provide a breakdown of the interest rate increase. Creditor adopts the debtors' unpaid principal balance at \$115,804.42.

Discussion

The court notes that while Creditor argues that the Debtors did not timely file their Motion, the Creditor states that it is amenable to using the 4.24% interest rate until a subsequent notice of mortgage payment change is filed.

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

IT IS ORDERED that the Motion is granted, Debtor is permitted to use the 4.25% interest rate until a subsequent notice of mortgage payment change is filed.

25. [17-25857](#)-C-13 GARTH PEDROTTI
RS-1 Richard Sturdevant

CONTINUED MOTION TO MODIFY
PLAN
5-30-18 [[42](#)]

Thru #26

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 May 30, 2018. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor incorrectly states the amount that has been paid in the months 1-9 of the plan. The court notes that the debtor actually understated the amount contributed to the plan.

B. Debtor's service does not comply with Local Rule 9014-1(e). Unlike the Motion and supporting pleadings, the Amended Notice of Hearing and proof of service filed on June 18, 2018, states that the earlier filed documents were not served until June 18, 2018, not at the time of filing as required by Local Bankruptcy Rule 9014-1(e).

The hearing date having been reset, re-service (or initial late service) is appropriate rather than refile the same documents.

C. Debtor's notices do not comply with 9014-1(d), for not including the statement that the parties may review the court's posted tentative or final decision prior to the hearing.

D. Debtor specifies a \$18.88 per month payment for post-petition arrears but debtor does not state a total amount. No claim has been filed for post-petition arrears and it appears that the creditor is not due any amount for post-petition arrears.

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

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

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

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

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

* * * *

26. [17-25857](#)-C-13 GARTH PEDROTTI
[DPC-2](#) Richard Sturdevant

CONTINUED MOTION TO DISMISS
CASE
5-1-18 [[36](#)]

No Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on May 1, 2018. 28 days' notice is required. That requirement is met.

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

The court's decision is to ~~grant the Motion to Dismiss and dismiss the case.~~

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

A. Debtors are delinquent in plan payments in the amount of \$6,248.51. Debtor has paid \$13,271.00 into the plan to date.

Debtor responds that a modified plan will be filed. The court notes that a plan has been filed and set for hearing the same day as the hearing on this Motion to Dismiss.

For the Motion to Confirm, the court **XXXXXXXXXXXXXXXXXX**

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

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

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

IT IS ORDERED that the Motion to Dismiss is ~~granted and the case is dismissed.~~

* * * *

27. [18-23557](#)-C-13 DANIEL BUTLER
[DPC-1](#) Scott Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-23-18 [[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 July 23, 2018. Fourteen days' notice is required. That requirement was 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 sustain the Objection.

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

A. The Debtor failed to file tax returns for the last four years.

B. The Debtor failed to provide the Trustee with (6) months of bank statements, (2) years of income taxes, (6) months of profit and loss statements, and the Class 1 checklist and authorization form.

C. The Debtor's Plan fails the Chapter 7 liquidation analysis. The Trustee calculates equity in non-exempt assets of approximately \$75,000.00 but the Plan does not propose payments to unsecured creditors.

D. The Debtor's Plan payment is insufficient to pay the Class 1 on-going mortgage payment.

E. The Debtor's Additional Provisions are incomplete.

F. The Debtor admitted during the First Meeting of Creditors that the expense for monthly tax withholding identified on Schedule J was overstated, accordingly the Debtor may not be proposing payments for all disposable income.

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

* * * *

28. [14-28960](#)-C-13 JAMES/DORI CANADY MOTION TO MODIFY PLAN
[MET-1](#) Mary Ellen Terranella 6-25-18 [68]

Final Ruling: No appearance at the August 21, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee June 25, 2018. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted .

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Modified Chapter 13 Plan filed on July 5, 2018 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

* * * *

Final Ruling: No appearance at the August 21, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee July 5, 2018. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted .

