UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 17, 2017, at 3:00 p.m.

1.	**12-25308-E-13** **TJW-2**	**RAYMUNDO/SANDRA VALTIERRA** **Timothy Walsh**	**MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR** **9-21-17 [54]**

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, parties requesting special notice, and Office of the United States Trustee on September 21, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Substitute 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 Substitute is denied without prejudice.

Joint Debtor, Sandra Valtierra, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Raymundo Valtierra, Jr. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Joint Debtor and Debtor filed for relief under Chapter 13 on March 19, 2012. On June 26, 2012, Debtor's Chapter 13 Plan was confirmed. Dckt. 23. On January 12, 2016, Debtor Raymundo Valtierra, Jr., passed away. Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1016, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on September 21, 2017. Dckt. 54. Joint Debtor is the spouse of the deceased party.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 3, 2017. Dckt. 60. The Chapter 13 Trustee states that Debtor has not amended Schedules B or C to reflect any life insurance that may have existed. Additionally, the Chapter 13 Trustee questions how the surviving debtor was able to make the final seventeen plan payments of $555.00 to complete the Plan. The Chapter 13 Trustee states that the deceased debtor's net income listed on Schedule I was $3,635.35, while the surviving debtor's net income from Schedule I was only $1,800.00.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy**

> **Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Sandra Valtierra has not provided sufficient evidence to show that administration of the Chapter 13 case is in the best interest of creditors after the passing of the debtor. The Chapter 13 Trustee has raised valid concerns about how the surviving debtor was able to complete the Plan without even proposing a modified plan, when presumably, the finances dictated on Schedules I & J changed in January

2016. Debtor has not provided any indication of how she funded the Plan, whether there were life insurance proceeds, or how her expenses changed. Additionally, the surviving debtor has not provided sworn testimony to the court that she is the heir and legal successor to Raymundo Valtierra, Jr. She also has not testified that is capable and willing to continue administering this case expeditiously and in the best interest of creditors.

The shortcomings in the Motion and pleadings prevent the court from granting the surviving debtor's request for substitution at this time. 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 for Substitute After Death 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 is denied without prejudice.

2. **17-25309-E-13** **ANTHONY/LAURA GONZALEZ** **OBJECTION TO CONFIRMATION OF PLAN BY SCHOOLS FINANCIAL CREDIT UNION**
RTD-1 **Mikalah Liviakis**
9-21-17 [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.

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 September 21, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Schools Financial Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Chapter 13 Plan is infeasible because the parties stipulated to a higher value for property on Schedule B than has been provided for in the Plan; and

B. The interest rate on Creditor's claim is too low.

DEBTOR'S RESPONSE

Anthony Gonzalez and Laura Gonzalez ("Debtor") filed a Response on September 27, 2017. Dckt. 51. Debtor proposes to modify the Plan by increasing plan payments, which includes increasing

monthly dividends to Creditor. Debtor proposes plan payments of $1,990.00 for the first month, $2,195.00 for the next sixteen months, and then $2,550.00 for the following forty-three months of the Plan. Debtor plans to pay Creditor monthly dividends of $180.00 for the 2009 Acura and $223.00 for the 2006 Ford until the secured claims are paid in full.

CREDITOR'S REPLY

Creditor filed a Reply on October 10, 2017. Dckt. 53. Creditor does not oppose the proposed plan payments of $1,990.00 for the first month, $2,195.00 for the next sixteen months, and $2,550.00 for the remaining months. Also, Creditor does not object to the proposed dividends of $180.00 per month for the 2009 Acura TL and $223.00 per month for the 2006 Ford F-150.

Creditor does continue to object, however, to the proposed interest rate on the secured claims.

DISCUSSION

Creditor's objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor contends that the dividends set forth in the plan are insufficient to pay the secured claims for a 2006 Ford and a 2009 Acura. Debtor listed the value of the 2006 Ford as $5,500.00, however, the sum to be paid over sixty months is $6,189.60. The court entered an order determining the 2006 Ford to have a secured claim of $11,170.00 with the remaining balance unsecured. Dckt. 43.

Debtor listed the value of the 2009 Acura as $6,500.00, however, the sum to be paid over sixty months is $7,315.20. The court entered an order determining the 2009 Acura to have a secured claim of $9,449.00 with the remaining balance unsecured. Dckt. 44. Creditor states that the amounts to be paid are significantly higher than set forth in the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.75%, but the stipulations between the parties call for a 5.5% interest rate. The court approved the motions to value Creditor's secured claims pursuant to the stipulations that were filed between the parties. Dckts. 43 & 44. Each of the stipulations included language that the interest rate on Creditor's claims would be 5.5%, which the court must now consider. In light of Debtor stating agreement to such an interest rate, and such rate not being unreasonable, the Plan as now presented does not provide for such interest rate.

At the hearing, Debtor addressed the interest rate issue, advising the court that **xxxxxxxxxxx.**

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

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

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

The Objection to the Chapter 13 Plan filed by Creditor Schools Financial Credit Union ("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.

3. 17-23911-E-13 LBG-3 — CRAIG MASON — Lucas Garcia — MOTION TO CONFIRM PLAN — 8-28-17 [34]

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 28, 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 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 Plan is denied.

Craig Mason ("Debtor") seeks confirmation of the Plan because he wants to address unexpected changes to his finances, mortgage delinquency, tax debts, and other unsecured claims. Dckt. 36. The Plan filed on July 7, 2017, proposes monthly payments of $5,750.00 for sixty months with a three percent dividend to general unsecured claims.

11 U.S.C. § 1324 states that the court shall hold a hearing regarding plan confirmation no earlier than twenty days after the Meeting of Creditors (unless in the best interest of creditors and unless there is no objection) and no later than forty-five days after the Meeting of Creditors (no specified exception).

