UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 3, 2017, at 3:00 p.m.

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1. **17-22614-E-13** **MICHAEL/POLLY LANHAM** **MOTION TO CONFIRM PLAN**
WW-1 **Mark Wolff** **8-9-17 [60]**

Final Ruling: No appearance at the October 3, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Michael Lanham and Polly Lanham ("Debtor") filed a Second Amended Plan and corresponding Motion to Confirm on August 10, 2017. Dckts. 67 & 70. Filing a new plan is a *de facto* withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Michael Lanham and Polly Lanham ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

2. 17-22614-E-13 WW-2 | **MICHAEL/POLLY LANHAM** **Mark Wolff** | **MOTION TO CONFIRM PLAN** **8-10-17 [67]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2017. By the court's calculation, 50 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Michael Lanham and Polly Lanham ("Debtor") seeks confirmation of the Amended Plan because their first proposed plan did not propose enough of a dividend to unsecured claims after priority claims filed were less than anticipated. Dckt. 67. The Amended Plan proposes a 12.3% dividend to unsecured claims

and incorporates an adequate protection stipulation for Schools Financial Credit Union. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 8, 2017. Dckt. 82. The Chapter 13 Trustee opposes Debtor proposing two plans and motions to confirm without withdrawing one. As the court has noted for the other motion to confirm, the filing of the Second Amended Plan acted as a *de facto* withdrawal of the prior plan.

Second, the Chapter 13 Trustee argues that Debtor may not be able to afford plan payments because the supporting testimony from Debtor is in a declaration filed with the First Amended Plan and not with the current proposed plan. Debtor's declarations for the two proposed plans are similar, but the first one includes additional testimony that Debtor has more than $100,000.00 in equity in their residence, which they intend to sell and use the proceeds for a lump sum payment to the Plan for unsecured claims. *See* Dckt. 63. The first declaration also includes testimony about Debtor's schedules and ability to support increased plan payments now that Michael Lanham anticipates raises from full-time work, in addition to working overtime, and now that Polly Lanham is seeking employment.

The Chapter 13 Trustee also opposes Section 2.09 of the proposed plan, which delays payment to Golden 1 Credit Union on its secured claim for thirteen months on the grounds that the delay may violate 11 U.S.C. § 1326(a)(1)(C) and the court's prior order. *See* Dckt. 6.

Finally, the Chapter 13 Trustee notes that Section 2.07 fails to provide a monthly dividend and instead provides "all funds available from lump sum payment plus all funds available after payment of monthly payments to class 2 creditors." The Chapter 13 Trustee notes that the First Amended Plan proposed $150 to administrative claims in Section 2.07.

RULING

The court has addressed that the filing of this Amended Plan was a *de facto* withdrawal of the prior Amended Plan, leaving only one plan pending before the court for consideration. That resolves the Chapter 13 Trustee's first ground for opposing. The remaining grounds cast doubt upon this plan's feasibility.

While the Chapter 13 Trustee has directed the court to supporting testimony in Debtor's declaration for the prior proposed plan, the court questions why Debtor would submit a new plan with a new declaration that is very similar but that omits the specific supporting language about selling their residence and expecting more income from employment. Removing such supporting statements may have been a strategic decision by Debtor, or removing them may have been an indication that those statements were no longer true. Without clarification, the court cannot determine that Debtor will be able to afford the plan payments and conduct a timely sale of property to provide a lump sum payment to the Plan.

As drafted, the Plan is funded by minimal monthly plan payments for two years, and then, from nowhere in particular, Debtor will produce $35,000.00 from thin air. Possibly it is from the sale of property,

but Debtor does not provide for such sale. Debtor does not commit or promise to make such a sale. Debtor does not put in place commercially reasonable standards for conducting such a sale.

Similarly, the Second Amended Plan changes the dividend to administrative claims in a way that is no longer clear about what the dividend is actually meant to be.

This Plan, as now drafted, is little more than a two-year delay, after which Debtor would likely come forward with another amended plan for further delay. Though the Plan does not so provide, the Motion to Confirm states that Debtor shall sell Debtor's residence to fund the lump sum payment. However, in her declaration, Debtor Polly Lanham testifies under penalty of perjury:

> We have 1 real estate properties, our residence. Our residence is subject to the deed of trust of Franklin American Mortgage. We are current on this payment and have provided that we will retain the property and continue making payments directly as a Class 4 creditor.

Declaration, Dckt. 69 at 3:3–5. The testimony is that Debtor has no intention to sell the property. No reference is made in the Declaration to there being any sale, selling, or liquidation of the residence.

While Debtor may intend to proceed with a commercially reasonable sale of the residence, in a commercially reasonable time-period in this Plan, it does not now so provide. In reviewing the file, Debtor has not employed a real estate broker to list and market the property. This case having been filed in April 2017, six months have passed with Debtor continuing to use, enjoy, and occupy what may be an asset to be liquidated, with no action taken to liquidate such asset.

The Plan is not feasible as proposed and is not in good faith.

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

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

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

3. 17-25018-E-13 DPC-1 | **ALFREDO/IVY ARRAZOLA** **Gabriel Liberman** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-6-17 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it is not Alfredo Arrazola and Ivy Arrazola's ("Debtor") best effort under 11 U.S.C. § 1325(b).

The Chapter 13 Trustee's objection is well-taken. The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Chapter 13 Trustee reports that there is conflicting information about Debtor's income. For instance, the Statement of Financial Affairs and Statement of Current Monthly Income indicate that Alfredo Arrazola is not employed, but bank statements provided to the Chapter 13 Trustee show that he has been receiving direct deposits from Nelson Staffing Payroll as recently as August 3, 2017.

Additionally, Schedule I indicates that Ivy Arrazola has gross income of $569.45 per month, but pay advices provided to the Chapter 13 Trustee show that she is paid weekly with an average monthly income of $2,592.54. The Statement of Financial Affairs states that her year-to-date income is $16,034.00, which averages $2,290.57 per month. The Statement of Current Monthly Income indicates that her last six months of income have been $2,456.68 per month.

Finally, Debtor testified at the First Meeting of Creditors held on August 31, 2017, that their adult son contributes approximately $400.00 per month to household income. That contribution is not disclosed on Schedule I.

Debtor appears to have more disposable income to provide to the 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.

Additionally, it appears that Debtor, and each of them, do not appreciate or believe that the information provided under penalty of perjury is to be stated accurately: Rather, it is merely whatever they (or their attorney) believes would better suit their interests. The Chapter 13 Trustee's Objection to Confirmation was filed on September 6, 2017. Though it appears that the Chapter 13 Trustee has documented clearly incorrect statements under penalty of perjury, Debtor has taken no action to file amended Schedules to correctly state such amounts.

The Plan, as proposed based on the inaccurate information, provides for a minimal payment of $150.00 per month. From that, no one receives any payment other than Debtor's counsel and the Chapter 13 Trustee for the required administrative fees for administering the Plan to pay Debtor's counsel. (The court does not find the token 2.5% dividend for general unsecured claims, which dividend spread over thirty-six months aggregates $1,350.00, to be of any significance.)

It may well be that Debtor, in the headlong rush to avoid fulfilling Debtor's obligation under Chapter 13, in the rush to provide information under penalty of perjury that is inaccurate because it is in Debtor's financial advantage, and in the rush to avoid properly paying creditors, may have larger problems than merely not having this Plan confirmed. Debtor may find, if the Chapter 13 Trustee or U.S. Trustee pushes the point, of having to defend a motion to have this case dismissed with prejudice (which results in all of the debts never being dischargeable).

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

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

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

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

4. 15-21819-E-13 PLC-3 — TERRY/CHARLOTTE SEELY — Peter Cianchetta — MOTION TO INCUR DEBT O.S.T. 9-15-17 [61]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2017. By the court's calculation, 18 days' notice was provided. The court required 18 days' notice. Dckt. 66.

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

The Motion to Incur Debt is denied without prejudice.

Terry Seely and Charlotte Seely ("Debtor") seeks permission to enter into a reverse mortgage with Sterling Mortgage Services that will pay an amount more than 100% of the Plan.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 18, 2017. Dckt. 67. The Chapter 13 Trustee is in favor of a 100% payoff for the Plan, but he notes that there are issues with the proposed reverse mortgage.

First, the Chapter 13 Trustee notes that there are two proofs of claim for secured claims that are not provided for by the Plan. The Chapter 13 Trustee notes those two claims because they will not be discharged without being paid. The claims are Claim No. 4 for Golden 1 Credit Union in the secured amount of $6,431.70 and Claim No. 5 for Caliber Home Loans with secured mortgage arrears of $39.54.

Second, the Chapter 13 Trustee notes that the Motion, supporting declaration, and exhibits all fail to refer to the actual address of the real property Debtor seeks to refinance. The Chapter 13 Trustee's review of Schedule A shows that 5762 Sparas Street, Loomis, California, is Debtor's residence.

Finally, the Chapter 13 Trustee notes that a closing statement has not been provided. Without that, he cannot determine from the filed documents what the amount to the Chapter 13 Trustee will be, what secured claims will be paid through escrow, or what date the escrow will close.

DISCUSSION

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

While the proposed credit in theory appears to be reasonable, there are a few hindrances noted by the Chapter 13 Trustee that must be addressed first. Debtor has not filed any supplemental pleading replying to the Chapter 13 Trustee's Response.

Debtor has not addressed whether the two unprovided-for secured claims are to be paid with funds from the reverse mortgage. Debtor has not provided a closing statement showing clearly what will be paid, to whom, and when. Finally, and most concerning to the court, Debtor's pleadings and the attached term sheet do not actually identify the property that is subject the reverse mortgage. At this time, Debtor's Motion is little more than a blanket request from the court to approve the financing without knowing what property is actually involved.

Debtor may respond that no other property than what is listed on Schedule A could be the subject of this Motion, but pursuant to Federal Rule of Bankruptcy Procedure 9013, Debtor must plead that property identification with particularity. ~~At the hearing, Debtor stated on the record that the property subject to this Motion and reverse mortgage is 5762 Sparas Street, Loomis, California.~~

The Motion states that the reverse mortgage proceeds of $259,200.00 will pay all claims, secured and unsecured, in full. The claims filed in this case are:

A.	Macy's	$ 455.00	
B.	SAFE Credit Union	$ 9,506.51	
C.	SAFE Credit Union	$ 6,093.36	
D.	Golden One Credit Union	$ 6,431.70	
E.	Caliber Home Loans	$198,847.86	
F.	US Bank, N.A.	$ ~~72,885.75~~	(Claim Provided For by Surrender)
G.	Portfolio Recovery	$ 3,602.47	
H.	Enerbank Usa	~~$ 8,722.00~~	(Claim Disallowed)
	Total	$224,936.90	

The reverse mortgage is for $259,200.00, which would appear to be enough for payment of the claims filed in this case. The confirmed Modified Plan in this case provides that through July 27, 2016, Debtor had funded the Plan with only $3,195.00, and the payments commencing August 1, 2016, and continuing for the life of the plan were $545.00 per month. That yields $9,735.00 having been paid through August 2017. Unfortunately, Debtor has not provided the court with the above analysis or shown that the monies are sufficient to pay the claims in the case. Debtor, in the exuberance of the moment, appears to have assigned that work to the court, or believed that the judicial process is one in which the court merely grants relief that is requested/demanded/instructed to be issued by a party.

While Debtor's stated reason for the request to incur post-petition debt does not cause the court serious concern, what concerns the court is that certain information has not been pled and disclosed. The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Terry Seely and Charlotte Seely ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

5.	**17-25025-E-13 DPC-1**	**JOSE RODRIGUEZ AND ERIKA MARTINEZ Thomas Gillis**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-6-17 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor's Attorney on September 6, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Jose Rodriguez and Erika Martinez ("Debtor") are delinquent under the proposed plan (as stated below, the Trustee now reports that the delinquency has been cured); and

B. Debtor failed to provide business documents.

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on September 26, 2017. Dckt. 18. He reports that Debtor is no longer delinquent with plan payments, resolving that portion of the Chapter 13 Trustee's Objection.

The Chapter 13 Trustee also reports that Debtor provided some of the required business documents on September 22, 2017, but Debtor has not yet provided six months of profit and loss statements.

DEBTOR'S RESPONSE

Debtor filed a Response on September 26, 2017. Dckt. 21. Debtor states that the delinquency has been cured and that all requested documents were provided to the Chapter 13 Trustee on September 21, 2017.

RULING

There is disagreement between Debtor and the Chapter 13 Trustee about whether all of the required business documents have been provided. Debtor asserts that all of them have been provided, but the Chapter 13 Trustee asserts that he has not received six months of profit and loss statements.