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Modified Chapter 13 Plan filed on July 5, 2018 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

* * * *

30. [18-23565](#)-C-13 PEGGIE GIBBS
[JM-1](#) Marc Carpenter

OBJECTION TO CONFIRMATION OF
PLAN BY LENDMARK FINANCIAL
SERVICES, LLC
7-25-18 [\[28\]](#)

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 26, 2018. 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. At the hearing -----.

The court's decision is to sustain the Objection.
--

Creditor, Lendmark Financial Services, LLC ("Lendmark") opposes confirmation of the Plan on the basis that:

A. The Debtor's Plan fails to provide for adequate protection, insurance, and payments to cure the default on Lendmark's secured claim.

B. The Debtor has not listed Lendmark's claim as secured because the Debtor has undervalued the secured property, a 2003 Ford Focus.

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 Lendmark Financial Services, LLC 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 not confirmed.

31. [15-26167](#)-C-13 BRANDON HUNT
EJS-1 Eric Schwab

CONTINUED MOTION TO MODIFY
PLAN
5-24-18 [\[48\]](#)

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 May 18, 2018. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor's declaration is deficient, but a supplementary declaration can fix the problems. The deficiency is that testimony is not provided for all of the confirmation elements.

B. The Notice does not comply with Local Rule 9014-1(d). where the notice does not contain information regarding pre-hearing dispositions. Debtors' notice is defective.

C. The debtor includes items 3 and 4 in Class 1 post-petition arrears but unless the creditors file claims for post-petition arrears the Trustee will not pay these amounts as the proof of claim determines the amount not the plan.

Debtor's Supplemental Declaration:

On August 20, 2018, Debtor filed a Supplemental Declaration in which the Debtor states the that:

1. His income has increased due to a promotion;

2. He has changed his tax withholding to get back more during the year;

3. His expenses have increased due to home repairs, braces for his son, fire damage to his home, increases in his utilities, and "in general" daily expenses and emergency expenses.

The Debtor's Declaration is not supported by any evidence. The Declaration does not indicate how much his monthly income has changed due to his claimed promotion or due to the change in withholding. Additionally, the Declaration does not provide evidence or exact figures to support the claimed increases for expenses.

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

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

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

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

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

32. [18-24575](#)-C-13 ANTHONY/AMALIA AITKEN MOTION TO EXTEND AUTOMATIC
[DBL-1](#) Bruce Dwigins STAY
8-7-18 [4]

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 August 7, 2018. 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. At the hearing -----
-----.

The Motion to Extend the Automatic Stay is granted, and the automatic stay is extended in this case.

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. 16-25419) was filed on August 17, 2016 and dismissed without discharge on June 1, 2018. 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 Debtors claim that they were unable to make the required payments in their previous bankruptcy due to unexpected expenses related to car maintenance. In support of the success of their present plan, the Debtors claim that: (1) their vehicle is in better working order now and do not anticipate further mechanical expenses; (2) Anthony Aitken is receiving full allotment hours in the work week; and (3) they have modified their tax withholdings to allow for a \$600.00 refund this year.

The Chapter 13 Trustee filed a statement of non-opposition to the Debtor's Motion for Stay Relief,

Debtors have 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 and parties, unless terminated by further order of this court or subsequent operation of law.

33. [18-23777](#)-C-13 STEVEN/CECILIA KITTS
[DWE](#)-1 Seth Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY FREEDOM MORTGAGE
CORPORATION
7-26-18 [[17](#)]

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 26, 2018. Fourteen days' notice is required. That requirement was 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. At the hearing -----.

The court's decision is to sustain the Objection.
--

Freedom Mortgage Corporation ("Secured Creditor") opposes confirmation of the Plan on the basis that the Debtor's Plan lists the Secured Creditor in Class 4, despite the existence of pre-petition arrearages. Secured Creditor requests that the Debtor either modify the Plan to reclassify the Secured Creditor's claim or exclude the claim from the Plan.