CREDITOR'S OPPOSITION

U.S. Bank National Association, as Trustee for GSR Mortgage Loan Trust 2007-3F ("Creditor") filed an Opposition on August 30, 2017. Dckt. 38. Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $101,326.78 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 the Plan is too speculative because it relies upon donations from Debtor's fiancée and because there may be income from Debtor's business, but Debtor has not provided a state of business income on Official Form 1066I. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 3, 2017. Dckt. 43. First, the Chapter 13 Trustee notes that he is unsure what plan is being proposed for confirmation because the Motion and the Declaration refer to a plan filed on June 12, 2014.

Second, the Chapter 13 Trustee cannot determine what attorney's fees will be and what will be paid through a plan because various documents conflict about fees. Section 2.06 of the proposed plan states that Debtor is paying $2,150.00 in fees before filing and an additional $3,500.00 through the Plan. The Additional Provisions call for attorney's fees to be paid fully in the first three months of the Plan by payments of $1,284.00 in the first month and $1,283.00 in the second and third months each, for a total of $3,8550.00. The Rights and Responsibilities states that attorney's fees in this case total $6,000.00, with $2,150.00 paid pre-petition. Finally, the Disclosure of Compensation states that total fees are $6,000.00, with $2,150 paid already.

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 states that Debtor is involved in litigation with the Federal Bureau of Alcohol, Tobacco, and Firearms that is not reported on the Statement of Financial Affairs and may have legal fees and expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 supplied insufficient information relating to his assets to assist the Chapter 13 Trustee in determining their value. For example, Debtor lists net earnings from his business of $4,620.00 per month,

but the Chapter 13 Trustee's review of a quarterly filing from March 31, 2017, with the California State Board of Equalization revealed that total sales were $80,452.00. Additionally, there are assets that are not disclosed, and there is no supporting documentation for at least one motorcycle that Debtor claims has no value because it is provided by sponsors.

The Chapter 13 Trustee asserts that CadleRock III, LLC, filed a claim of $25,000.00 in this case secured by UCC-1 against inventory, equipment, and accounts. The Plan does not provide for that claim.

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 CadleRock'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.

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required.

See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

RULING

Creditor and the Chapter 13 Trustee have presented numerous grounds upon which the proposed plan cannot be confirmed.

The proposed Plan provides for mortgage cure arrearage payments of $500.00 for three months and then $1,750.00 per month for fifty-seven months. Dckt. 28. That totals $101,250 ($1,500 + $99,750), with the arrearage stated by Creditor to be $101,326.78. The $124 "short-fall" does not render the Plan not feasible. Creditor's objection that the Plan fails to provide for a cure of the arrearage because a lesser amount is stated in the Class 1 treatment ignores the Plan language stating that the amount of the claim and arrearage stated in Creditor's proof of claim or as ordered by the court controls over the amount stated in the Plan. Plan ¶ 2.04. The court does not take Creditor's ignoring of this Provision as a waiver of Creditor's rights thereunder (nor as an admission that for any other cases in which a lower amount was stated in the Plan that Creditor admits that it is the Plan amount that controls the amount of the pre-petition arrearage on its claim).

Creditor next objects because it does not believe Debtor's fiancée's contribution to the monthly expenses is proper. Debtor's Declaration is moot on this point. Dckt. 36. He does not offer an explanation as to whether his fiancée lives in the same house and contributes to the expenses. He does not testify when they will be married and their living situation combined into one.

On Schedule I, Debtor lists having income from both a tenant and his fiancée, who is listed as a dependent of Debtor. Debtor's fiancée fails to provide any declaration as to her contribution or ability to contribution the $3,000 per month.

Further, it is significant that while Debtor seeks to have the court accept the statement that he has monthly net income of $4,620.00 from his business, he has failed (or has been unwilling) to disclose the gross income information and all of the expenses being paid through the business. As both the Chapter 13 Trustee and Creditor advance, the court cannot determine that the Plan is feasible without disclosure of the fiancée's ability to contribute $3,000 per month and the accurate disclosure of the financial information for Debtor's business.

The Chapter 13 Trustee further identifies significant defects in Debtor's disclosures under penalty of perjury in this case. Each renders this Plan unconfirmable. It appears that Debtor has failed to disclose assets, as well as liabilities and litigation.

In addition to rendering it impossible for the court to conclude that the Plan is feasible, the numerous problems with the filing of this Motion and the information presented in this case under penalty of perjury by Debtor cause the court to question whether Debtor is acting in bad faith. The 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 Craig Mason ("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.

4. 17-24713-E-13 DPC-1 — RICHARD/STACI LASBY — Douglas Jacobs — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 9-21-17 [18]

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 21, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

B. Debtor's Plan is fewer than sixty months without accounting for disposable income that can pay unsecured claims; and

C. Debtor's Plan fails the Chapter 7 Liquidation Analysis.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that California Department of Tax and Fee Administration has a claim for $10,022.58 in priority unsecured debt for taxes from July 1, 2012, through June 30, 2016. Proof of Claim No. 1, filed on August 8, 2017. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

In addition, the Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of thirty-six months, but Debtor has proposed to pay less than the full amount of allowed unsecured claims. Moreover, the Chapter 13 Trustee asserts that Debtor may be over the median income. The Chapter 13 Trustee alleges that Debtor has a daughter who is a dependant and employed and whose income is not included on Schedule I.

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). First, the 26.71% dividend proposed for general unsecured claims appears to be too low because Debtor has additional equity from the vehicles listed on Schedule B alone. Additionally, Debtor reported no money in checking or savings accounts when the case filed, but the Chapter 13 Trustee received bank statements showing a checking account balance of $12,169.16 from six days before the petition date. Finally, a real property sale occurred in May 2017, but Debtor did not disclose any payments received, even though it appears Debtor received $49,511.85. From the sale proceeds, Debtor spent $43,090.73, of which $16,006.73 may have been avoidable transfers.