As of the court's review of the pleadings, Debtor had not resolved the final portion of the Chapter 13 Trustee's Objection by providing profit and loss statements. At the hearing, the parties reported that the profit and loss statements have / have not been provided.

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

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

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

6.	**17-25129-E-13** **CYB-1**	**ADRIAN/LESLIE CARTER PADILLA** **Candace Brooks**	**MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION** **9-12-17 [16]**

Final Ruling: No appearance at the October 3, 2017 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 12, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

On September 15, 2017, Creditor Golden 1 Credit Union filed an amended proof of claim stating that the amount of its secured claim is $18,900.00, with the balance as part of its unsecured claim. Amended Proof of Claim No. 1. That is the same as the value asserted by Debtor. With there now being no dispute as to the value, the court has determined that oral argument will not be of assistance in ruling on the Motion. FN.1.

FN.1. The court notes, so that it will not assume that it went unnoticed, that this demonstrates the communication between the parties and counsel to resolve these issues prior to hearing. Such diligence and good faith efforts assist not only the parties and their respective counsel, but the court and other persons in the judicial process by freeing the court to focus on matters in which there is an actual dispute.

The Motion to Value Collateral and Secured Claim of Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $18,900.00.

The Motion filed by Adrian Padilla and Leslie Padilla ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Acura TL SH AWD Sedan ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $18,900.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 19, 2017. Dckt. 28. The Chapter 13 Trustee notes that the Vehicle is listed on Schedule A/B, and the claimant is listed on Schedule D with a claim amount of $22,301.00 and a value of $16,048.00.

Creditor is included in Class 2B. 1. of the Plan as a purchase-money claim with an amount of $22,301.00, value of $18,900.00 at 3.49% interest and with a monthly dividend of $600.00. Creditor has filed a Claim No. 1-1 in the amount of $21,770.18, and states $18,900.00 is secured.

CHAPTER 13 TRUSTEE'S SECOND RESPONSE

The Chapter 13 Trustee filed a second Response on September 19, 2017. Dckt. 31. He notes that Debtor moved the Court to value the Vehicle with the odometer reading of approximately 72,270 miles and as in good condition with a retail value of $18,900.00.

He also notes that Creditor filed an amended Proof of Claim on September 15, 2017, regarding the Vehicle for an amount of $21,770.18, where $18,900.00 is secured and $2,870.18 is unsecured.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 10, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,770.18. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $18,900.00, the value of the collateral agreed to by the parties. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Adrian Padilla and Leslie Padilla ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Golden 1 Credit Union ("Creditor") secured by an asset described as 2013 Acura TL SH AWD Sedan ("Vehicle") is determined to be a secured claim in the amount of $18,900.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $18,900.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

7. **16-20740-E-13** **EMMA MCZEEK-TANKO** **MOTION TO INCUR DEBT**
TLA-4 **Thomas Amberg** **9-19-17 [82]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied.

Emma McZeek-Tanko ("Debtor") seeks permission to purchase a 2017 Dodge Journey, with a total purchase price of $22,290.00 and monthly payments of $420.00 to Consumer Portfolio Services, Inc. over seventy-two months with a 16.70% interest rate.

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

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 21, 2017. Dckt. 87. The Chapter 13 Trustee argues that the interest rate proposed for the auto loan may not be commercially reasonable at 16.70%, although it is an improvement from 22.9% that was proposed previously. The Chapter 13 Trustee is unclear as to whether Debtor formally applied with various lenders and what Debtor is currently doing for transportation.

The Chapter 13 Trustee asserts that Debtor cannot make plan payments of $356.00 per month if this Motion is approved because the auto payment is $420.00 per month. He notes that Debtor's Schedule I and J do not show any obvious expenses to be reduced, and Debtor's net projected disposable income is $356.00. Debtor's Declaration promising to allocate resources to afford monthly payments are vague. Additionally, Debtor has failed to amend Schedule J.

DISCUSSION

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—16.70%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a new car and attempt to borrow money at a 16.70% interest rate.

Debtor has not shown how she can fund the purchase of a new car and still perform her plan. On Amended Schedule J, filed on March 31, 2016, Debtor states having expenses of only $1,700.00 per month. This expense allows Debtor to state she has $1,075.00 in monthly net income. Dckt. 22. Then, on June 21, 2016, Debtor filed a new "Current Budget" in support of her motion to confirm the Chapter 13 Plan. In that Budget, Debtor's expenses expanded to $2,419.00. Dckt. 46. Those expenses consumed all but $356.00 per month that was reported as monthly income—only 33% of what Debtor stated was her monthly net income only months earlier. But that lower number then became the basis for Debtor extending payments over sixty months rather than what would have been a much shorter period based upon her earlier statements under penalty of perjury of her income and expenses.

Using Debtor's budget for showing only $356.00 in monthly net income, Debtor provides $0.00 for vehicle payments, $0.00 for vehicle insurance, $50.00 for entertainment, and $150.00 for transportation (gas, maintenance, registration). In the Confirmed Modified Plan, no provision is made for payment of any debt secured by a vehicle.

Having failed with her prior motion to have the court authorize post-petition financing with a 22% interest rate so Debtor can buy a new car, Debtor tries again, advancing what she believes the court will find to be an acceptable rate of 16.70%. With car loans in the 4–5% range for borrowers that lenders believe will be able to pay the loan back, the 16.70% is a clear signal that the lender knows Debtor cannot pay, knows Debtor will default, and wants to stick Debtor (and Debtor's creditors) for as much interest as possible before repossessing the car and having a large post-petition debt for the deficiency for this car loan.

Debtor's lack of financial ability to pay is demonstrated by her declaration in support, which is devoid of any actual financial information. Rather, Debtor merely dictates her conclusions to support her demand that the court sign an order allowing her to purchase a brand new car as part of her Chapter 13 case.

> "8. While I am aware that this is interest rate is high, I went to a number of different lenders and called my bank, and no other institution provided me with a better alternative. My goal is to refinance the loan after 1-2 years in order to lower the interest rate.
>
> 9. I am aware that the Trustee opposed my previous motion. I believe that I can afford the monthly payments by cutting back on my discretionary spending and better allocating some of my resources. I am in need of transportation to work, as I can no longer rely on borrowing vehicles, use rideshare alternatives or renting a car. I understand and believe that I can make the payments by budgeting better."

Declaration, p. 2:4–12.5. Debtor provides no actual financial information showing she can pay, but only her "belief" that she can afford it.

Interestingly, Debtor surrendered the 2013 Ford Escape in the original plan confirmed by order on May 5, 2016. Plan, Class 3, Dckt. 7; Order, Dckt. 30. Though the Debtor surrendered her only vehicle in 2013 and needs a vehicle to get to work, she has had no vehicle since May 2016. No explanation is provided as to what this vehicle-less Debtor has done for the past seventeen months for transportation. FN.1.

FN.1. Debtor is incorrect in her statement under penalty of perjury that she modified her plan to surrender the Ford Escape. Declaration, ¶ 2; Dckt. 84. She surrendered it in her original plan confirmed in this case.

To (grossly) paraphrase William Shakespeare from Hamlet (Act 1, Scene 4), *Something Appears to Be Rotten in the River City* with respect to Debtor's finances and the prosecution of this case. There may be more to be addressed by parties in interest than merely Debtor's desire (demand) that she must drive a new car (for which she can show no financial ability to pay) as part of her Chapter 13 Plan.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Emma McZeek-Tanko ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

8. **14-28443-E-13** **PERRY/LOUISE ALLEN** **MOTION TO APPROVE LOAN MODIFICATION**
DRE-1 **Randall Ensminger** **9-13-17 [42]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 13, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Perry Allen and Louise Allen ("Debtor") seeks court approval for Debtor to incur post-petition credit. Safe Credit Union ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification consolidation of three secured lines of credit that will reduce Debtor's mortgage payment from the current $1,655.00 per month to $276.00 per month. The modification will capitalize the pre-petition arrears in a new principal balance of $40,000.00 and will provide for a fixed interest rate of 3.00% over the next 180 months.

CHAPTER 13 TRUSTEE'S "OPPOSITION"

David Cusick ("the Chapter 13 Trustee") filed an "Opposition" on September 19, 2017. Dckt. 47. The Chapter 13 Trustee actually states that he does not oppose the Motion. He states that the primary benefits of the proposed loan modification are to cure pre-petition arrears and set the new principal balance of $40,000.00.

DISCUSSION

The Motion is supported by the Declaration of Perry Allen and Louise Allen. Dckt. 44. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Perry Allen and Louise Allen ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Perry Allen and Louise Allen to amend the terms of the loan with Safe Credit Union ("Creditor"), which is secured by the real property commonly known as 114 Boston Commons Place, Roseville, California, on such terms as stated in the Modification Agreement filed as Exhibit C in support of the Motion (Dckt. 45).

9. 17-24045-E-13 HDR-3 | **PAULINE ABBOTT** / **Harry Roth** | **MOTION TO EMPLOY RE/MAX GOLD AS BROKER(S) AND/OR MOTION TO SELL**
9-15-17 [40]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Employ is granted.

Pauline Abbott ("Debtor") seeks to employ Re/MAX GOLD ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to assist her in marketing and selling 2961 10th Street, Biggs, California ("Property").

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 19, 2017. Dckt. 45.

The Chapter 13 Trustee notes that the Vacant Land Listing Agreement states that the listing price is $14,000.00 and that $2,000.00 will be paid to Broker. Debtor is proposing to pay approximately a 14% commission to Rosalva Ibarra, a licensed real estate salesperson.

The Chapter 13 Trustee is not certain if the listing price is reasonable because there is no specific value of the Property on Schedule A/B. He argues that Debtor has not indicated the status of the Property. An online review of the address shows a pending sale CRMLS #OR1720776 on www.redfin.com.

DISCUSSION

Debtor argues that Broker's appointment and retention is necessary to market and sell the Property for the benefit of Debtor and all creditors in interest. Broker will procure and submit to Debtor all purchase offers. In consideration for these services, Broker will receive, upon consummation of any sale, a real estate broker's commission equal to $2,000.00. No commission is due and payable unless and until an order has been entered approving the sale and escrow closes.

Rosalva Ibarra, a licensed real estate salesperson of Re/MAX GOLD, testifies that she has extensive knowledge and familiarity with the area where the Property is located. Ibarra testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ RE/MAX GOLD as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Vacant Land Listing Agreement filed as Exhibit A, Dckt. 43. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Pauline Abbott ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ RE/MAX GOLD as Broker for Debtor on the terms and conditions as set forth in the Vacant Land Listing Agreement filed as Exhibit A, Dckt. 43, with the commission to be the Broker a set fee of $2,000.00.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 (which may be included in a motion for authorization to sell the property) and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by Broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

10. **17-25945-E-13** **HARRY NASH** **MOTION TO EXTEND AUTOMATIC STAY**
PGM-1 **Peter Macaluso** **9-15-17 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 15, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Harry Nash ("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 petition pending in the past year. Debtor's prior bankruptcy case (No. 17-25283) was dismissed on August 21, 2017, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 17-25283, Dckt. 8, August 21, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he did not know what he needed to do to complete the filing for a Chapter 13 case. Dckt. 12 at 4:12–13.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 19, 2017. Dckt. 14. The Chapter 13 Trustee states that he cannot determine whether this case has been filed in good faith because it is a skeleton filing, and he cannot determine if Debtor's circumstances have changed since the prior case.

The Chapter 13 Trustee notes that Debtor's counsel has filed, and Debtor has signed, a declaration without adequately reading and reviewing its contents. He states that Debtor's declaration refers to a plan at items 3, 5, 6, and 9, but there is no plan. The Chapter 13 Trustee questions whether the rest of the declaration is credible based upon the misstatements.

Finally, the Chapter 13 Trustee notes that Debtor does not explain how or why he and his wife selected a "legal team" from Farmington, Utah to assist them. Additionally, Debtor has not identified the name and case number of his spouse's case, the name of his mother-in-law, the date when his mother-in-law died, or the identifying information for the person who said, "This is just a pretend BK," and whether Debtor and his spouse heard that statement.

DISCUSSION

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Subsequent to the Chapter 13 Trustee's Response that raised a number of concerning issues for this case, Debtor filed a plan and schedules. Debtor proposes a plan by which he would make payments of $8,000.00 for sixty months with a 100% dividend to unsecured claims. Dckt. 18.

Debtor has presented to the court that he filed his prior case (filed in *pro se*) without knowing what he was doing, which is not a valid excuse, but does not prevent him from having the automatic stay extended in this case. The Chapter 13 Trustee has expressed concern about this case being a skeleton filing, which has now been corrected with the filing of Debtor's plan and schedules. Additionally, the Chapter 13 Trustee noted that it is unclear what is different about this case. With the filing of the required documents, the court determines that Debtor has taken a more serious approach to the current bankruptcy filing. Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The court notes that in the prior 2017 case filed by Debtor " on the advice of the legal team we hired, Community Assistance Program in Farmington, Utah," purports to have been filed in *pro se*, with Debtor going so far as to state on the signature block for the Petition, "Debtor not represented by attorney." 17-25283; filed August 10, 2017, Petition pg. 7, Dckt. 1.