Secured Creditor has filed Proof of Claim No. 7, in which the pre-petition arrearage is stated to be \$3,321.02. Class 4 Plan treatment is permitted only for secured claim in which there is not a pre-petition default that is outstanding.

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 creditor Freedom Mortgage Corporation 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.

* * * *

34. [18-23689](#)-C-13 KATHLEEN PIGNATARO
[DPC-1](#) Joseph Sandbank

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-25-18 [[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 July 25, 2018. Fourteen days' notice is required. That requirement was 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 sustain the Objection.

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

A. The Debtor failed to appear and be examined at the First Meeting of Creditors held on July 19, 2018 and continued to August 30, 2018. The Trustee notes that instead attorney Joseph Sandbank appeared but was unwilling to declare he was appearing as attorney for the Debtor.

The Bankruptcy Petition has been signed by Luke Jackson, of the Vokshori Law Group, as the attorney for Debtor. Luke Jackson is the attorney of record for Debtor in this bankruptcy case. A review of the California State Bar website indicates that Mr. Sandbank is not a member of Mr. Jackson's firm. ^{FN.1.}

FN.1. <http://members.calbar.ca.gov/fal/Licensee/Detail/219367> .

B. The Debtor's Plan proposes plan payments over 60 months fully paying the general unsecured creditor, but does not propose to pay interest to the unsecured claims. Trustee believes that the plan can be completed in 18 months, if the Debtor contributes all projected disposable income. The Trustee states that the Debtor has an additional \$2,345.88 per month to contribute to the plan.

C. The Debtor improperly filled out Form 122C-1 incorrectly reporting gross expenses that should be reflected on Form 122C-2. Further, the Debtor has not provided a detailed Business Budget itemizing business income and expenses.

D. The Trustee is uncertain that the Plan can be completed within (60) months, based on a secured claim filed on July 10, 2018, the Trustee determined it will require (62) months to full-pay the claim;

E. The Trustee is not certain the Debtor can make all required Plan payments;

F. The Debtor's plan calls for payments of \$6,000.00 of attorney fees but fails to indicate how the fees will be paid.

G. The Debtor failed to provide her full legal name on the petition, listing only her middle initial rather than the complete name.

H. The Debtor has failed to provide the Class 1 Checklist form to the Trustee as required by LBR 3015-1(b)(6).

I. The Debtor has not provided the Trustee with (60) days of employer payment advices.

The Trustee directs the court to there being \$331,223.00 non-exempt equity in the property of the estate for payment of creditor claims in full.

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

35. [16-25490](#)-C-13 WILLIAM/TONYA HERKEL CONTINUED MOTION TO MODIFY
[KWS-1](#) Kyle Schumacher PLAN
5-23-18 [\[73\]](#)

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 May 23, 2018. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent on plan payments in the amount of \$570.00. Debtor has paid \$22,690.00 to the plan.

B. Debtor's plan no longer proposes to pay interest to creditors holding unsecured claims nor does it authorize interest payments made to date under the confirmed plan.

C. Debtors' modified plan does not propose to add debtors' mortgage to Class 4. Schedule J incorporates the mortgage payment but the plan does not provide for the debt in Class 4.

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

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

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

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

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

* * * *

36. [18-21291](#)-C-13 MIRIAM CROWLEY
[PR-2](#) Patrick Riazzi

MOTION TO CONFIRM PLAN
7-11-18 [[35](#)]

* * * *

No Tentative Ruling: The Motion to Confirm the Debtor's First Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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.

Incorrect 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 11, 2018. Forty-two days' notice is required and Forty-one days notice was provided. **That requirement was not met.**

The Motion to Confirm the First Amended Plan has not been properly 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 ~~xxxxxx~~ the Motion to Confirm the Plan.

The Chapter 13 Trustee objects to the confirmation of the Debtor's First Amended Plan for the following reasons:

A. The Debtor is delinquent in plan payments in the amount of \$452.34. The Debtor has paid \$7,362.84 into the plan; and

B. The Debtor's plan appears to fail the Chapter 7 liquidation analysis.

At the hearing counsel for the Debtor addressed the defaults advising the court that -----.