DEBTOR'S REPLY

Debtor filed a Reply on October 3, 2017. Dckt. 23. Debtor argues that the priority tax claim is not actually owed and promises to file an Objection to it before the hearing. Debtor also alleges that even though a daughter lives in Debtor's home and earns income, Debtor did not report the income because it is from minimum-wage work that barely pays the daughter's car and phone expenses.

Debtor explains that listing $0.00 in bank accounts was an inadvertent mistake and promises to file an amended plan to correct the issues.

Debtor does not address the sale of property identified by the Trustee or the disposition of the monies from the sale in the months prior to the filing of this bankruptcy case

Debtor concedes that the proposed plan should not be confirmed.

RULING

Though acknowledging in the October 3, 2017 Response, filed after the September 21, 2017 Objection filed by the Chapter 13 Trustee that the information provided under penalty of perjury was inaccurate, no amended Schedules have been filed as of the court's October 14, 2017 review of the docket (twenty-three days after the Chapter 13 Trustee having brought this under penalty of perjury inaccuracies).

In the Reply, Debtor offers no response to having sold property and disposing of the proceeds in the months preceding the filing of this bankruptcy case. Debtor offers no explanation as to how the almost $50,000.00 disbursed from escrow into Debtor's bank account has been expended, disbursed, or diverted.

The Chapter 13 Trustee recounts in the Objection that Debtor provided the Chapter 13 Trustee with a statement of having made preferential transfers, buying a vehicle for a family member, paying taxes, and "saving" (though not disclosing the existence of the monies) to pay creditors or otherwise disburse outside of the bankruptcy plan. A substantial expense, $4,500.00, is for a dog, for which on the Schedules Debtor states under penalty of perjury that Debtor has no pets.

On the Statement of Financial Affairs, Debtor states under penalty of perjury that no payments in excess of $600 have been made to any creditors. Dckt. 17 at 15. In the Chapter 13 Trustee's Objection, he asserts that Debtor (not under penalty of perjury) listed creditors within ninety days of the bankruptcy case being filed (the escrow monies reported to have been deposited in Debtor's account on April 25, 2017, and the bankruptcy case being filed on July 19, 2017, only eighty-five days later) having paid creditors: $6,014.20, $677.83, $4,314.70, $9,000.00, $8,467.00, $1,217.00, $4,500.00, and $1,800.00—all well in excess of the $600.00 amount stated in Statement of Financial Affairs Question 6, Dckt. 17.

Debtor's lack of response to the Objection on these points appears to be an admission of fraudulent statements having been made, the filing of this bankruptcy case being in bad faith, the proposing of this Plan being in bad faith, and the active perpetration of a fraud on this court.

With Debtor concurring that the proposed plan is not confirmable, the court finds that the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

Further, it may well be that Debtor's lack of honest, forthright, truthful providing of information under penalty of perjury and choosing not to respond (declaration and amended Schedules) may so impugn Debtor's credibility that they have rendered any plan unconfirmable in this (and possibly a future case), as well as requiring conversion of this case to one under Chapter 7 (even though a trustee or the U.S. Trustee might seek to have Debtor denied a discharge) to allow a trustee to recover the transfers, liquidate the assets, and make a proper distribution of assets to creditors in this bankruptcy case Debtor chose to voluntarily file.

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.

5. 17-25215-E-13 DPC-1 | **ENRIQUE GARCIA** / **W. Scott de Bie** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **9-13-17 [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 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 13, 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. The Plan will complete in ninety-nine months, instead of the thirty-six months proposed.

B. Enrique Garcia ("Debtor") has not filed tax returns for the last four years prior to filing.

The Chapter 13 Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in ninety-nine months due to Debtor unable to pay $181,230.46 owed within the thirty-six months proposed. Debtor's proposed plan pays$10,000.00 for the first month, then $3,480.00 for thirty-five months, which totals only $131,800.00. According to the Chapter 13 Trustee, the Plan should have accounted for the $3,000.00 attorney fees, the $102,873.96 Class 1 mortgage payment, $33,047.87 mortgage arrears in Class 1 with no proof of claim, $18,05.88 priority claim of Internal Revenue Service, and $24,002.75 unsecured portion of Claim No. 1-1. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor admitted at the Meeting of Creditors that federal income tax returns for the 2011, 2013, 2014, and 2015 tax years have not been filed still. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The 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") 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.

6.	**15-21819-E-13** **PLC-3**	**TERRY/CHARLOTTE SEELY** **Peter Cianchetta**	**CONTINUED MOTION TO INCUR DEBT** **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 granted.

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. (As discussed below, Debtor subsequently addressed these issues to the satisfaction of the Trustee and the court.)

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.

OCTOBER 3, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017. Dckt. 70.

DEBTOR'S SUPPLEMENT

Debtor filed a Supplement on October 5, 2017. Dckt. 72. Debtor states that the property address is 5762 Sparas St, Loomis, California. Debtor asserts that the claim filed by Golden 1 is not secured because it is for a visa card, and Debtor claims to have spoken with Golden 1, which agreed that listing the claim as secured was an error that will be corrected in an amended claim.

Debtor states that the loan is a full Life Expectancy Set-Aside and that taxes and insurance will be paid by the loan servicer. Upon closing for the refinance, Debtor asserts that Caliber Home Loans will be paid fully. Debtor states that the initial line of credit is $43,280.00, of which Debtor will draw $25,747.20 to pay the Chapter 13 Trustee's demand, and the remainder will go to Debtor. Debtor states that total settlement charges for the loan are $19,292.95, including HUD Mortgage Insurance Premium of $11,175.00.

CHAPTER 13 TRUSTEE'S AMENDED RESPONSE

The Chapter 13 Trustee filed an Amended Response on October 6, 2017. Dckt. 74. He states that after reviewing the Supplement, he no longer opposes the Motion.

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).

Since the October 3, 2017 hearing, Debtor has provided sufficient information about the proposed reverse mortgage, including a Settlement Statement that documents where money will go. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by 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 granted, and Terry Seely and Charlotte Seely are authorized to incur debt pursuant to the agreement terms stated in the HUD Settlement Statement. Exhibit B, Dckt. 71.