In reviewing the Statement of Financial Affairs filed in this case, Debtor states under penalty of perjury that he has only made payments to his current counsel in connection with filing of a bankruptcy case. Statement of Financial Affairs Question 16, Dckt. 17. Given that Debtor says the Farmington, Utah Program was "hired," the question arises as to why no payment for such "hired" services is shown. This does not preclude the granting of this Motion, as the court is confident that Debtor, Debtor's counsel, the Chapter 13 Trustee, and U.S. Trustee will consider the activity of this group, whether there are undisclosed payments, and the nature of such "legal services and advice to file bankruptcy."

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Harry Nash ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

11. **17-25972-E-13** **JOSEPHINE NASH** **MOTION TO EXTEND AUTOMATIC STAY**
PGM-1 **Peter Macaluso** **9-15-17 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 15, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Josephine Nash ("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 petition pending in the past year. Debtor's prior bankruptcy case (No. 17-25552) was dismissed on September 11, 2017, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 17-25552, Dckt. 10, September 11, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she took incomplete advice from a loan modification company and did not know what all needed to be done upon filing a Chapter 13 case.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 19, 2017. Dckt. 20. He states that he cannot determine if there has been a change in circumstances or if this case has been filed in good faith because it is a skeleton petition. The Chapter 13 Trustee notes that the petition in the prior case listed "Margaret Cadilli" as a spouse, but she is not mentioned in any way in this case.

The Chapter 13 Trustee also notes that Debtor's counsel filed, and Debtor signed, a declaration without adequately reading and reviewing its contents. Debtor's declaration refers to a plan in items 3, 5, 6, and 9 and makes statements about the plan, but Debtor had not yet filed a plan. The Chapter 13 Trustee believes that such misstatements may be grounds to question the validity of the entire declaration.

Additionally, the Chapter 13 Trustee notes that Debtor does not explain how or why she selected a "legal team" in Farmington, Utah, to assist her. Plus, she has not identified the addresses of her other two real properties; the name of the creditor in India (not listed on the master address list); the name, number, and e-mail of the person who said, "This is just a pretend BK," and whether Debtor or spouse, or both, heard that statement; the name of Debtor's mother; and the date when Debtor's mother died.

DISCUSSION

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Subsequent to the Chapter 13 Trustee's Response that raised a number of concerning issues for this case, Debtor filed a plan, schedules, an amended creditor matrix, and an amended petition. On Schedule A, Debtor has disclosed what her three properties are. Debtor reports that one of the properties belongs to the Estate of Margaret Cadilli, Debtor's deceased mother. Debtor has not identified a creditor on either Schedule D or E/F that is based in India. Debtor proposes a plan by which she would make payments of $8,000.00 for sixty months with a 100% dividend to unsecured claims. Dckt. 24.

Debtor has presented to the court that she filed her prior case without knowing what she was doing, which is not a valid excuse, but does not prevent her from having the automatic stay extended in this case. The Chapter 13 Trustee has expressed concern about this case being a skeleton filing, which has now been corrected with the filing of Debtor's plan, schedules, and amended documents. Additionally, the Chapter 13 Trustee noted that it is unclear what is different about this case. With the filing of the required documents, the court determines that Debtor has taken a more serious approach to the current bankruptcy filing. Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Josephine Nash ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

12. 15-20352-E-13 GREGORY/CLARICE BRIDGES MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso 8-24-17 [103]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2017. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Gregory Bridges and Clarice Bridges ("Debtor") seek confirmation of the Modified Plan because of recent retirement and health issues. Dckt. 103, 105. The Modified Plan proposes that all missed payments be forgiven and that plan payments of $3,025.00 begin in September 2017 for twenty-nine months. The Modified Plan also proposes to surrender Debtor's 2000 Audi. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 19, 2017. Dckt. 113. The Chapter 13 Trustee asserts that Debtor is $10,935.46 delinquent in plan payments under the confirmed plan. The Chapter 13 Trustee does not argue that Debtor is delinquent under the proposed modified plan, but he states that he does not expect Debtor to make the increased payment of $3,025.00 due on September 25, 2017.

DEBTOR'S REPLY

Debtor filed a Reply on September 25, 2017. Dckt. 115. Debtor admits to becoming delinquent under the confirmed plan but argues that plan payments did not stop entirely. Debtor argues that the payment of $3,025.00 in the proposed Modified Plan will be paid before the hearing.

RULING

Plan payments are due to the Chapter 13 Trustee on the twenty-fifth day of each month according to Section 1.01 of the Modified Plan. Debtor's Reply, filed on September 25, 2017, essentially admits that Debtor has not made the plan payment and is already delinquent under the proposed plan. Debtor's promise to pay before the hearing is not evidence that the plan is confirmable. In fact, such promise represents the opposite—that Debtor cannot afford to make the increased plan payments.

This Modified Plan raises other concerns. The Confirmed First Amended Plan in this case requires Debtor to have made three payments of $2,580.00 each and then fifty-seven payments of $2,704.00 each. These payments began in February 2015.

In the proposed Modified Plan, Debtor is to have made $74,438.92 in total payments through August 2017, and then will make increased payments of $3,025.00 per month for the final twenty-nine months of the plan. Using the amounts required in the Confirmed First Amended Plan, the payment through August 2017 by Debtor should total the following:

February–April 2015	$ 7,740.00	(three months)
May 2015–August 2017	$75,712.00	(twenty-eight months)

Total Payments Required For First Thirty-One Months
Under Confirmed First Amended Plan.....$83,452.00

However, Debtor's proposed First Modified Plan only accounts for $74,438.92 in payments for the first thirty-one months of the Confirmed First Amended Plan—there is $9,011.08.00 in projected disposable income unaccounted for by Debtor. The only testimony under penalty of perjury that Debtor is able to (or willing, in light of it being under penalty of perjury) give concerning the $9,000.00 of missing monies is:

> "2. We have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; Recent retirement and off work due to medical conditions."

Declaration, ¶ 2; Dckt. 105.

Debtor's counsel is equally cryptic about the missing $9,000.00, being only willing (subject to the certifications arising under Federal Rule of Bankruptcy Procedure 9011) to parrot the above quote in the Motion. One inference that could be drawn from such cryptic pleading is that counsel is aware that no good faith, bona fide reason exists for such default and is unwilling to hang his license out on the limb for Debtor.

Though Debtor and counsel state that the modification does not alter the rights of creditors, presumably in light of Debtor's First Amended Plan providing for a 0.00% dividend, what Debtor has shown is that there was at least $9,000.00 of monies that could have gone to pay creditors with general unsecured claims. Debtor is somehow able to "make-up" (that term being used both descriptively as in "curing" and pejoratively as in "fancifully creating") $9,000.00 to keep the 0.00% dividend plan in place.

Both debtors have jobs with their employers of many years, both of which are public entities. When the case was filed, Debtor stated under penalty of perjury monthly take-home income of $6,985.22. Schedule I, Dckt. 9 at 22–23. On Schedule J, Debtor stated having *reasonable* and *necessary* (excluding rent/mortgage/property taxes/property insurance) monthly expenses of ($4,405.22). That generated a monthly net income figure of $2,580.00 as Debtor's "projected income" for purposes of a Chapter 13 Plan. Those expenses include making a charitable contribution of $500.00 per month and having $500.00 per month in transportation expenses (excluding vehicle insurance). Schedule J, *id.* at 24–25.

With respect to illness and inability to work, the court notes that on June 1, 2015 (now more than two years ago), Debtor filed an Amended Schedule I that lists monthly take-home income of $6,911.47. Dckt. 53 at 8. Debtor Gregory Bridges lists wages of $0.00 and states he is receiving disability payments of $1,900.00 per month. Though on disability, that change had no significant effect on Debtor's monthly net income from when Mr. Bridges was not disabled.

Now, in support of confirmation of the proposed Modified Chapter 13 Plan, Debtor has filed "new" Schedules I and J. Though the court has addressed with Debtor's counsel on numerous times over the past several years, Debtor and Debtor's counsel has filed these "new" Schedules stating that they are both "amended" Schedules and "supplemental" Schedules. Dckt. 107 at 4, 6. Thus, Debtor and Debtor's counsel purport to say that this amends the Original Schedules I and J, and states under penalty of perjury that this information is true and correct as of the commencement of this bankruptcy case in January 2015. However, on the very same Schedules they further state that these are merely supplemental schedules for which the information is true and correct since only August 22, 2017. *Id.*

The "new" Schedules cannot be both. Given that the court has repeatedly addressed this issue with Debtor's counsel, and the court is confident that counsel has addressed with his staff those prior "pleasant" conversations, the conclusions drawn by the court are that counsel is intentionally filing these internally inconsistent pleadings, which are made under penalty of perjury, for at least one of several purposes, including: (1) misleading the court, (2) misleading creditors and other parties in interest, (3) allowing his clients to provide false testimony with an "excuse" to argue plausible deniability, and/or (4) to abuse the Bankruptcy Code.

Further, if this is taken as "merely" a supplemental schedule, the new financial information is accurate only from August 22, 2017, not providing any "cover" as to where the missing $9,000.00 from the prior months has gone.

Interestingly, without explanation, Debtor Clarice Bridges reports that her monthly gross income has dropped from $6,852.80 per month (Schedule I, Dckt. 9 at 23) to $4,406.02 per month (Second Amended Schedule I, Dckt. 107 at 4). Now, between his pension and Social Security benefits, Debtor Gregory Bridges has increase his monthly take-home income to $1,456.00.

At the end of the day, Debtor lists $5,743.16 in monthly take-home income—a ($4,405.22).

If taken as true, Debtor now testifies under penalty of perjury that monthly take-home income is $5,743.16—$1,200 per month less than under the post-disability Amended Schedule I, notwithstanding one of the debtors significantly increasing his income.

On Second Amended Schedule J, Debtor now states having *reasonable* and *necessary* expenses of only ($2,718.16)—which is $1,687.00 (38%) less than the prior *necessary* expenses. Dckt. 107 at 7. Some of the expenses that drop are:

(1) transportation, reduced –61% (from $560 to $220);

(2) electricity/gas/water, reduced –18% (from $350 to $287);

(3) phone/cable reduced –72% (from $430 to $121);

(4) food and housekeeping supplies reduced –43% (from $875 to $500);

(5) clothing/laundry reduced –62% (from $214 to $80);

(6) personal care products reduced –70% (from $150 to $45); and

(7) charitable contributions reduced –60% (from $500 to $200).

However, some expenses have been increased, including: (1) home maintenance, +60% (from $150 to $240); and (2) vehicle insurance phone/cable +21% (from $185 to $225).

No credible explanation is provided for those changes or for how long those lower expenses have been the purported true and actual expenses of Debtor. The disclosed $9,000.00 of missing projected disposable income may well understate the actual amount of projected disposable income that has been diverted from the Plan.

This proposed Modified Plan, the "plausible deniability" testimony, and the dearth of information for the gross changes in income and expenses demonstrate not only a lack of feasibility, but raise the specter that this case has not been filed in good faith, the prior testimony under penalty of perjury by Debtor has been false, the prior plans were not purposed and confirmed in good faith, the latest proposed Chapter 13 Plan is not proposed in good faith, and that this case is not being prosecuted in good faith. The best-case scenario for Debtor may be the dismissal of this case and commencing a new case (if the dismissal is not with prejudice) in good faith, proposing a new plan in good faith, confirming that plan in good faith, and then prosecuting the new case in good faith to complete the new sixty-month plan.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Gregory Bridges and Clarice Bridges ("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.

13. 17-24652-E-13 DPC-1 — GERALDINE DEGUZMAN, Pro Se — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 8-29-17 [21]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on August 29, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Geraldine DeGuzman ("Debtor") failed to appear at the Meeting of Creditors;

B. Debtor has not made any plan payments;

C. Debtor's plan is blank;

D. Debtor failed to disclose a prior bankruptcy case;

E. The Plan fails the liquidation analysis; and

F. Debtor has not provided pay advices and tax returns.

The Chapter 13 Trustee's objections are well-taken. Debtor did not appear at the first Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. The Meeting was continued to 11:00 a.m. on September 21, 2017, Debtor appeared, which resolves this ground of the Chapter 13 Trustee's Objection.