~~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 Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan is confirmed.~~

* * * *

37. [18-23292](#)-C-13 RICHARD FAIRCHILD
[EAT](#)-1 Mohammad Mokarram

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DITECH
FINANCIAL, LLC
7-12-18 [\[21\]](#)

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 24, 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. At the hearing -----.

The court's decision is to sustain the Objection.

The Creditor, Ditech Financial, LLC ("Creditor"), opposes confirmation on the basis that the plan provides for payments to commence on Creditor's arrearages in month 22. Creditor argues that Debtor's Plan proposing paying arrears in the amount of \$6,274.00. Creditor stated that it was in the process of filing a proof of claim; however, it provided an approximation totaling \$11,386.78.

Debtor's attorney states he received an \$800.00 up-front payment, with the balance to be paid in the first 22 months. Debtor states that the Plan provides for payment of Creditor's arrearages in the starting in month 22 to allow for the payment of attorney fees.

Discussion:

The Debtor's proposed plan payments are insufficient to provide for all required payments. The Court notes that after filing its Objection, Creditor filed Claim 5-1 reflecting \$11,386.78 in pre-petition arrears, an

amount inconsistent with what is provided for in Debtor's Plan. Creditor's claim was filed on July 23, 2018 which was before the August 2, 2018 deadline to file a claim. Despite being filed after Creditor filed its proof of claim, Debtor does not address the fact that the Plan does not provide for the arrearages reflected on Creditor's proof of claim. The Debtor has not objected to Creditor's proof of claim on the basis that the pre-petition arrears should be \$6,274.00 or on any other basis.

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 Ditech Financial, LLC 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.

38. [18-23594](#)-C-13 SHAWN SISTRUNK
[DPC](#)-1 August Bullock

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-13-18 [[22](#)]

No Tentative Ruling: The Amended 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 24, 2018. Fourteen days' notice is required. That requirement was 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 ~~xxxxxxxxxxxxxxxxxxxx~~ the Objection.

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

A. The Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4) because the Debtor does not provide for approximately \$9,000 of equity in non-exempt property; and

B. The Debtor may not be able to make the payments provided for in the Plan because the stated expenses and proposed plan payments exceed the Debtor's stated income by \$1.

On Schedule I Debtor lists having \$1,634 in gross income, consisting of \$1,484 in unemployment compensation and \$150 in Food Stamps. Dckt. 1 at 64-65. On Schedule J Debtor lists having only (\$1,261) in expenses for a family unit of one adult and two teenage children. *Id.* at 66-67. Schedule J makes provision

for \$0.00 in expenses for: clothing, personal care products, property maintenance, and entertainment. *Id.* at 67. Debtor also provides only \$100 for fuel, maintenance, and registration as transportation expense.

Additionally, while not a stated basis of the Trustee's Objection, the Trustee is unable to determine whether the Debtor's Attorney seeks a flat fee or will be filing a separate motion for compensation under LBR 2016-1(a).

Opposition Filed by Debtor:

Debtor filed a Opposition on August 13, 2018. Dckt. 26. In it, Debtor asserts the following, requesting that the Objection be overruled:

1. Debtor has filed Amended Schedule C (correcting what is stated to be a clerical error).

2. Debtor is attending truck driving school and will graduate soon, anticipating that he will find employment in that field.

3. Debtor's counsel is requesting that \$3,700 of his flat Chapter 13 fees be paid through the Chapter 13 Plan.

Debtor provides his Declaration stating that in the future he anticipates being able to make the plan payments from future income from a future job he obtains after graduating "in a few months" from truck driving school.

Charlotta Sistrunk, Debtor's Mother, has filed her Declaration, stating that she will help the Debtor making the \$374.00 a month plan payments. Dckt. 29. No information is provided as to her financial ability to fund the Plan or what length of time.