7. 17-25320-E-13 DPC-1 — DAVID/KIMBERLY TREXLER — Eric Schwab — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 9-21-17 [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 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 21, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The monthly arrears dividend proposed to Class 1 creditor will take eighty-three months to pay in full, instead of the proposed sixty months.

B. David Trexler and Kimberly Trexler ("Debtor") do not present an accurate description of monthly expenses.

The Chapter 13 Trustee's objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The monthly arrears dividend proposed to Class 1 creditor Evergreen in the amount of $427.00 per month will not pay the claim in sixty months. The claim would take eighty-three months as proposed. Interest will accrue at 10%, unless a "0%" rate is specified. Because the interest rate on the listed arrears in Class 1 was left blank, it will accrue at the rate of 10% on the $28,310.00 in Class 1.

The Chapter 13 Trustee recalls that at the First Meeting of Creditors on September 14, 2017, Debtor admitted that the child support expense listed on Schedule J in the amount of $765.00 will cease in one month. The Chapter 13 Trustee notes that Debtor states they have additional medical expenses not covered by insurance, and their transportation expense may be low because Debtor commutes seventy miles per day from Marysville to Roseville. PG&E has demanded a statutory deposit in the amount of $1,200.00 at the rate of approximately $98.00 per month. The Chapter 13 Trustee concludes that it is not clear if the net income listed on Schedule J is accurate in the amount of $2,453.00 per month.

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 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.

8. **17-21525-E-13** **CHERI GOETZ** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Eric Vandermey** **4-26-17 [30]**

Final Ruling: No appearance at the October 17, 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 March 8, 2017, is confirmed.**

Counsel for Cheri Goetz ("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.

9.	**17-25129-E-13 CJO-1**	**ADRIAN/LESLIE CARTER PADILLA Candace Brooks**	**OBJECTION TO CONFIRMATION OF PLAN BY AMERIHOME MORTGAGE COMPANY, LLC 9-13-17 [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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 13, 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 overruled.

Cenlar FSB as servicer for AmeriHome Mortgage Company, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Adrian Padilla, Jr., and Leslie Padilla's ("Debtor") Plan fails to cure the pre-petition arrears owed to Creditor. Creditor asserts that $1,791.33 is owed for pre-petition arrearages.

DEBTOR'S RESPONSE

Debtor filed a Response on September 28, 2017. Dckt. 34. Debtor states that there is no pre-petition arrearage owed to Creditor, and they attached copies of July and August 2017 statements in support of their position.

RULING

First, the court notes that Creditor has not filed a claim in this case. In filing the Objection to Confirmation, Creditor has chosen not to provide any evidence (declaration, properly authenticated exhibits) in support of the Objection. Creditor merely has its counsel dictate to the court that an arrearage exists, apparently believing that if Creditor dictates a fact, such fact exists—freeing Creditor and its attorney from the Federal Rules of Evidence and the burden of proof with which other parties in federal court must comply.

Debtor, complying with the Federal Rules of Evidence has provided evidence demonstrating that the statements made by Creditor in the Objection to Confirmation are false. Reviewing the mortgage statements filed by Debtor reveals that there is no pre-petition arrearage owed to Creditor. This case was filed on August 2, 2017. One of the exhibits provided by Debtor is a mortgage statement, dated August 2, 2017. That document states clearly that the next payment due on September 1, 2017, was $3,509.43, which was comprised of only principal, interest, and escrow fees. Unnumbered Third Exhibit, Dckt. 36. More emphatically, that statement listed the overdue amount as $0.00. *Id.* Based upon the evidence provided by Debtor, as opposed to no evidence provided by Creditor, there does not appear to be a pre-petition arrearage owed to Creditor.

On a simple point, it appears that Debtor is the prevailing party in this Contested Matter initiated by Creditor. As in adversary proceedings, any request for prevailing party attorney's fees (contractual or statutory) are by judgment/order motion. FED. R. CIV. P. 54 and FED. R. BANKR. P. 9014, 7054. The court does not address such request at this time. FN.1.

FN.1. The filing of pleadings asserting legal contentions without legal support or alleging legal facts for which there is not a good faith basis for such contention raises the specter of Federal Rule of Bankruptcy Procedure 9011 (the Bankruptcy Rule corollary to Federal Rule of Civil Procedure 11). Not seeing a reply countering Debtor's evidence, nor a stipulation pursuant to Federal Rule of Bankruptcy Procedure 7041, 9014 and Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the court is left wondering as to Creditor's legal strategy for its attorneys.

The Objection is overruled, and Debtor's Plan filed on August 2, 2017, is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by AmeriHome Mortgage Company, 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 is overruled, and Adrian Padilla, Jr., and Leslie Padilla's ("Debtor") Chapter 13 Plan filed on August 2, 2017, is

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

10. 17-25129-E-13 DPC-1 | **ADRIAN/LESLIE CARTER PADILLA**
Candace Brooks | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
9-13-17 [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 and Debtor's Attorney on September 13, 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 overruled.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it relies upon the court granting a motion to value. That motion was heard and granted on October 3, 2017, with the parties agreeing that Adrian Padilla, Jr., and Leslie Padilla's ("Debtor") valuation was correct.

With the Chapter 13 Trustee's only ground being resolved satisfactorily, the Objection is overruled, and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by 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 is overruled, and Adrian Padilla, Jr., and Leslie Padilla's ("Debtor") Chapter 13 Plan filed on August 2, 2017, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. 13-20939-E-13 DPC-1 | **TIMOTHY/TAMARA MENEBROKER** **George Burke** | **MOTION TO MODIFY PLAN** **9-8-17 [122]**

Final Ruling: No appearance at the October 17, 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, creditors, and Office of the United States Trustee on September 8, 2017. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a trustee to modify a plan after confirmation. David Cusick ("the Chapter 13 Trustee") has filed evidence in support of confirmation and explains that he was mistaken previously when he asserted that Tamara Menebroker ("Debtor") was delinquent under the last proposed modified plan. The Chapter 13 Trustee also states that Debtor provided evidence that direct payments were made to Ally Financial and Harley Davidson in October, November, and December 2016.