The Chapter 13 Trustee asserts that Debtor is $75.00 delinquent in plan payments (with another $75.00 payment due prior to this hearing), which represents one month of the $75.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has proposed a plan payment of $75.00 but has not proposed any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee reports that Debtor failed to disclose a prior bankruptcy case (Case No.09-40543, filed on September 24, 2009) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has misstated her exemptions on Schedule C by claiming exemptions up to the full amount of each asset, instead of claiming the dollar amount allowed under California law. Additionally, Debtor lists no liens on her real property on Schedule D, but she lists Bayview Loan Servicing on Schedule E/F. It appears that Debtor there may be additional equity in Debtor's property that can be contributed to the Plan.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

14. **17-24755-E-13** **ROBBIE/CHRISTI HOLCOMB** **MOTION TO VALUE COLLATERAL OF CELTIC BANK**
CYB-1 **Candace Brooks** **9-13-17 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 13, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Celtic Bank ("Creditor") is denied without prejudice.

The Motion filed by Robbie Holcomb and Christi Holcomb ("Debtor") to value the secured claim of Celtic Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of business assets such as all inventory, chattel paper, accounts, equipment, and general intangibles ("Property"). Debtor seeks to value the Property at a replacement value of $585.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 18, 2017. Dckt. 25. The Chapter 13 Trustee notes that Debtor has included Creditor on Schedule D and in Class 2B of the proposed Plan. He notes that, to date, Creditor has not filed a proof of claim regarding this matter.

RULING

The court begins with the Property that secures Creditor's claim. The Motion states that the debt secured is that of Robbie Holcomb, dba the Holcomb Group. Exhibit A is identified as the document "describing" the collateral. Exhibit A is a copy of Schedule A/B filed in this case. Taken literally, Debtor could be stating that all assets listed on Schedule A/B secure Creditor's claim. The "argument" portion of the Motion makes reference to a financing statement filed as Exhibit B.

Exhibit B is a UCC Financing Statement in which Celtic Bank Corporation is listed as the secured creditor ("secured creditor" being a term of art under the Commercial Code). The "debtor" (as a Commercial Code term) is stated to be "The Holcomb Group." The collateral description on the Financing Statement is the general "all personal property" description commonly used by institutional lenders. Exhibit B, Dckt. 23.

> 4 .COLLATERAL: All Inventory, Chattel Paper, Accounts, Equipment, and General Intangibles, whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).

Id.

Debtor does not provide the court with the loan documents or the security agreement (which is the binding document that describes the collateral).

In his Declaration, Debtor Robbie Holcomb testifies that "The Holcomb Group" is the name of his IT consulting business. Dckt. 22. He does not provide any testimony about the underlying obligation, when it was obtained, and the terms of such debt.

On Schedule A/B, in response to Question 35 "Any financial assets you did not already list, Debtor states:

> "Business Assets - APC Smart UPS 2200-2U-$159, APC Smart UPS 2200 times (2)-$99 each or total $198, APC Smart UPS 1400 times (2)-$55 each or total $110; Dell Optiplex GX280-$48.50, Dell Monitors 17# times (2)-$35 each or total $70; Total Value: $585.50"

Schedule A/B, Question 35; Dckt. 1 at 17.

However, in response to Question 37, Debtor states he has no "business assets." *Id.* In response to Question 17 on Schedule A/B, Debtor lists having $2,925.00 in "business" bank accounts. *Id.* at 15. But no "business" is listed on Schedule A/B.

The California Secretary of State lists there being a "Celtic Bank Corporation" (the name on the Financing Statement filed as Exhibit B) registered to do business in California. https://businesssearch.sos.ca.gov/CBS/Detail. The agent for service of process for Celtic Bank Corporation is Timothy J. McGoff, at an address in San Diego, California.

The FDIC lists a "Celtic Bank" as a federally insured financial institution that is located in Salt Lake City, Utah. FN.1.

FN.1. https://research.fdic.gov/bankfind/detail.html?bank=57056&name=Celtic Bank&searchName=celtic bank&searchFdic=&city=&state=&zip=&address=&searchWithin=&activeFlag=&searchByTradename =false&tabId=2.

It is not clear that "Celtic Bank" is the same entity as "Celtic Bank Corporation." Reviewing the information available on LEXIS-NEXIS for entities with the words "Celtic Bank" in their names or tied by LEXIS-NEXIS to "Celtic Bank" include:

A. CELTIC INVESTMENT INC;

B. CELTIC BANK CORPORATION;

C. CELTIC BANK CORP;

D. CELTIC BANK;

https://advance.lexis.com/publicrecordshome/?pdmfid=1000200&crid=e94b297c-aa7e-439d-87f5-44f47 a2c48ec.

The court is uncertain as to who the creditor is having a claim in this case, what business Debtor may have, what business assets exist, who the parties are to the loan documents and security agreement, and the assets subject to the lien.

The Motion is denied without prejudice. Debtor can file a new motion, with all of the necessary evidence for the court to identify the collateral, the creditor, the claim, and the secured claim to be determined pursuant to 11 U.S.C. § 506(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Robbie Holcomb and Christi Holcomb ("Debtor") having been presented to the court, and

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

IT IS ORDERED that the Motion is denied without prejudice.

15.	**17-24755-E-13** **DPC-1**	**ROBBIE/CHRISTI HOLCOMB** **Candace Brooks**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-29-17 [16]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on November 21, 2017.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it relies upon the court granting a pending Motion to Value.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Celtic Bank. That Motion was heard at the October 3, 2017 hearing, and the court denied that motion without prejudice.

The court continues this hearing to allow Debtor to file and serve a new motion to value and set it for hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection is continued to 3:00 p.m. on November 21, 2017.

16. **17-22357-E-13 NUU-2** | **KAYLENE RICHARDS-EKEH** **Chinonye Ugorji** | **MOTION TO APPROVE LOAN MODIFICATION** **9-8-17 [55]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2017. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Kaylene Richards-Ekeh ("Debtor") seeks court approval for Debtor to incur post-petition credit. Deutsche Bank National Trust Company, serviced by Specialized Loan Servicing, LLC, ("Creditor"), whose claim the confirmed Plan provides for in Class 4 and whose claim the proposed Modified Plan provides for in Class 4 and the Additional Provisions, has agreed to a loan modification that will allegedly reduce Debtor's monthly mortgage payment, while capitalizing the pre-petition arrears. *Compare* Dckt. 12 (confirmed plan with Creditor listed in Class 4 and monthly contract installments of $2,650.00), *with* Dckt. 46 (proposed modified plan with Creditor listed in Class 4 and monthly contract installments of $2,650.00); *see* Exhibit A, Dckt. 58 (Creditor's letter of July 6, 2017, to Debtor announcing approval of trial loan modification, and superimposed scan of check to Creditor for $2,000.00).

Debtor provided her own declaration to support the Motion, but neither her declaration nor the Motion itself inform the court of the terms of the loan modification. *See* Dckt. 57 (Debtor's declaration).

In violation of Federal Rule of Bankruptcy Procedure 9013, Debtor has not stated grounds with particularity for the court to consider granting the Motion. Debtor has not informed the court about what the new payment amount will be, Debtor has not discussed whether interest rates will change over the loan's term, and most glaringly, Debtor has not provided the loan terms for the court's review.

Additionally, Federal Rule of Bankruptcy Procedure 4001(c)(1) requires that a copy of the credit agreement be filed with the motion, in addition to the terms being summarized in the motion. While the court has waived the requirement to provide a copy of the agreement when it is adequately summarized in the motion (trying to avoid a consumer debtor from being prejudiced by the failure of counsel to comply with the Rules), here the court has been provided with nothing to approve.

All Debtor has provided is that the proposed loan "modification will reduce [her] current monthly mortgage payment to a much affordable amount." Dckt. 57 at 1:22–23. That statement alone is insufficient to grant the Motion. Debtor attached what she identifies as a "Trial Loan Modification Approval Notification," and it states little more than that Debtor has been approved for trial loan payments. Exhibit A, Dckt. 58. Scanned over the notification letter is a check from Debtor to Creditor dated August 1, 2017, for the amount of $2,000.00. Debtor may believe that such scant presentation is sufficient for the court to "know" what the terms of the modification are, but the court has not been presented with any legally sufficient argument or evidence to presume that the trial loan modification payments are $2,000.00 per month.

No party has opposed the Motion, but the court has not been presented with any evidence and argument about the terms of the agreement. Debtor has failed to plead grounds for the motion with particularity as required by Federal Rule of Bankruptcy Procedure 9013. Debtor has failed to provide the court with the terms of the proposed Trial Loan Modification. If the court were to issue an order granting the relief requested, the court would be reduced to nothing more than signing orders merely because it is told to by Debtor, without regard to the relief granted.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Kaylene Richard-Ekeh ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

17. 17-22357-E-13 NUU-1 — KAYLENE RICHARDS-EKEH, Chinonye Ugorji — MOTION TO CONFIRM PLAN, 8-16-17 [47]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2017. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

Kaylene Richards-Ekeh ("Debtor") seeks confirmation of the Amended Plan because the amounts she owes in taxes has changed. Dckt. 49 at 2–3. The Amended Plan proposes payments of $405.00 for sixty months, with a 2% dividend to general unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 14, 2017. Dckt. 60. The Chapter 13 Trustee asserts that Debtor is $405.00 delinquent in plan payments, which represents one month of the proposed $405.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, the Chapter 13 Trustee alleges that Debtor and the Plan violate 11 U.S.C. §§ 1322(b)(5) and 1325(a)(3), (6), and (7) because she has proposed a loan modification that contains

"extreme misrepresentation . . . with undisclosed terms." Dckt. 60 at 2:21.5–23. The court has addressed that proposed loan modification and has denied it without prejudice, in part because it does not disclose the loan terms to the court.

RULING

The Chapter 13 Trustee's Opposition has merit. The court has denied, without prejudice, the motion for the court to approve a trial loan modification of unspecific terms, for unspecified amounts, and undisclosed conditions. Additionally, the proposed plan treats the claim of Deutsche Bank National Trust Company as if there are no defaults and as though it can be paid outside the Plan. There are defaults. While Debtor hopes that Debtor completes the trial loan modification payments (presuming that Debtor can obtain court approval) and then Creditor will enter into a permanent loan modification that cures all of the defaults (which is not guaranteed), there is no loan modification at this time. Debtor's attempt to short-circuit the conduit plan requirements and confirm a plan on undisclosed terms (for which the court cannot make a projected disposable income calculation) smacks of bad faith.

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

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

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

18. 17-24960-E-13 DOUGLAS/VALERIE LUTES
DPC-1 Peter Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-6-17 [33]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Douglas Lutes and Valerie Lutes's ("Debtor") Plan relies on a Motion to Value a Secured Claim; and

B. Debtor's plan is not their best effort.

The Chapter 13 Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Franklin Credit/Bosco. That Motion was denied at the August 29, 2017 hearing and has not been refiled. Dckt. 32. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

Debtor Douglas Lutes stated on Schedule I that he receives unemployment income of $4,124.00 per month, but he testified at the Meeting of Creditors on August 31, 2017, that he is now back at work. Therefore, the accuracy of Schedule I is in question, and the amount of Debtor's disposable income to be distributed cannot be determined to satisfy § 1325(b)(1). Thus, the court may not approve the 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 David Cusick ("the Chapter 13 Trustee") been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

19. 17-24960-E-13 NLG-1 | **DOUGLAS/VALERIE LUTES** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC** **8-15-17 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 16, 2017. By the court's calculation, 48 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Bosco Credit LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Douglas Lutes and Valerie Lutes's plan violates the anti-modification provisions of 11 U.S.C. § 1322(b)(2),

B. The Plan fails to provide for Creditor's claim, and

C. Debtor cannot afford the plan payments.

Creditor's objections are well-taken. First, Creditor argues that Debtor's Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $112,192.01, secured by a second deed of trust against the property commonly known as 3001 Tree Swallow Circle, Elk

Grove, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Creditor asserts a claim of $112,192.01 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $92,705.63. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

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

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that Debtor has not account for its monthly mortgage payment that is more than $370.00, which would push Debtor beyond the available disposable income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 Bosco Credit LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

20. **16-25462-E-13** **DAN/MEGHAN MILLER** **CONTINUED MOTION TO CONFIRM PLAN**
PGM-2 **Peter Macaluso** **7-14-17 [62]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2017. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

Dan Miller and Meghan Miller ("Debtor") seek confirmation of the Amended Plan because they have surrendered property and have eliminated as many non-essential expenses as possible. Dckt. 64. The Amended Plan proposes plan payments of $2,075.00 beginning in June 2017 for fifty-one months to complete the Plan with 0.00% paid to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on August 11, 2017. Dckt. 75. The pleading says that the Plan is feasible and that Debtor is current under it, but it also presents several grounds in opposition to confirmation.