The Chapter 13 Plan exists to make payments on two debts: one secured by Debtor's Harley Davidson and the other secured by Debtor's Silverado. Plan, § 3.08(d), Class 2 Claims. Dckt. 7 at 3.

~~_____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 Amended 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.~~

39. [18-23694](#)-C-13 JEANNE RENNERT
[DPC-1](#) Marc Carpenter

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-23-18 [[17](#)]
DEBTOR DISMISSED: 07/30/2018

Final Ruling: No appearance at the August 21, 2018 hearing is required.

The case having previously been dismissed, the Objection is dismissed as moot.

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

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

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

IT IS ORDERED that the Objection dismissed as moot, the case having been dismissed.

No 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 July 9, 2018. 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 ~~xxxx~~ the Motion to Confirm the Plan.

Chapter 13 Trustee's Opposition:

The Chapter 13 Trustee opposes the Debtor's Motion to Confirm the First Amended Plan for the following reasons:

- A. The Debtor appears to be over the debt limits and may be ineligible for a Chapter 13 bankruptcy;
- B. The Debtor has failed to provide the Trustee with tax return information for the pre-petition tax years, or a written statement that no such documentation exists;
- C. The Debtor has failed to file all pre-petition tax returns;
- D. The date of Debtor's plan is in error because the Amended Plan was filed on July 9, 2018 but the filed plan shows that the Debtor electronically signed the Amended Plan on May 18, 2018, the date the original plan was electronically signed;

E. The Debtor's Plan does not propose payments that would pay unsecured claims what they would receive in the event of a Chapter 7; and

F. The Debtor's Schedules do sufficiently identify the Debtor's interests in property.

The Trustee requests that the Debtor's Amended Plan be denied for that a discovery schedule be set. The Trustee has requested records through informal discovery.

The court also notes that on July 27, 2018, creditor Susan Kamenksy filed a joinder to the Trustee's Opposition.

Creditor Alden Jamison's Opposition:

Creditor Alden Jamison opposes the Debtor's Motion to Confirm the First Amended Plan for the following reasons:

A. Debtor has not filed required tax returns;

B. Debtor failed to accurately identify interests in property on her Schedules, Jamison submitted exhibits from a state court litigation identifying assets not identified on the Debtor's Schedules;

C. Debtor's Amended Plan may fail the deemed liquidation test; and

D. Debtor's debts exceed the debt limits under Chapter 13.

Debtor's Reply:

Debtor filed a Reply to the Oppositions. Dckt. 130. Debtor's counsel argues that Debtor is within the Chapter 13 debt limits. Counsel argues that Debtor believed she was within the debt limits when the case was filed. Debtor believed in good faith that she listed all her claims. Debtor was confused when she listed her debts.

Debtor's counsel then argues that there are some debts that "run with the land." He asserts that some of the properties listed on the Schedules are not property of the estate, nor is the Debtor liable on the loans.

Missing from the Reply is any testimony from Debtor. It appears that Debtor has failed (or refuses) to provide testimony under penalty of perjury in this bankruptcy case. Given that the court had now addressed the impropriety of Debtor's counsel merely filing replies and oppositions in which counsel makes arguments of "facts," without presenting any evidence, the court is confident if evidence existed for the facts argued, such would have been presented. Debtor failing (or refusing) to provide testimony, counsel's arguments are not credible.

When the original and Amended Schedules were filed, Debtor was, and continues to be, represented by experienced bankruptcy counsel. On original Schedule A Debtor (with the assistance of her counsel) states under penalty of perjury that Debtor owns the following real properties:

1526 & 1530 Caramay Way FMV \$ 598,000
Sacramento, CA

1398 Herbert Ave FMV \$ 184,000
South Lake Tahoe, CA

20 Jessen Court FMV \$1,100,000
Kensington, CA

1611 Broderick St FMV \$ 1.00 (Stated to be “property in disputed over title”)
San Francisco, CA

For a total of real property having a value of \$1,882,001 being property of the Debtor and bankruptcy estate. Dckt. 14.