At the moment, the Chapter 13 Trustee reports that Debtor is delinquent under the confirmed plan by $10,029.00. The proposed modified plan calls for $59,686.00 to be paid through August 2017, with $1,165.74 to be paid each month for the remaining five months of the Plan, which will result in no less than a 12% dividend to unsecured claims.

No opposition to the Motion has been filed by Debtor or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified 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 Motion is granted, and the Chapter 13 Trustee's Modified Chapter 13 Plan filed on September 8, 2017, is confirmed. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to Tamara Menebroker ("Debtor") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

12. **11-22544-E-13** **FRANCISCO ALVARADO** **MOTION TO AVOID LIEN OF YOANA FLORES GARCIA**
HLG-1 **Leticia Tanner**
9-19-17 [68]

Final Ruling: No appearance at the October 17, 2017 hearing is required.

The hearing on the Motion to Avoid Judicial Lien is continued to 3:00 p.m. on October 24, 2017.

On October 6, 2017, Francisco Alvarado ("Debtor") filed an Amended Notice of Hearing that set this matter for hearing at 3:00 p.m. on October 24, 2017. Dckt. 73. No responsive pleading has been filed to the Motion.

Continuance of a hearing is permitted only upon approval by the court upon written request at the hearing or by oral motion at the hearing. LOCAL BANKR. R. 9014-1(j). The court shall treat, for this motion only, the Amended Notice of Hearing as a written request to continue the hearing. Because no opposition has been filed, allowing the continuance will not be of harm to any possible opponent.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien filed by Francisco Alvarado ("Debtor") having been presented to the court, Debtor requesting that the hearing be continued, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Avoid Judicial Lien is continued to 3:00 p.m. on October 24, 2017, pursuant to Local Bankruptcy Rule 9014-1(j).

13. **17-25945-E-13** **HARRY NASH** **MOTION TO CONSOLIDATE LEAD CASE 17-25945 WITH 17-25972**
PGM-2 **Peter Macaluso** **9-20-17 [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 Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 20, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Consolidate Cases 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 Consolidate Cases is denied without prejudice.

Harry Nash ("Debtor") and Josephine Nash (debtor in Case No. 17-25972) (collectively, "Movant") move for the court to consolidate their separate cases into one case. Movant argues that they are married and have property in common. Additionally, Movant argues that on September 20, 2017, each debtor filed identical schedules, plans, statements of financial affairs, and rights & responsibilities in their separate cases.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 28, 2017. Dckt. 28. The Chapter 13 Trustee states that Movant has not cited legal authority for the requested relief, in violation of Local Bankruptcy Rule 9014-1(d)(6). Because of that failure, the Chapter 13 Trustee is unsure what relief is being sought. He notes that Movant may seek relief under Federal Rule of Bankruptcy Procedure 1015(a) or (b).

The Chapter 13 Trustee raises a possible conflict for Movant because the individual cases were filed on separate dates—September 7, 2017, and September 8, 2017. The cases have the same date for the Meeting of Creditors and the same date for the claims bar, but the government bar date differs by one day. The Chapter 13 Trustee also raises that both debtors have claimed exemptions under California Code of Civil Procedure § 703.140(b), but neither of them has filed a non-filing spouse waiver.

On Schedule A/B, who owns what property is not clear to the Chapter 13 Trustee because each debtor appears to claim properties as sole owners in their own cases. Schedule D & E/F do not clearly state who owes what debt for the similar reason that both cases assert the debts as solely owned by that case's debtor.

The Chapter 13 Trustee also notes that plans filed in each case are identical, calling for plan payments of $8,000.00.

The Chapter 13 Trustee believes that the Motion should be denied unless Movant can address the numerous issues satisfactorily.

MOVANT'S REPLY

Movant filed a Reply on October 9, 2017. Dckt. 33. Movant opens by stating that they request the case be joined pursuant to Federal Rule of Bankruptcy Procedure 1015(a) and by stating that every asset in the two cases is the same, except for the real property owned by each debtor. Additionally, Movant states that the combined plans from the two cases call for a total of $8,000.00 in plan payments to cure arrears on both of Movant's houses.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1015 governs consolidation or joint administration of cases pending in the same court, and it states:

> (a) **Cases involving same debtor.** If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
>
> (b) **Cases involving two or more related debtors.** If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife . . . , the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest.

The notes by the Advisory Committee provide additional insight to how the two subsections apply to cases. The notes state:

> *Note to Subdivision (a).* **Subdivision (a)** of this rule is derived from former Bankruptcy Rule 117(a). It **applies to cases when the same debtor is named in**

> **both voluntary and involuntary petitions, when husband and wife have filed a joint petition pursuant to § 302 of the Code, and when two or more involuntary petitions are filed against the same debtor**. It also applies when cases are pending in the same court by virtue of a transfer of one or more petitions from another court.
>
> . . . .
>
> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. **This rule does not deal with the consolidation of cases involving two or more separate debtors**. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. **Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule** [because] the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. . . .
>
> **Joint administration as distinguished from consolidation** may include combining the estates by using a single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

FED. R. BANKR. P. 1015 (Notes of Advisory Committee) (citing *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941)).

Joint administration and substantive consolidation are not the same concept. Joint administration is a procedural tool that aids expediting cases, but "[b]ecause of the dangers in forcing creditors of one debtor to share on a parity with creditors of a less solvent debtor . . . substantive consolidation is no mere instrument of procedural convenience . . . but a measure vitally affecting substantive rights." *Union Savings Bank v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.)*, 860 F.2d 515, 518 (2d. Cir. 1988); *see also Reider v. F.D.I.C. (In re Reider)*, 31 F.3d 1102, 1109 (11th Cir. 1994).