The Trustee questions Debtor's ability to make plan payments under 11 U.S.C. § 1325(a)(6) because they have less income than reported on the schedules, leading to insufficient disposable income.

Specifically, the Trustee notes that Debtor has not amended the income statement to reflect that co-debtor Dan Miller is no longer receiving $1,890.00 in unemployment benefits.

The Trustee also argues that the Plan is not Debtor's best effort because it does not propose an increase in plan payments beginning in month thirty-seven after car payments cease. The Trustee requests language in an order confirming that the plan payment increase to $480.00 for months 37–60.

Finally, the Trustee argues that the Motion has not been pleaded with particularity because Debtor does not explain in the Motion why an Amended Plan is being sought.

DEBTOR'S REPLY

Debtor filed a Reply on August 22, 2017. Dckt. 78. Co-Debtor Dan Miller reports that he has been employed and has begun receiving paychecks, the first of which contained net income of $856.32.

Because Debtor has not received a full month's pay yet, Debtor requests a forty-five day continuance to show feasibility of the plan payments and to file updated Schedules I and J.

AUGUST 29, 2017 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 3, 2017, to determine if Debtor's changed circumstances support the proposed plan. Dckt. 81.

TRUSTEE'S STATUS UPDATE

The Trustee filed a Status Update on September 19, 2017. Dckt. 84. The Trustee states that Debtor has not updated any records and are delinquent $2,075.00 with another payment due on September 25, 2017.

DEBTOR'S REPLY

Debtor filed a Reply on September 26, 2017. Dckt. 88. Debtor states that Dan Miller has provided pay stubs showing full-time employment, and Debtor *promises* to be current by the hearing.

RULING

At the April 25, 2017 hearing, the court expressed concern that Debtor has proposed "a slim budget" that does not seem capable of carrying them through to completion of a Plan. Dckt. 53. Even after amendments, Debtor now once again faces a reality where a plan may not feasible. Debtor reports becoming employed, but Debtor has become delinquent under the Plan.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). Debtor has not shown to the court that income from Debtor's new employment can support the Plan.

Though this has been pending since April 25, 2017, Debtor has failed (or refused) to file SUPPLEMENTAL Schedules I and J showing what the real, truthful, accurate income and expenses for Debtor are now in September 2017. Debtor leaves the court in the dark, asserting nothing more than "trust me, you don't need to know, just sign the order."

The Motion is denied, and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied without prejudice. The court denies the Motion without prejudice to protect Debtor in the event that once current, accurate financial information is presented, the plan is one that could be confirmed in this case.

21. **17-23464-E-13 MET-2** **JOSEPHINE MELONE**
Mary Ellen Terranella

CONTINUED MOTION TO VALUE COLLATERAL OF BOSCO CREDIT II, LLC TRUST SERIES 2010-1
6-9-17 [25]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 9, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Secured Claim of Bosco Credit II, LLC Trust Series 2010-1 ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $65,572.01.

The Motion to Value filed by Josephine Melone ("Debtor") to value the secured claim of Bosco Credit II, LLC Trust Series 2010-1 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1049 Star Lilly Court, Vacaville, California ("Property"), which is rental property owned by Debtor. Debtor seeks to value the rental property at a fair market value of $550,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 13, 2017. Dckt. 30.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on June 20, 2017. Dckt. 38. Creditor notes that Debtor "significantly reduces the value of the Property based upon necessary repairs to the pool and pond." *Id.* at 3:15–16. Creditor states that it is owed $143,119.90, as of the petition filing date. Creditor opposes the Motion on the ground that it has not had an opportunity to conduct an appraisal, and Creditor requests that the court continue the hearing on the Motion approximately forty-five days to allow time for an appraisal to be conducted.

JUNE 27, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 15, 2017, to allow Creditor to conduct an appraisal and for parties to consider the economic reality of a second deed of trust position. Dckt. 44.

CREDITOR'S SUPPLEMENTAL OPPOSITION

Creditor filed a Supplemental Opposition on August 2, 2017. Dckt. 59. FN.1. Creditor states that it conducted an appraisal of the house, which concluded that the Property is worth $623,000.00.

FN.1. Creditor filed the Supplement Opposition and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny a party's requests. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Creditor also argues to the court that a debtor may not utilize 11 U.S.C. § 506(a) when another person is a form of joint owner for the property securing a claim to be valued. Dckt. 59 (citing *In re Rodriguez*, 156 B.R. 659, 660 (Bankr. E.D. Cal. 1993)). Creditor argues that Armando Leyva was the only person to execute the note for the Property, with Debtor not being part of that credit transaction.

AUGUST 15, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 29, 2017, to allow time for the parties to try to resolve any disputes. Dckt. 71.

AUGUST 29, 2017 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 3, 2017, and ordered Debtor to file a supplemental pleading of the proposed repairs on or before September 15, 2017. Dckt. 78.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on September 15, 2017. Dckt. 81. Debtor states that approximately four years ago, she noticed that the pool at her rental property needed refilling more frequently. She requested an estimate from a pool service, but she has been unable to locate that estimate, which she states was for $12,000.00.

Recently, Debtor states that she contacted another pool service (because the prior one is no longer operating) for an estimate to repair cracked plaster, and she states that the attached estimate is for roughly $9,000.00. *See* Exhibit A, Dckt. 82. Debtor states that the estimate does not include any more extensive work or for replacing cracked or missing tiles.

Debtor states that four years ago she also obtained an estimate from a lawn service company to remove a pond. She states that the estimate was $1,000.00, but she does not have a copy of that document. Debtor states that she has been unable to find another landscaping firm who will provide a pond-removal estimate. Debtor speculates that a full removal and repair would cost $2,500.00.

Debtor believes that the original, undocumented pool estimate is more accurate than the estimate she provided, and she believes that the total repair cost totals $14,500.00.

APPLICABLE LAW

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 2-1 appears to be the claim at stake.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $548,427.99, according to Proof of Claim 3-1. Creditor's second deed of trust secures a claim with a balance of approximately $143,119.90.

Determination That The Property Is Not Debtor's Principal Residence

In Creditor's related Objection to Confirmation, Creditor alleges that Debtor's plan impermissibly modifies its claim secured only by an interest in Debtor's primary residence in violation of 11 U.S.C. § 1322(b)(2). Dckt. 50.

On the Petition, Debtor states that she lives at 1740 Newark Lane, Suisun City, California. Dckt. 1. On the Statement of Financial Affairs, she also discloses that she lived at the Property from December 2005 to February 2015 and then moved to 2367 Main Street, Apt. 101, Ferndale, Washington, from February 2015 through May 2017. *Id.* That disclosure is consistent with Debtor's prior case, No. 14-29966, filed on October 6, 2014, in which she disclosed that she lived at the Property at the time of filing and also received rental income from it. Case No. 14-29966, Dckt. 1.

Debtor's Declaration with the Motion states that the Property is her rental property and has been since the filing of this case. Dckt. 27. What neither Creditor nor Debtor has addressed is the legal determination of when a property is deemed a debtor's primary residence—whether that time is upon signing a loan note, filing a bankruptcy case, or confirming a Chapter 13 plan. That determination could impact whether Debtor could move to value Creditor's secured claim under 11 U.S.C. § 506(a).

The Bankruptcy Appellate Panel for the Ninth Circuit has addressed the precise question of when to determine a debtor's principal residence for purposes of 11 U.S.C. § 1322(b)(2). *See Benafel v. One West Bank, FSB (In re Benafel)*, 461 B.R. 581 (B.A.P. 9th Cir. 2011). After studying trends in case law, the Bankruptcy Appellate Panel held that 11 U.S.C. § 1322(b)(2) should be analyzed using the petition date to determine a debtor's principal residence. *Id.* at 588.

The *Benafel* court summarized its research into the issue and concluded that using the petition date reflected the majority trend. *See id.* at 589–90 (citing *In re Christopherson*, 446 B.R. 831, 835 (Bankr. N.D. Ohio 2011); *In re Baker*, 398 B.R. 198, 203 (Bankr. N.D. Ohio 2008); *Wells Fargo Bank, N.A. v.*

Jordan (In re Jordan), 330 B.R. 857, 860 (Bankr. M.D. Ga. 2005); *In re Leigh*, 307 B.R. 324, 331 (Bankr. D. Mass. 2004); *In re Bosch*, 287 B.R. 222, 226 (Bankr. E.D. Mo. 2002); *In re Schultz*, No. 00-10581-JMD, 2001 Bankr. LEXIS 1319 (Bankr. D. N.H. July 12, 2001); *In re Larios*, 259 B.R. 675 (Bankr. N.D. Ill. 2001); *In re Donahue*, 221 B.R. 105, 111 (Bankr. D. Vt. 1998); *In re Howard*, 220 B.R. 716, 718 (Bankr. S.D. Ga. 1998); *In re Lebrun*, 185 B.R. 665 (Bankr. D. Mass. 1995); *In re Wetherbee*, 164 B.R. 212, 215 (Bankr. D. N.H. 1994); *In re Chruchill*, 150 B.R. 288, 289 (Bankr. D. Me. 1993); *In re Boisvert*, 156 B.R. 357, 359 (Bankr. D. Mass. 1993); *In re Dinsmore*, 141 B.R. 499, 505–06 (Bankr. W.D. Mich. 1992); *In re Amerson*, 143 B.R. 413, 416 (Bankr. S.D. Miss. 1992); *In re Groff*, 131 B.R. 703, 706 (Bankr. E.D. Wis. 1991)). Since *Benafel*, other courts have adopted the petition date as the appropriate to determine a debtor's principal residence. *See, e.g.*, *Utzman v. Suntrust Mortg., Inc.*, No. 15-cv-04299-RS, 2016 U.S. Dist. LEXIS 26341, at *26 (N.D. Cal. Mar. 1, 2016); *TD Bank, N.A. v. Landry (In re Landry)*, 479 B.R. 1, 7 (D. Mass. 2012); *In re Montiel*, No. 14-44784, 2017 Bankr. LEXIS 1797, at *8, 16 (Bankr. W.D. Wash. June 28, 2017); *In re Schayes*, 483 B.R. 209, 215 (Bankr. D. Ariz. 2012).

This court finds persuasive the petition date analysis as the appropriate date to determine whether the property at issue constitutes Debtor's principal residence for purposes of the 11 U.S.C. § 1332(b)(2). Using that date, the court finds that Debtor's principal residence on May 22, 2017, was 1740 Newark Lane, Suisun City, California. The Property was not Debtor's principal residence on the petition date, which means that the anti-modification provisions of 11 U.S.C. § 1322(b)(2) do not apply to prevent Debtor from moving to value Creditor's claim against the Property under 11 U.S.C. § 506(a).

Creditor's Appraiser Is More Persuasive Than Debtor's Owner Valuation

While the court has Debtor's personal opinion of value for the Property being $500,000, the court finds the expert testimony presented by Creditor to be more persuasive—as a starting point. Laurie Hawes provides her testimony as a licensed real estate appraiser. Declaration, Dckt. 60. The testimony of an expert as to specialized knowledge, experience, and information is permitted to assist the finder of fact making the required factual findings. FED. R. EVID. 701, 702. The expert is not the "finder of fact" but assists the court as the actual "finder of fact."

Ms. Hawes's expert opinion is that the Property has a value of $623,000.00. Dckt. 60. Attached as Exhibit 2 to the Declaration is a detailed appraisal report (using the standard Uniform Residential Appraisal Report format). In the Report, Ms. Hawes provides six comparable properties, making adjustments for all the properties.

In her Declaration, Debtor makes a downward adjustment in her valuation of $25,000.00, testifying that: (1) the pool is cracked and needs to be replastered, (2) because it is a rental property Debtor needs to put a fence around the pool (but does not testify as to why that has not been previously done if it is "needed" for rental property), and (3) the pond must be removed because it is stagnant. Declaration ¶ 8, Dckt. 27.

In her Declaration, Ms. Hawes does not expressly address these specific repairs identified by Debtor. Ms. Hawes does not provide testimony as to the extent that she physically inspected the Property, limiting her testimony to a general "I observed and inspected the interior and exterior of the home . . . ." Declaration ¶ 11, Dckt. 60.

As part of her Appraisal Report, Ms. Hawes includes pictures of the Property (but does not testify that she took the pictures). There is one picture of the pool and one of the spa. While the pool appears to need a cleaning, the court cannot tell from the picture the extent of any of the asserted necessary replastering. Dckt. 60 at 24.

Ms. Hawes has included a picture of the pond, which appears to be a fetid body of water that needs to be cleaned. *Id.* at 25. The court cannot tell what needs to be "removed" in connection with the pond as testified to by Debtor in her Declaration.