But on June 22, 2018, Debtor, with assistance of her counsel, filed an Amended Schedule A/B stating that she had real property with a value of only \$782,000. Dckt. 73. The reduced value is because the 20 Jessen Court, Kensington, California million dollar property disappears without any explanation from Schedule A/B. The corresponding debt for the million dollar property then disappears from Amended Schedule D. Dckt. 74.

In the Reply, Debtor’s counsel argues that it “became clear” that the 1526-1530 Caranay Way, Sacramento, California property “was ‘not property of the estate.’ . . .” Reply, Dckt. 130 at 2. This argument is inconsistent with the changed statements under penalty of perjury by Debtor removing the Jessen Court million dollar property when she filed Amended Schedule A/B.

Debtor offers no testimony as to how she was “confused” over owing a million dollar property. The Reply arguments put forth by Debtor through Debtor’s counsel are inconsistent with the other pleadings and conflicting statements under penalty of perjury by Debtor.

Interestingly, Susan Kamensky, individually and as Trustee, filed Proof of Claim No. 7 in the amount of \$3,401,735.55 for a secured claim. The security for this claim is the 20 Jessen Court, Kensington, California property. Attached to Proof of Claim 7 is a copy of a state court complaint seeking to enforce the obligation under secured notes, naming Debtor as a defendant and deed of trust. These Notes are summarized as follows:

The First Note, dated October 18, 2013, names “Sarah Garlick, DBA REAT Holdings, Inc” as the payor for an obligation in the principal amount of \$416,000.00.

The Second Note, dated April 14, 2014, identifies “Sarah Garlick (DBA REAT Holding, Inc. & Jessen Court Trust) as the payor for an obligation in the principal amount of \$208,000.00.

The Third Note, dated April 14, 2014, identifies “Sarah Garlick (DBA REAT Holding, Inc & 908 Alma Trust)” as the payor for an obligation in the principal amount of \$156,000.00.

The Fourth Note, dated August 15, 2014, identifies “Sarah Garlick (DBA REAT Holding, Inc.” as the payor for an obligation in the principal amount of \$208,000.00.

The Fifth Note, dated January 27, 2015, identifies “Sarah Garlik [sic] DBA REAT Holdings, Inc.” as the payor for an obligation in the principal amount of \$104,000.00.

The Sixth Note, dated May 18, 2015, names “Sarah Garlik [sic] DBA Blue Sky Holdings US, Inc” as the payor for an obligation in the principal amount of \$208,000.00.

The Seventh Note, dated February 2, 2016, names TMITA Fund, LLC as the payor for an obligation in the principal amount of \$355,160.00 (this Seventh Note is signed “Sarah Garlick, Manager of Blue Sky Holdings US, Inc.”).

The Eighth Note, dated July 6, 2015, names TMITA Fund, LLC as the payor for an obligation in the principal amount of \$550,000.00 (this Eighth Note is signed “Sarah Garlick, Managing Member, TMITA FUND LLC.”).

The Ninth Note, dated February 2, 2016, names TMITA Fund, LLC as the payor for an obligation in the principal amount of \$84,240.00 (this Ninth Note is signed by “Sarah Garlick, Manager of Blue Sky Holdings US, Inc.”). ^{FN.2.}

FN.2. The court reviewed the California Secretary of State website identifying corporations and limited liability companies authorized to do businesses in California. <https://businesssearch.sos.ca.gov/>. The website provides the following information:

REAT Holdings, Inc. is listed as a corporation with the status “FTB Forfeited,” it having registered in 2013.

Blue Sky Holdings US, Inc. (Sarah Garlick as president) is listed as a corporation with its status as “FTB Suspended,” it having registered in 2015.

TMITA Fund, LLC is reported as a limited liability with the status “SOS Forfeited,” it having registered in 2015.