Sometimes, the substantive consolidation of two estates may be appropriate, such as to create a single fund to pay identical claims. *See Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 764 (9th Cir. 2000). Despite that possibility, the Ninth Circuit has not provided much guidance for courts when presented with the scenario. One case from the Bankruptcy Appellate Panel for the Ninth Circuit indicated that relevant factors for substantive consolidation include the breadth of jointly held property and the number of debts owed jointly. *Ageton v. Cervenka (In re Ageton)*, 14 B.R. 833, 835 (B.A.P. 9th Cir. 1981).

Incorrect Citation to Rule 1015(a)

In this case, Movant did not initially cite to any legal authority for the requested relief, but after the Chapter 13 Trustee raised the issue in his Response, Movant replied that relief is requested under Federal Rule of Bankruptcy Procedure 1015(a). In the Reply, Debtor does not quote the Rule that is stated as the basis for the relief requested.

The request for relief pursuant to Rule 1015(a) is clearly wrong because there is more than one debtor in the two cases that Movant seeks to consolidate. There are two separate debtors, who assert that they are married, and who wish to consolidate their cases, which would be under Federal Rule of Bankruptcy Procedure 1015(b). Additionally, the kind of relief Movant seeks is substantive consolidation, which is not governed by Federal Rule of Bankruptcy Procedure 1015. Movant does not want to administer the two cases separately in a procedurally efficient manner. Instead, Movant seeks to join the two cases into one—governed by 11 U.S.C. §302(b).

Correct Application of Rule 1015(b)

Though the court could deny the Motion based upon the legal basis asserted by Debtor, such would not be in the interests of creditors, the Chapter 13 Trustee, Debtor, and the court. The correct Rule upon which relief could be requested is:

> (b) Cases involving two or more related debtors. If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of a husband and wife shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

For this Rule, the court may order the joint administration of the cases. However, it does not provide for the substantive consolidation of the cases. In the Motion, Debtor requests that the court "join" the two cases and have them jointly administered. While the second part of this relief is provided for in Rule 1015(b), the court is unsure of the legal concept requested to "join" two cases.

The court first notes that Debtor and his spouse filed their separate bankruptcy cases in *pro se*, with the current counsel attempting to get the cases into the proper status so that it can be effectively prosecuted.

However, there is no motion filed in the second case; Josephine Nash, Case No. 17-25972; to have that case jointly administered. The creditors in that case have not received separate notice of such relief requested in that case.

Review of Schedules and Plan

Using the Schedules in this case, it appears that there may be some unusual facts that mitigate in favor of the cases not only being jointly administered, but substantively consolidated. (Debtor and counsel may research such concepts for such future motions as appropriate in this and the related cases.)

Debtor and spouse assert an interest in the Panorama Drive Property with a value of $779,000.00. Schedule A, Dckt. 17 at 3. This is listed as property in or from the estate of Margaret Cadilli (Debtor's spouse in the second case), being subjection to a lien securing debt in the amount of ($297,970.00), Schedule D, *Id.* at 15, showing an equity of almost $500,000 for Debtor and his spouse.

Debtor also lists owning property on Grove Circle with a value of $439,000, which is subject to a lien securing debt of ($217,000), showing an equity of $225,000. Schedules A and D, *Id.* Debtor then lists a third property, Oakwood Avenue with a value of $465,000.00, which is subject to a lien securing a debt of ($217,215.53). *Id.*

In addition, Debtor states on Schedule B having a "Worldmark–Vacation Property" that has a value of only $1.00. *Id.* at 11.

On Schedule I, Debtor states under penalty of perjury that he has income of $5,361.00, which includes $1,085 for "SSI from dependant." *Id.* at 27. That includes only $2,000 per month from wages and $1,629.00 from Social Security (in addition to the SSI income in the forgoing sentence).

Debtor also lists the Debtor Spouse having monthly income of $9,9048. *Id.* That includes "rental or business income" of $5,985.00 per month. *Id.* No such "business" is disclosed on Schedule B.

Looking at Debtor's Schedule I and J, though reporting that he and Spouse Debtor have gross income of $16,172, which includes income from each of them working two jobs and having $72,000 per year in interest and dividend income, the total tax payments for income, medicare, Social Security taxes are only $863.00—for the two of them. Dckt. 17 at 26–29. It is also stated that Spouse Debtor will be making an additional $12,000 per year after twelve for her share of her ex-husband's military retirement.

A review of Debtor's Schedule J raises serious concerns. No provision is made for paying the mortgage, taxes, and insurance on his residence. Those are left to the Plan. For the residence, Debtor only provides for $25.00 per month in repair, maintenance, and upkeep expenses. That does not appear reasonable.

Debtor's transportation expense, for the two adults and the multiple vehicles they own are stated to be only $300.00 per month. Again, that does not appear reasonable for the 2005 Porsche Boxster (85,298 miles) and the 2012 Volkswagen Jetta (77,200 miles).

For the two adults and the ten-year-old dependant (who appears to be receiving SSI benefits), Debtor states that there are only $50.00 per month in health and dental expenses. Again, this does not appear to be reasonable.

The only "taxes" provided for on Schedule J is for "dmv reg" of ($25) per month.

A necessary expense listed on Schedule J is for Debtor to maintain a ($1,000) per month payment on the WorldMark Vacation home having a value on Schedule B of $1.00. The total value of the asset is .0000833333% of just one year's payments Debtor believes are necessary and reasonable to make.

Debtor states that there is ($1,200) of mortgage payments for another property, for which there is ($50) per month of maintenance, ($30) for insurance, and ($250) for HOA dues of additional expenses.

Debtor also states that there is ($1,182) per month of "business expenses." The business income listed on Schedule I for Spouse Debtor is $5,985.00. However, no statement of gross income and expenses is provided for any "business."