In light of the direct testimony that repairs to the pool are necessary and that work must be done on the pond, and Ms. Hawes not clearly and expressly addressing such in her declaration and Appraisal Report, the court concludes that Ms. Hawes's valuation of $623,000.00 is more credible but that it needs to be adjusted for the repairs and cleaning testified to by Debtor.

When the court addressed the downward adjustment previously, it concluded that a $15,000.00 reduction was appropriate to account for repairs. *See* Dckt. 78. After ordering Debtor to provide supplemental pleadings and evidence of repairs, and after reviewing Debtor's Supplemental Declaration, it appears that Debtor overstates what needs to be done. She has provided an estimate of only one repair and has not provided the court with anything more than conjecture about other repairs she believes need to be done. The one repair that the court has an actual estimate for is a $9,000.00 repair to the property pool. With nothing more provided, the court determines that a $9,000.00 reduction is appropriate to the property valuation.

The court determines that the Property has a value of $614,000.00 ($623,000–$9,000). Making the mathematical calculation based on a $614,000.00 value, the value of the Creditor's interest in the Debtor's interest in the collateral is computed as follows:

Gross Value of Property.....$614,000.00
Claim Secured by Senior Lien.....($548,427.99) Proof of Claim No. 3

Value of Creditor's Secured Claim.....$ 65,572.01

Debtor May Avail Herself of the Provisions of 11 U.S.C. § 506(a)

Creditor has argued that the Motion cannot be granted because of a 1993 decision in this court stating that a valuation motion cannot be granted when a joint tenant ownership is involved. That logic was addressed and resolved by the Bankruptcy Appellate Panel in 2001. *See Highland Fed. Bank v. Maynard (In re Maynard)*, 264 B.R. 209, 214–15 (B.A.P. 9th Cir. 2001). In that case, the appellant relied upon *In re Rodriguez* for the same proposition as Creditor here, but there, the court held that *In re Rodriguez* was distinguishable because the debtor entered the *Rodriguez* case with only a fractional interest that became part of the estate, as opposed to the case on appeal in which community property (which under 11 U.S.C. § 541(a)(2) brought all of the property into the estate) was not barred from valuation because of a non-debtor.

In this case, the deed of trust for the Property shows that it was held by Armando Leyva and Debtor as joint tenants. Additionally, Debtor disclosed in her petition that Mr. Leyva is deceased. While the Creditor chose to make the loan only to Armando Leyva, Creditor insisted on getting the grant of a security interest from Debtor. In effect, Creditor made a non-recourse loan with respect to Debtor and Debtor's interests in the Property.

Additionally, in alleging that Debtor is not the "sole owner" of the Property, Creditor appears to be misstating the facts. On Schedule A/B, Debtor states under penalty of perjury that she is the sole owner of the Property. Dckt. 1 at 11. On Schedule H, Debtor states under penalty of perjury that Armando Leyva was a co-debtor on an obligation, but that he is deceased. *Id.* at 27.

The Deed of Trust provided by Creditor, Exhibit B attached to the Supplemental Opposition (Dckt. 59 at 13), lists Debtor and Mr. Leyva as "joint tenants." Creditor offers no explanation as to how Mr. Leyva, if deceased as stated under penalty of perjury by Debtor, could continue to be a "joint tenant." The court also notes that Creditor has not provided a declaration or other method of authenticating Exhibit B as required by Federal Rules of Evidence 901 and 902.

It appears that Creditor (through the original lender from whom this obligation has been assigned) knew from day one that Debtor could be the owner of the property and that its obligation was subject to the bankruptcy laws of this country.

Creditor has not offered any counter-evidence to the statements under penalty of perjury that the joint tenant of the property identified in Creditor's deed of trust is deceased and that Debtor is the only remaining person having an interest in the Property.

RULING

Creditor's secured claim is determined to be in the amount of $65,572.01, the value of the collateral (after the senior deed of trust, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Josephine Melone ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Bosco Credit II, LLC Trust Series 2010-1 secured by a

second in priority deed of trust recorded against the real property commonly known as 1049 Star Lilly Court, Vacaville, California (rental property), is determined to be a secured claim in the amount of $65,572.01, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $614,000.00 and is encumbered by a senior lien securing a claim in the amount of $548,427.99, which does not exceed the value of the Property that is subject to Creditor's lien.

22. 17-24965-E-13 DPC-1 | **DAT/KAMYIN LUONG** **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-6-17 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Dat Luong and Kamyin Luong ("Debtor") failed to appear at the Meeting of Creditors, which has been continued to 11:00 a.m. on October 26, 2017.

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

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

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

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

23. **17-22866-E-13** **ABEL RUSFELDT** **MOTION TO VALUE COLLATERAL OF FIRST INVESTORS SERVICING CORPORATION**
DAO-2 **Dale Orthner** **8-23-17 [75]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 23, 2017. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of First Investors Servicing Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,500.00.

The Motion filed by Abel Rusfeldt ("Debtor") to value the secured claim of First Investors Servicing Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Nissan Altima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $8,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 19, 2017. Dckt. 100. The Chapter 13 Trustee notes that the Vehicle's style has not been disclosed and that it is listed on Schedule

D with a value of $12,000.00. He also notes that Creditor filed a claim at a slightly lower amount than Debtor alleges—$16,528.42 as opposed to $16,869.77.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 12, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,528.42. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $8,500.00, the value of the collateral, agreed upon by both parties. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Abel Rusfeldt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of First Investors Servicing Corporation ("Creditor") secured by an asset described as 2011 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of $8,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

24. 17-24967-E-13 DPC-1 | **BARBARA GRAVES** Gary Fraley | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-6-17 [13]**

Final Ruling: No appearance at the October 3, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on October 17, 2017.

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

A. The Plan relies upon two motions to avoid lien that have not been filed, and

B. The Additional Provisions need clarification about a step payment.

The Chapter 13 Trustee opposes confirmation of the Plan because it relies upon two motions to avoid lien that had not been filed at the time he opposed. Those two motions were filed on September 18, 2017, and they are set for hearing at 3:00 p.m. on October 17, 2017.

Additionally, the Chapter 13 Trustee opposes what he views as unclear terms in the Additional Provisions of the Plan about step payments and tax refunds. He notes that the Additional Provisions call for payments of $1,347.31 for two months, then $8,015.00 for one month, and then $1,347.31 for the remainder of the Plan. Further provisions state that Debtor will turn over tax refunds for the tax years 2014–16 totaling $8,801.00; Debtor's Schedule B indicates that she is holding tax refunds of $8,015.00. The Chapter 13 Trustee requests clarification about how much of the tax refunds will be paid into the Plan, or if the lump sum payment of $8,801.00 is in addition to the proposed step payment.

The Additional Provisions can be clarified in an order confirming, which leaves only the ground of objecting to confirmation because the Plan relies on pending motions to avoid lien. Those have been set for hearing, and continuing the hearing on this Objection to be heard in conjunction with them is appropriate to allow Debtor a chance to confirm the proposed plan. The hearing on the Objection to Confirmation is continued to 3:00 p.m. on October 17, 2017.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on October 17, 2017.

25. 17-24872-E-13 DPC-1 | **VALERRIE GIFFIN-PRATTON** **Eric Schwab** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-6-17 [14]**

Final Ruling: No appearance at the October 3, 2017 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on July 25, 2017, is confirmed.**

Counsel for Valerrie Giffin-Pratton ("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.

26. 17-23273-E-13 HDR-4 | **RUTH/ROSCO RIGSBY** **Harry Roth** | **OBJECTION TO CLAIM OF WEST VIRGINIA STATE TAX DEPARTMENT, CLAIM NUMBER 5-2** **8-17-17 [69]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 17, 2017. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has not been set properly for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 5-2 of West Virginia State Tax Department is sustained, and the claim is disallowed in its entirety.

Ruth Rigsby and Rosco Rigsby, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of West Virginia State Tax Department ("Creditor"), Proof of Claim No. 5-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $21,163.44. Objector asserts that the unsecured debt was discharged in Objector's prior Chapter 7 case, Case No. 16-27922.

ISSUE REGARDING NOTICE

Notice and service are different concepts that apply in different scenarios. For matters that are administrative or that affect creditors generally, Bankruptcy Rule 2002 governs notice. *In re Gordon*, No.

BK-S-11-22221-LBR, Bankr. LEXIS 1087, at *10 (Bankr. D. Nev. Feb. 12, 2013). Service applies, though, "when a particular creditor's rights are at issue in the bankruptcy case." *Id.*

As noted by courts in the Ninth Circuit, Federal Rule of Bankruptcy Procedure 3007 does not govern service for an objection to a proof of claim. *E.g.*, *Monk v. LSI Title Co. Of Ore., LLC (In re Monk)*, No. 10-6067-fra, 2013 Bankr. LEXIS 3275, at *9 (Bankr. D. Or. Aug. 9, 2013) (citing *In re Levoy*, 182 B.R. 827 (B.A.P. 9th Cir. 1995)). Instead, the rule's own Advisory Committee Notes state that "[t]he contested matter initiated by an objection to a claim is governed by rule 9014 . . . ." FED. R. BANKR. P. 3007; *see also Keys v. 701 Mariposa Project, LLC (In re 701 Mariposa Project, LLC)*, 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) ("Claims objections undoubtedly are contested matters subject to the requirements of Rule 9014."). Bankruptcy Rule 9014, in turn, applies service provisions from Bankruptcy Rule 7004, which does not allow service for a claim objection to done at the notice address listed on a proof of claim. *See In re Collins*, No. 13-01783, 2014 Bankr. LEXIS 3172, at *1 (Bankr. D. Haw. July 24, 2014) (citing *Monk*, 2013 Bankr. LEXIS 3275; *In re Gordon*, 2013 Bankr. LEXIS 1087).

Taking Bankruptcy Rules 3007, 7004, and 9014 together,

> Rule 9014(b) provides the manner in which service of the objection to claim should be made, while Rule 3007(a) supplements that provision by providing more specific information about who should receive notice of the hearing and when. Rule 3007 is not a substitute for service of the objection to claim. The fact that a claim objection is initiated by an objection rather than a motion does not remove the matter from the service requirements of Rule 9014(b).

Monk, 2013 Bankr. LEXIS 3275, at *9.

For this Objection, Creditor was served at:

> West Virginia State Tax Department
> Bankruptcy Unit
> PO Box 766
> Charleston WV 25323-0766

Dckt. 74. As this court has noted before, "[s]ervice upon a post office box is deficient." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Additionally, Federal Rule of Bankruptcy Procedure 7004 states that first class mail may be used as another form of service

> "[u]pon a state or . . . other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof."

FED. R. BANKR. P. 7004(b)(6); *see also In re Frost*, No. 03-22010, 2004 Bankr. LEXIS 2489 (Bankr. D. Idaho Apr. 9, 2004) (finding service of objection to claim in Chapter 13 case was inadequate because service was not addressed to person or office upon whom process was prescribed to be served by law).

With service appearing defective, the court has reviewed the website of the Bankruptcy Court for the Southern District of West Virginia, confirming that Post Office Box served for this matter is the address stated by the Tax Department as the proper address filed with that court. Therefore, the court accepts Objector's service on Creditor as sufficient for this Objection.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

In Case No. 16-27922, Objector received a discharge on March 6, 2017. Case No. 16-27922, Dckt. 18. Creditor was the only party to file a claim in that case, and Susan Smith, the Chapter 7 Trustee, reported that no distribution was made to the scheduled claims, which included Creditor's claim. Case No. 16-27922, Dckt. 1.

Section 523(a)(1)(A) states that "[a] discharge under section 727 . . . does not discharge an individual debtor from any debt for a tax . . . of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) . . . , whether or not a claim for such tax was filed or allowed." Section 507(a)(8)(A)(i) & (ii) includes in relevant portion the "allowed unsecured claims of governmental units, only to the extent that such claims are for a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition; [or] assessed within 240 days before the date of the filing of the petition . . . ."

In this case, Creditor filed a claim for unsecured, non-priority income taxes, and in Debtor's prior case, Creditor filed a claim asserting that a portion was entitled to priority under 11 U.S.C. § 507(a)(8). Both claims asserted that the debt was for 2005 income taxes. Those taxes fall outside of the specifications of both 11 U.S.C. § 507(a)(8)(A)(i) & (ii) because they were not for a taxable year within three years of filing either of Debtor's petitions, and there is not evidence they were assessed within 240 days before the hearing.

In fact, the interest outweighs the amount of the taxes owed, which indicates to the court that these taxes were assessed several years ago and have been accruing interest ever since.

There is no explanation on the record why Creditor filed a claim in Debtor's first case indicated that the tax debt was entitled to priority and why the claim in this case indicates that the debt is entirely non-priority. For determining the effect of Debtor's discharge in Case No. 16-27922, the court determines that Creditor's tax debt was discharged because it was not excepted from discharge by 11 U.S.C. § 523(a)(1)(A).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of West Virginia State Tax Department, Creditor filed in this case by Ruth Rigsby and Rosco Rigsby, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 5-2 of West Virginia State Tax Department is sustained.