Attached as Exhibit 1 to Proof of Claim No. 7 is a deed of trust in which the “borrower” is identified as the Jessen Court Trust and the real property subject to the deed of trust is identified as being in Kensington, California, with a legal description (but not a street address). The person signing the deed of trust is “Devon J. Bella, as Trustee.” The obligation secured by the Deed of Trust is identified as a \$312,000 note which is dated November 29, 2013.

Debtor Financial Information

The Reply includes factual arguments about Debtor’s business - for which no evidence has been presented. Debtor counsel argues that Debtor’s financial information shows that she can perform the Plan. The information provided on Amended Schedules I and J under penalty of perjury do not support such arguments by Debtor’s counsel.

On Amended Schedule I Debtor states under penalty of perjury that her real estate self-employed business net income is \$3,950.00 a month. Debtor's attachment of gross income and expenses shows \$5,400.00 in gross monthly income and expenses of "other taxes" of (\$1,300) and "office expenses" of (\$150). Dckt. 91. Debtor has no other business expenses.

On Amended Schedule J Debtor lists (\$3,599) of living expenses for herself and a minor child. *Id.* at 8. This leaves Debtor with \$350 a month in monthly net income to fund a bankruptcy plan. Debtor does not list paying any self-employment taxes, federal income taxes, or state income taxes on Amended Schedule J. It is not clear what "other taxes" of (\$1,300) a month are stated to be paid as part of the business expenses, not Debtor's personal tax obligations. The court notes that for all of the real properties Debtor lists on original and Amended Schedule A/B, no provision is made for payment of the required property taxes. It appears that the "other taxes" paid as part of Debtor's real estate business are for such property taxes.

No having made provision for payment of required self-employment taxes, federal income taxes, and state income taxes, when stating her income and expenses under penalty of perjury, Debtor's credibility is further impaired, in addition to demonstrating that the Plan is not feasible.

Consideration of Debt Limits

On Schedule D, Debtor has listed (\$1,847,003) in secured claims, with three of them being listed at (\$1) each. Dckt. 14 at 13 - 16. These secured claims relate to multiple real properties and a vehicle.

Congress provides in 11 U.S.C. § 109(e) that an individual is not eligible for a Chapter 13 bankruptcy case if the amount of secured debt exceeds \$1,184,200.

On May 21, 2018, Debtor filed an Amended Schedule D, stating under penalty of perjury a second time that the secured debts total \$1,847,003. Dckt. 18 at 4-7.

Then, after the Trustee's Motion to Dismiss this case due to the debt limit issue having been filed, Debtor filed a Second Amended Schedule D, then stating under penalty of perjury that the secured debts had dropped by one million dollars to "just" \$820,003. Dckt. 74 at 4-6.

Debtor offered no testimony in her declaration about the one million dollar reduction in the prior amount of secured debt stated under penalty of perjury. Declaration, Dckt. 89.

It appears that Debtor has signed notes for which she is identified as the borrower and obligor, whether secured or unsecured (with the 11 U.S.C. § 109(e) debt limit for unsecured claims being only \$394,725) of debts well in excess of the Chapter 13 debt limits..

Denial of Confirmation

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

Further, given Debtor's conflicting statements under penalty of perjury and Debtor's counsel pursuing a litigation strategy of arguing "facts" for which no evidence is provided (and which are inconsistent with schedules filed by Debtor under penalty of perjury), serious questions exists as to whether Debtor and

Debtor's counsel have filed this case in good faith. Further, whether Debtor and Debtor's counsel have proposed the plan in good faith.

Given the conflicting statements under penalty of perjury, prepared with the assistance of Debtor's counsel, for which no testimony explaining such "confusion" and how Debtor no longer claims her ownership of a million dollar property, the pleadings are pregnant with the issue of whether an independent fiduciary needs to replace the Debtor to make sure that all property of the estate is properly administered in this case. Debtor trying to prosecute this as a Chapter 13 case, the available remedy is conversion of this case to one under Chapter 7. Such issues need to be the subject of other proceedings, if any.

~~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.~~

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