Looking at the Statement of Financial Affairs, no $72,000 per year of net business income is reflected for 2015, 2016, or 2017. *Id.* at 17. In Spouse Debtor's case no such income is shown on her Statement of Financial Affairs. 17-25972; Dckt. 23 at 31–32.

Review of Plan

Notwithstanding the tremendous income (for which Debtor and Spouse Debtor purport not to have to pay any taxes), Debtor's Chapter 13 Plan requires $8,000 per month plan payments. Dckt. 18. That includes all of Spouse Debtor's income. In Class 1, Debtor is having to cure arrearages on two properties that total $70,000. Plan at 2. Of the $8,000 per month payment, $6,266.60 goes to make the current monthly payment and the arrearage payment on just two secured claims. Debtor then has Class 2 payments of $361.00 per month to pay the claims secured by the Porsche Boxster and Volkswagen Jetta.

Then, notwithstanding what is stated to be substantial equities in property and huge monthly income, after making the other plan payments and the necessary expenses (including $12,000 per year for a vacation rental worth $1.00), Debtor will stretch paying his unsecured claims totaling $19,270.75 over five years at no interest.

Given that Debtor makes no provision for paying taxes on the substantial income, including the $72,000 in net business income of Spouse Debtor, the plan appears to be illusory. Spouse Debtor's Plan appears to mirror Debtor's Plan, also requiring an $8,000 per month plan payment by Spouse Debtor. 17-25972; Plan, Dckt. 24. There is not enough money to fund two plans with $8,000 per month for Debtor and Spouse Debtor.

Denial Without Prejudice

Other than making several factual allegations in the two-page (including the caption page) about how the two skeletal cases were filed, the Motion is nothing more than a request (demand) that the cases be "joined" and jointly administered. The court cannot tell why or how such joint administration or substantive consolidation is proper. The creditors in the Spouse Debtor's case are left in the dark about this joint administration or consolidation that is afoot.

While it may well be that there should be one plan for the two cases, the two cases be consolidated, or the two plans be coordinated for the payment of creditors, that has not been done by Debtor or Spouse Debtor.

Movant has failed to demonstrate to the court legal authority for its request to combine two separate cases into one case and grounds showing that such a substantive consolidation would be in the best interest of creditors of the two estates. 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 Consolidate Cases filed by Harry Nash and Josephine Nash ("Movant") having been presented to the court, Movant requesting that the hearing be continued, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Consolidate Cases is denied without prejudice.

14. **17-25049-E-13** **AUSTREBERTO PEREZ** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Nikki Farris** **PLAN BY DAVID P. CUSICK**
9-21-17 [22]

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 21, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

B. Debtor cannot comply with the Plan because the Chapter 13 documents are incomplete.

The Chapter 13 Trustee's objections are well-taken. The Plan does not comply with Local Bankruptcy Rule 3015(b)(6), which states that a debtor must provide the Class 1 Checklist and Authorization to Release Information forms to the trustee as required.

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 Schedule B may not have listed all of Debtor's assets properly because Debtor is married with three children. Schedule B shows no electronics were listed, and

only "One man's clothing" was listed. Additionally, Debtor's wife holds a seasonal job, but her income was not listed on Schedule I. Lastly, the Chapter 13 Trustee notes that Debtor is below median income, with a transportation expense of $269.00, where one of the vehicles is a 1995 truck. 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

15. 17-24453-E-13 DPC-1 | **MICHELLE QUINLIVAN** **Mark Briden** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-16-17 [33]**

Final Ruling: No appearance at the October 17, 2017 hearing is required.

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

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.

The Objection to Confirmation of Plan is overruled as moot.

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

A. Michelle Quinlivan ("Debtor") failed to appear at the meeting of creditors;

B. The Plan relies on a pending motion to value; and

C. Page two of the Plan is missing.

SEPTEMBER 19, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017, to be heard in conjunction with another objection to confirmation and to allow Debtor an opportunity to appear at the continued Meeting of Creditors. Dckt. 61.

RULING

Subsequent to the filing of this Objection, Debtor filed a Second Amended Plan and corresponding Motion to Confirm on September 26, 2017. Dckt. 66. FN.1. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

FN.1. Debtor filed the Motion to Confirm and Second Amended Plan as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. 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.

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 overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

16. **17-24453-E-13** **MICHELLE QUINLIVAN** **CONTINUED MOTION TO VALUE**
MWB-1 **Mark Briden** **COLLATERAL OF PNC BANK**
7-12-17 [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.

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, Creditor, and Office of the United States Trustee on July 12, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Secured Claim of PNC Bank ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Michelle Quinlivan ("Debtor") to value the secured claim of PNC Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2685 Boneset Street, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of $70,000.00 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).

CREDITOR'S RESPONSE

Creditor filed a Response on July 28, 2017. Dckt. 22. Creditor opposes Debtor's valuation of the Property and states that it obtained a valuation on May 16, 2017, showing that the Property could be listed for $181,000.00 and sold for $179,000.00. Creditor states that if the court is not satisfied with the BPO valuation, then it requests that the hearing be continued for it to conduct a full appraisal.

AUGUST 15, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on September 19, 2017, and ordered supplemental opposition pleadings to be served by September 5, 2017, and replies by September 12, 2017. Dckts. 37 & 39. The court also ordered Debtor to serve David Cusick ("the Chapter 13 Trustee") by August 22, 2017. Dckt. 39.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on September 1, 2017. Dckt. 43. The Chapter 13 Trustee states that he was served on August 23, 2017, and he notes that Creditor has not filed a claim in this case.

STIPULATION TO CONTINUE HEARING

On September 6, 2017, the parties filed a Stipulation to Continue Hearing to October 17, 2017, and they agreed that Creditor would have until October 3 to file a supplemental opposition, and Debtor would have until October 10, 2017, to file a reply. Dckt. 49.