27. 17-23174-E-13 NICOLE PRESTON MOTION TO CONFIRM PLAN
MWB-1 Mark Briden 8-9-17 [23]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 9, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Nicole Preston ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan retains collateral of Tehama County's secured tax lien against Debtor's Real Property and adds Debtor's grandson's contributed income to continued plan payments. Additionally, Debtor explicitly removed payment to Glen Duralia and Lori Duralia ("Creditor") on their secured claim because "they have not communicated with Debtor," but Debtor states that she is retaining $588.00 per month to pay Creditor if they do contact her. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 7, 2017. Dckt. 34. The Chapter 13 Trustee argues that Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee notes that Debtor is withholding $588.00 per month for Creditor's alleged, unfiled claim. The Chapter 13 Trustee also notes that the plan proposes a 0% dividend to general unsecured claims.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on September 26, 2017. Dckt. 38. Debtor maintains that she has tried to contact Creditor about its lien secured by a first deed of trust on Debtor's real property. Debtor claims that Creditor has not contacted Debtor, and Debtor alleges that her mail to Creditor has been returned. Debtor alleges that she has set aside $588.00 per month to pay the claim and that support from her grandson, social security, and income from various craft sales will be sufficient to support plan payments.

RULING

Debtor is required to contribute all disposal income to the Plan. 11 U.S.C. § 1325(b)(1)(B). It appears that Debtor may have an additional $588.00 per month than can be contributed to the Plan. While Debtor is not required to provide for a secured claim, she cannot pocket additional funds that could otherwise be used to fund her plan. Debtor can properly file a claim for Creditor, properly provide for payment of such claim, and then have the Chapter 13 Trustee pay any unclaimed monies to the Treasury.

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

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

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

28. **17-24575-E-13** **JANICE KASE** **OBJECTION TO CONFIRMATION OF**
DPC-1 **David Silber** **PLAN BY DAVID P. CUSICK**
8-29-17 [21]

Final Ruling: No appearance at the October 3, 2017 hearing is required.

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

29. 17-24379-E-13 GEL-1 | **MARCIS/MARTI BEUTLER** Gabriel Liberman | **CONTINUED MOTION TO VALUE COLLATERAL OF ALLY BANK 8-11-17 [17]**

Final Ruling: No appearance at the October 3, 2017 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required, Contested Matter Resolved by Stipulation.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 11, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion to Value Collateral and Secured Claim of Ally Financial Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,240.00.

The Motion filed by Marcis Beutler and Marti Beutler ("Debtor") to value the secured claim of Ally Financial Inc. ("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of a 2012 Dodge Journey ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,204.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

FN.1. Debtor identified Creditor as "Ally Bank," but the court notes that the claim filed before this Motion was filed is for Ally Financial Inc. Claim. No. 1. Ally Financial Inc. Has entered into a Stipulation resolving this Contested Matter, which corrects the error in identifying the party against whom the relief is requested.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on August 15, 2017. Dckt. 25. The Trustee states that Debtor estimates value of the Vehicle to be $5,204.00 and does not provide specific information of style of the Vehicle. He notes that Ally Financial filed a proof of claim on July 25, 2017, for a secured amount of $11,800.00.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 17, 2017. Dckt. 28. Creditor opposes the Motion on the grounds that paying only $5,204.00 towards its claim on the Vehicle fails to provide it with the full value of its claim in violation of 11 U.S.C. § 1325(a)(5)(B)(ii). Creditor provided the National Automobile Dealers Association guide as Exhibit D, which retails the Vehicle at $9,275.00. Creditor argues that Debtor uses the Vehicle for personal use, and the market price for this vehicle for personal usage is different from retail value.

AUGUST 29, 2017 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 3, 2017. Dckt. 35.

DISCUSSION

The Parties have Stipulated to a value of $7,240.00 for the collateral. Dckt. 41. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $7,240.00, the NADA retail value. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Marcis Beutler and Marti Beutler ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Financial Inc. ("Creditor") secured by an asset described as a 2012 Dodge Journey ("Vehicle") is determined to be a secured claim in the amount of $7,240.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $9,275.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

30. 17-24379-E-13 DPC-1 | **MARCIS/MARTI BEUTLER** **Gabriel Liberman** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-9-17 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 9, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

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

A. Marcis Beutler and Marti Beutler ("Debtor") failed to appear at the First Meetings of Creditors.

B. Tax returns were not provided.

C. Pay advices were not provided.

D. Debtor failed to file a Motion to Value Secured Claim.

DEBTOR'S RESPONSE

Debtor filed a Response on August 11, 2017. Dckt. 22. Debtor states that they attended the Continued Meeting of Creditors on August 31, 2017.

Regarding the unprovided documents, Debtor explains counsel's office moved the date to send the tax returns and pay advices to August 31, 2017, the date of the Continued First Meetings of Creditors. However, upon receipt of the Chapter 13 Trustee's objections, Debtor provided the necessary documents.

Finally, Debtor filed the Motion to Value Secured Claim of Ally Financial on August 11, 2017, the hearing for which is scheduled for 3:00 p.m. on August 29, 2017.

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on September 1, 2017. Dckt. 32. He reports that Debtor attended the meeting of creditors, that tax returns and pay advices were provided, and that a motion to value was filed, heard, and continued to 3:00 p.m. on October 3, 2017. The Chapter 13 Trustee requests that the hearing on this Objection be continued to a date after October 3, 2017.

SEPTEMBER 12, 2017 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 3, 2017, to be heard in conjunction with a motion to value. Dckt. 36.

DISCUSSION

The court has now granted the Motion to Value the Secured Claim, that Contested Matter having been resolved by Stipulation. The Chapter 13 Trustee's September 1, 2017 Status Report states that the only remaining impediment to confirmation was the Motion to Value.

The agreed value is consistent with (though slightly higher) than stated in the Plan.

The proposed plan complies with 11 U.S.C. § 1322 and 1325. The Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is over ruled and the proposed Chapter 13 Plan filed on June 30 2017, is confirmed. Counsel

for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

31. 17-24979-E-13 DPC-2 | **MARIO LOPEZ AND LEAH ALBERTO** **Lucas Garcia** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-6-17 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Mario Lopez and Leah Alberto ("Debtor") incorrectly categorized a vehicle lease agreement in Class 2;

B. Debtor failed to provide for a priority claim for the Franchise Tax Board; and

C. The Plan is not Debtor's best effort.

The Chapter 13 Trustee's objections are well-taken. Honda Lease Trust ("Creditor") asserts a claim of $20,382.31. Debtor lists Creditor's claim under Class 2 of the Plan. Dckt. 5. The claim should be categorized under Section 3 Executory Contract and Unexpired Leases of the Plan, however, because it is for a lease agreement. Debtor does not have an equity or ownership interest in the vehicle at the expiration of the lease, and therefore, categorizing this claim under Class 2 is incorrect.

In addition, the Chapter 13 Trustee asserts that the Franchise Tax Board has a claim for $315.25 in priority unsecured debt. Proof of Claim No. 4, filed on September 5, 2017. The Plan does not provide for this debt as required by 11 U.S.C. § 1322(a)(2).

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

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

Here, Debtor testified at the Meeting of Creditors on August 31, 2017, that a current retirement loan payment of $724.78 per month will be paid off on October 15, 2017. Debtor's plan payments do not increase after the loan is repaid, however. Not designating all of their disposable income to plan payments to unsecured creditors is a violation of § 1325(b)(2), even though Debtor is proposing a 100% plan. The Chapter 13 Trustee notes that the Plan could be completed sooner.

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

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

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

32.	**17-24979-E-13 VVF-1**	**MARIO LOPEZ AND LEAH ALBERTO** **Lucas Garcia**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY HONDA LEASE TRUST** **8-9-17 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 9, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Honda Lease Trust ("Creditor"), holding a secured claim, opposes confirmation of the Plan on the basis that the Plan attempts to reclassify Creditor's claim as being for a vehicle from a purchase money security interest, when that claim actually arises from a lease agreement. Creditor argues that Mario Lopez and Leah Alberto ("Debtor") have proposed a plan term that violates 11 U.S.C. § 365(a).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on August 28, 2017. Dckt. 20. The Chapter 13 Trustee notes that the meeting of creditors is scheduled for 11:00 a.m. on August 31, 2017, and that the confirmation hearing date, according to the Notice of Commencement of Case, is scheduled for 3:00 p.m. on October 3, 2017. The Chapter 13 Trustee requests that this hearing be continued to 3:00 p.m. on October 3, 2017.

SEPTEMBER 12, 2017 HEARING

At the hearing, the court noted that continuing the hearing would allow Debtor time to address Creditor's Objection, if possible. The court continued the hearing to 3:00 p.m. on October 3, 2017. Dckt. 30.

RULING

No further pleadings have been filed since the September 12, 2017 hearing.

As the Chapter 13 Trustee has also noted in his Objection to Confirmation, Creditor filed a claim in this case indicating that its debt was for a lease contract, but Debtor has listed the debt in Class 2. That is an improper attempt to value Creditor's claim by valuing the its collateral on a lease agreement, and the claim should be provided for in Class 3. 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 Honda Lease Trust ("Creditor"), holding a secured claim, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the Plan is not confirmed.

33. 17-23980-E-13 DPC-1 | **KENNETH JIMENEZ** **Todd Peterson** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-16-17 [25]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 16, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Kenneth Jimenez ("Debtor") failed to appear at the Meeting of Creditors;

B. Debtor failed to provide tax returns;

C. Debtor failed to provide business documents;

D. Debtor cannot afford the plan payment; and

E. The Plan lists Siskiyou County Property Taxes improperly in both Class 1 and Class 2.

Dckt. 25.

SEPTEMBER 12, 2017 HEARING

At the hearing, the Chapter 13 Trustee requested that the hearing be continued, as agreed by the Chapter 13 Trustee and Debtor, to accommodate scheduling issues relating to this Objection. *See* Dckt. 29. The court continued the hearing to 3:00 p.m. on October 3, 2017. Dckt. 31.

DISCUSSION

No further pleadings have been filed, and the Chapter 13 Trustee's objections are well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary tax transcript. This is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

A. Questionnaire,
B. Six months of profit and loss statements, and
C. Profit and loss statements;

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided sufficient evidence of total monthly expenses and net income. While Debtor has listed business income on Schedule I (line #8a in the amount of $1,200.00), Debtor has failed to provide an attachment showing gross receipts, ordinary and necessary business expenses, and the total monthly net income. In addition, Debtor's Plan proposes to pay in net proceeds from an anticipated sale of parcel, but Debtor has failed to file a motion for approval of sale. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Finally, the Trustee alleges that Debtor has improperly classified property taxes to Siskiyou County in both Class 1 and Class 2.

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

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

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

34. 17-24489-E-13 DPC-1 | **JAMES SEIBERT** / **Peter Cianchetta** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-30-17 [36]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 30, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. James Seibert ("Debtor") failed to appear at the Meeting of Creditors;

B. Debtor cannot make payments under the proposed Plan;

C. Debtor fails the Chapter 7 Liquidation Analysis;

D. The Plan may not be proposed in good faith because Debtor may have sold real property without court approval;

E. Class 2 may not be provided for adequately;

F. The Chapter 13 Trustee cannot determine how attorney fees are proposed to be paid; and

G. Debtor has failed to cooperate by providing supporting documents.

The Chapter 13 Trustee's objections are well-taken. Debtor did not appear at the initial Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). The continued Meeting of Creditors was held on September 21, 2017, and Debtor appeared, resolving this portion of the Chapter 13 Trustee's Objection.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor does not have sufficient disposable income to fund the plan. On Schedule J, Debtor reports his household's net disposable income to be ($2,128.69), and at the same time, he proposes a plan payment of $5,223.63. Without additional information from Debtor on how he will increase his monthly capital, Debtor has insufficient disposable income to support the proposed plan payments.

The Chapter 13 Trustee asserts that Debtor is $5,223.62 delinquent in plan payments, which represents one month of the $5,223.62 plan payment. Before the hearing, another plan payment will be due. To date, Debtor has paid $0.00 into the Plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee asserts that the Internal Revenue Service has a claim for $355,646.06 in secured debt, $30,274.10 in priority unsecured debt, and $6,000.00 in general unsecured debt. Proof of Claim No. 1, filed on July 28, 2017. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has reported non-exempt equity in the amount of $390,000.00 along with proposing a 0% dividend to unsecured claims. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a 0% dividend when there may be upward of $390,000.00 in non-exempt equity available.

The Chapter 13 Trustee has also raised concerns about a possible sale of property that may have occurred without court approval, about whether Class 2 of the Plan is provided for adequately, about how Debtor's attorney intends to seek attorney fees and why the Plan proposes $6,000.00 in attorney fees, and about how Debtor has failed to cooperate with the Chapter 13 Trustee's request for additional documentation to support Debtor's ability to afford plan payments.

All of the grounds raised by the Chapter 13 Trustee, and also those raised in other objections to confirmation, indicate that Debtor faces stiff opposition to proposing a confirmable plan in this case, and it also raises a concern that Debtor may be attempting to abuse the bankruptcy process for his own undisclosed intentions. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

35. 17-24489-E-13 JAMES SEIBERT
FGP-1 Peter Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY MILLER LYN MILLER
8-31-17 [40]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and the Chapter 13 Trustee on August 30, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Dana Miller ("Creditor"), misidentified as Miller Lyn Miller, opposes confirmation of the Plan on the basis that:

A. James Seibert ("Debtor") does not qualify for Chapter 13 because his listed unsecured debt exceeds the debt limit;

B. The proposed plan violates 11 U.S.C. § 1325(a) because it proposes no dividend to unsecured claims, despite Debtor's income of more than $300,000.00 in 2016;

C. The Plan and case were filed in bad faith because of actions Debtor took in state court litigation;

D. Debtor cannot afford plan payments because his scheduled income is negative; and

E. Debtor's schedules contain numerous inaccuracies.

Creditor's objections are well-taken. First, Creditor argues that Debtor cannot have a Chapter 13 case because his unsecured debt exceeds the limit imposed by Congress. Section 109(e) of the Bankruptcy Code establishes that "[o]nly an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $394,725 . . . may be a debtor under chapter 13." On Schedule E/F, Debtor lists a total of $472,975.31 in unsecured debt, and for each debt, Debtor has not checked the boxes indicating that any of his debts are contingent or unliquidated. Therefore, Debtor exceeds the unsecured debt limit, and the proposed plan cannot be confirmed.

Creditor argues that Debtor's Plan is improper because it does not propose a dividend to unsecured claims, despite Debtor having an apparently sufficient income previously. As of the date of the petition, though, Debtor has scheduled that his expenses exceed his income, which indicates to the court that he does not have the sufficient funds that Creditor alleges. Dckt. 14.

Creditor argues that the Plan has been proposed in bad faith because of actions taken in a state court civil suit and in a divorce proceeding. Namely, Creditor argues that there was an agreement with Debtor to sell real property to provide funds for a civil suit, which Debtor allegedly ignored by filing this case without listing other property owners or creditors against the property. Creditor also argues similarly that Debtor's schedules contain inaccuracies because he has not listed Creditor has a spouse, co-debtor, or property owner; has not proposed payments to her or another creditor; and has not listed Creditor as the true owner of a vehicle.

Finally, Creditor argues that Debtor cannot afford plan payments because his income is negative. A review of the Schedules I and J shows that Debtor has scheduled his expenses as exceeding his income. It appears that Debtor does not have sufficient income to fund a confirmable plan. 11 U.S.C. § 1325(a)(6).

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

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

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

36. **17-24489-E-13** **JAMES SEIBERT** **OBJECTION TO CONFIRMATION OF**
REL-2 **Peter Cianchetta** **PLAN BY ROBERT SEIBERT, JR.**
8-22-17 [28]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 22, 2017. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Robert Seibert, Jr., ("Creditor") opposes confirmation of the Plan on the basis that:

A. James Seibert's ("Debtor") Plan fails the liquidation analysis;

B. The Plan and case were filed in bad faith;

C. Debtor cannot afford plan payments because his income is negative; and

D. Debtor's schedules are inaccurate and incomplete.

Creditor's objections are well-taken. Creditor opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Creditor states that Debtor proposes to retain several assets that have a total equity of $415,000.00, but Debtor is proposing

a zero percent dividend to unsecured claims. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a zero percent dividend when there may be upward of $415,000.00 in non-exempt equity.

Creditor argues that both the case and the Plan have been filed in bad faith because Debtor knew that Creditor was asserting a claim against him, but Debtor failed to schedule that claim at all and did not include Creditor on the mailing matrix.

Creditor argues that Debtor cannot afford plan payments because his income is negative. A review of the Schedules I and J shows that Debtor has scheduled his expenses as exceeding his income. It appears that Debtor does not have sufficient income to fund a confirmable plan. 11 U.S.C. § 1325(a)(6).

Finally, Creditor notes that the schedules identify that there is at least one co-debtor for Debtor's residence and for a vehicle, but the schedules do not identify that person.

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 Robert Seibert, Jr., ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

37. 17-22593-E-13 HOWARD THOMAS MOTION TO CONFIRM PLAN
WSS-8 Steven Shumway 8-9-17 [103]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 9, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Howard Thomas ("Debtor") seeks confirmation of the Amended Plan because he did not receive income support from Easter Perkins and his sons like he had anticipated. Dckt. 105. The Amended Plan proposes payments of $151.00 for thirty-six months with a 0% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 30, 2017. Dckt. 114. The Chapter 13 Trustee believes that Debtor cannot afford plan payments because he is delinquent by $604.00. The Chapter 13 Trustee received $70,546.25 from Debtor's counsel's attorney-client trust account as the balance after a sale of real property, but the Plan does not address those funds.

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3).

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). While Debtor has reported non-exempt equity in the amount of $30,450.40, Debtor is proposing a zero percent dividend to unsecured claims. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a zero percent dividend when there may be upward of $30,450.40 in non-exempt equity.

Finally, the Chapter Trustee notes that Debtor has not filed a change of address since his real property was sold. For now, where Debtor receives mail is unclear.

DEBTOR'S REPLY

Debtor filed a Reply on September 26, 2017. Dckt. 117. Debtor states that he is working to resolve an issue with his income from his deceased wife's retirement now that the funds are delivered to the Chapter 13 Trustee. Debtor also acknowledges that he did not file tax returns for 2015 and 2016 because his only income was from social security. He states that he is working with his attorney to prepare and file those returns, and the 2014 has been sent to the Chapter 13 Trustee.

Debtor states that he has filed amended schedules to correct the values of property and the amounts owed, which should reflect that his non-exempt equity is $7,778.00. Debtor argues that he had claimed a homestead exemption on his residence that was sold and that the funds from the sale should be exempt. He states that he is willing to use $7,778.00 from those exempt funds to supplement the Plan, though.

Debtor also states that he has filed a change of address.

RULING

While Debtor shows effort to prosecute this case, he has not resolved the Chapter 13 Trustee's grounds fully. Debtor appears to be delinquent still, and he has not filed (much less provided) tax returns for 2015 and 2016. Additionally, he has not provided all disposable income to the Plan, even though he states that he is willing to contribute up to $7,778.00. The only ground Debtor has really resolved is his current mailing address. The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Howard Thomas ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38.	**13-21699-E-13 GW-4**	**GARLAND/CHRISTA ROSAURO Gerald White**	**MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTORS' ATTORNEY 8-25-17 [52]**

Final Ruling: No appearance at the October 3, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2017. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gerald White, the Attorney ("Applicant") for Garland Rosauro and Christa Rosauro, the Chapter 13 Debtor ("Client"), makes a Third and Final Request for the Allowance of Fees and Expenses in this case.

Previously, the court granted Applicant's interim requests fees in the amount of $765.00 and $6,221.00. Dckts. 20 & 40. Applicant requests fees in the amount of $2,250.00.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on September 7, 2017. Dckt. 58.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R.

103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization

to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include case management after confirmation and sale of real property. Applicant and the Chapter 13 Trustee report that $495.00 is held in trust, and $423.42 is held by the Chapter 13 Trustee. Dckts. 52 & 58. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

Post-Confirmation Case Administration: Applicant spent 2.35 hours in this category. Applicant communicated with Debtor, the Chapter 13 Trustee, and creditors regarding the case status after confirmation of the plan.

Sale of Real Property: Applicant spent 5.15 hours in this category. Applicant communicated with Debtor, the Chapter 13 Trustee, and the Franchise Tax Board regarding sale of Debtor's real estate to pay off the plan, and Applicant prepared the appropriate motion and supporting documents.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Gerald White, attorney	7.50 hours	$300.00	$2,250.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$2,250.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$6,221.00	
Second Interim	$765.00	
	$0.00	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$6,221.00	

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Third and Final Fees in the amount of $2,250.00 and prior Interim Fees in the amount of $6,221.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case. Additionally, Applicant is authorized to withdraw $495.00 from funds held in an attorney-client trust account for fees in this case, and Client is authorized to pay $1,331.59 to Applicant directly, pursuant to a retainer agreement in this case. *See* Exhibit A, Dckt. 56.

Applicant is allowed, and the parties are authorized to pay, the following amounts as compensation for fees to this professional in this case:

A. The Chapter 13 Trustee is authorized to pay $423.42 from undistributed plan funds;

B. Applicant is authorized to withdraw $495.00 from attorney-client funds held in trust in this case; and

C. Client is authorized to pay $1,331.59 to Applicant directly, pursuant to a retainer agreement with Applicant;

pursuant to this Application and prior interim fees of $6,221.00 as final fees pursuant to 11 U.S.C. § 330.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gerald White ("Applicant"), Attorney for Garland Rosauro and Christa Rosauro, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald White, Professional employed by Client
>
> Fees in the amount of $2,250.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Client.
>
> The fees pursuant to this Motion, and fees in the amount of $6,221.00 approved pursuant to prior Interim Application, are approved as final fees pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay fees of $423.42 allowed by this Order from the available Plan Funds; Applicant is authorized to withdraw $495.00 from attorney-client funds held in trust in this case; and Client is authorized to pay $1,331.59 to Applicant directly, pursuant to a retainer agreement with Applicant, all in a manner consistent with the order of distribution in a Chapter 13 case.

39. 17-26064-E-13 PGM-1 | **MARTIN/MARIA ORTEGA** **Peter Macaluso** | **MOTION TO EXTEND AUTOMATIC STAY O.S.T. 9-21-17 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 21, 2017. By the court's calculation, 12 days' notice was provided. The court required 12 days' notice. Dckt. 20.

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

The Motion to Extend the Automatic Stay is denied.

Martin Ortega and Maria Ortega ("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 petition pending in the past year. Debtor's prior bankruptcy case (No. 15-27210) was dismissed on August 8, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 15-27210, Dckt. 59, August 8, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because a mortgage-holder claimed that Debtor did not have a right to certain real property and would not accept payments from Debtor, which Debtor litigated successfully in state court to determine that Debtor owns the property. Dckt. 15 at 2:16–22.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 22, 2017. Dckt. 21. The Chapter 13 Trustee states that he is uncertain whether Debtor has shown a change in circumstances or has the ability to make plan payments. The Chapter 13 Trustee notes that the prior case was dismissed for delinquency, and in this case, both income and expenses have increased, but expenses have increased more than income ($317.45 increase in expenses and $285.05 increase in income). Additionally, the proposed plan includes $16,000.00 in mortgage arrears and $11,053.85 in priority taxes that were not present in the prior case. Despite Debtor's argument to the contrary, the Chapter 13 Trustee believes that Debtor has incurred $27,053.85 in additional debt since the prior case.

DEBTOR'S REPLY

Debtor filed a Reply on September 26, 2017. Dckt. 25. Debtor acknowledges that since the prior case was dismissed, there have been additional accrued debts for mortgage arrears and taxes. Debtor states that monthly plan payments of $2,225.00 will be made beginning in October 2017, as proposed in the Plan.

DISCUSSION

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor states explicitly under penalty of perjury that they "have not acquired any new debt since [the] previous case was dismissed." Dckt. 15 at 2:23–24. Only after the Chapter 13 Trustee noted that Debtor appeared to have acquired $27,053.85 in additional debt did Debtor respond and admit to having more debt.

In the prior case, Debtor's confirmed plan payments were $530.00. Case No. 15-27210, Dckt. 42. Additionally, Debtor was paying a total on two claims in Class 4 of $1,677.06. In total, Debtor was paying $2,207.06 to creditors.

Now, Debtor proposes plan payments of $2,225.00 and argues that they will be able to make those payments. Class 4 of the Plan includes only one claim in the amount of $300.00, which Debtor argues is being paid by their daughter, who has not provided a declaration affirming that she is making such payments. Dckt. 5. The mortgage payment in the prior case has been moved to Class 1 in the same payment amount ($1,306.00). Also, the Chapter 13 Trustee noted that income increased by $285.05 to $3,953.65, and expenses increased by $317.45 to $2,150.05. Based upon the new income and expenses presented by Debtor, the court does not see how Debtor expects to afford increased plan payments in this case.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Martin Ortega and Maria Ortega ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A), is denied.