ORDER GRANTING STIPULATION TO CONTINUE HEARING

On September 6, 2017, the court entered an order granting the Stipulation and continuing the hearing on this Motion to 3:00 p.m. on October 17, 2017, with supplemental opposition due by October 3, 2017, and replies by October 10, 2017. Dckt. 50.

CREDITOR'S SUPPLEMENTAL OBJECTION

Creditor filed a Supplemental Objection on October 3, 2017. Dckt. 70. Creditor insists that Debtor's valuation of $70,000.00 for the Property is incorrect because she admitted at the Meeting of Creditors that she looked at Zillow and reduced the estimate based upon her own opinion and upon oral statements about repair costs that were made to her.

Creditor had the Property inspected and appraised. Theodore Carr, the appraiser, has provided his declaration and appraisal report. Dckt. 73. The appraiser spoke with the inspector, who said that the foundation was sound structurally despite the Property needing maintenance, and reviewed his report, and then the appraiser valued the Property at $130,000.00 as of the petition filing date. The testimony of Mr. Carr includes the following, curious, statements:

> "17. **I have reviewed Mr. Quigley's home inspection report** of the Subject Property and Debtor's declaration in support of her motion to value collateral, **neither of which change or impact my valuation of the Subject Property**.
>
> 18. It was **my impression from my conversation with Mr. Quigley that there were no structural issues** with the property **or costly repairs** that would have necessitated an inspection by a licensed contractor and/or impacted the appraisal value other than an

inspection and report by a licensed pest inspector. The appraisal value would have been impacted had there been conditions that affected the health and safety in the home or the structural nature of the home."

Dckt. 73. From Mr. Quigley's declaration and report, it appears that there are significant items that would affect the value of the Property.

The Inspector, Kevin Quigley, has filed a declaration and his report as to the condition of the Property. Dckt. 71. Some of the significant conditions that he identified that would affect the value for any buyer include:

A. "At multiple locations, the fencing around the Residence was in need of service in order to be fully functional." Declaration ¶ 6.

B. "The concrete driveway had not been maintained and was cracked and/or deteriorating in some areas." *Id.*

C. "Inspection of the [exterior] wall coverings confirmed the presence of wood damage/decay." *Id.*

D. "I walked on the roof for inspection, and the roof was in satisfactory condition." Declaration ¶ 7. [While "satisfactory" for the existing condition, the Inspector offers no testimony as to whether that is for one year or ten years.]

E. "I turned on the heating system and proceeded to the kitchen to check the appliances, flooring and ceiling." Declaration ¶ 8. [Inspector offers no testimony as to the condition of the appliances, floor, and ceiling.]

F. For the heater and air conditioning, the Inspector merely states that he turned it on and it ran. Nothing about the condition, functional life, and any anticipated repairs. Declaration ¶ 9.

G. In his Report, Mr. Quigley states,

1. "Driveway
1.7 - MAINTENANCE: The c**ement driveway has not been maintained and is cracked and/or deteriorating in some areas**. As a preventative measure, we recommend that all cracks be filled/sealed and the driveway be re-coated or resurfaced to extend its life span [which life span is not stated in the Report]."

2. "Wall Coverings

1.9 - DEFERRED : The **wall coverings and building envelope are not tested for watertightness**, and we do not guarantee or provide any type of warrant against moisture intrusion."

3. "1.10 - DEFERRED- A pest control inspection and report should confirm the **presence of wood damage/decay to the wood siding wall covering at multiple locations around the residence and the need for any repair/replacement**. If the building has not yet been inspected by a licensed pest control operator, you should have this done as soon as possible."

4. "1.12 - DEFICIENT: There are **gaps or opening in the wood wall coverings at multiple locations** around the residence that will need to be sealed or otherwise made watertight in order to help prevent against moisture or pest intrusion."

5. "1.13 - DEFICIENT: There is **evidence of termites** along the exterior siding by the front door that needs to be treated and repaid."

6. "2.6 - COMMENTS: **The roof framing system is undersized** by current standards and/or would **probably not meet with current building requirements**, but appears to be functional with no evidence of failure.

7. "Heating and AC

   7.1 - COMMENTS: Central Hearing and cooling is provided by an older 42,000 btu forced-air package system, commonly referred to as a 'dual pack' as both the hearing and cooling components are housed together in a single package. The furnace is fueled by gas, the cooling electrically powered. The package system is located on the roof.

   7.3 - COMMENTS: **The package system has reached the end of its design life** and should be closely monitored and serviced annually and a home warranty purchased."

8. "Fireplace
   8.2 - DEFERRED: There is damage at the rear wall of the firebox that you should have evaluated by an appropriately qualified specialist for further remarks and recommendations."

9. "Ceilings
   9.6 - DEFERRED: **There are water stains or other evidence of moisture intrusion in the south/east bedroom ceiling** covering that you need to have evaluated further by an appropriately qualified specialist.

10. "9.15 - DEFICIENT: The **Kenmore electric cook top did not respond to normal user controls** and needs service."

Creditor argues that pursuant to 11 U.S.C. § 1322(b)(2), if any of its junior lien position is secured by the Property's value, then its full claim must be treated as secured. Additionally, Creditor argues that even if the court were to reduce the $130,000.00 property value by the $50,000.00 in repairs that Debtor alleges, there would still be remaining equity to secure a portion of Creditor's claim.

Creditor reasserts that without evidence from Debtor about the cost of necessary repairs, Creditor's valuation of $130,000.00 should be used for the Property, which would have the ultimate effect of denying this Motion.

DECLARATION OF JOEL LOCKWOOD

Joel Lockwood filed a Declaration in Support of the Motion on October 9, 2017. Dckt. 75. Mr. Lockwood states that he is a general contractor and owner of Lockwood Enterprises, holding a general contractor license from the State of California.

Mr. Lockwood states that he visited the Property on October 4, 2017, at Debtor's request, to provide a written estimate of various repairs, which he has attached as Exhibit A. He states that the total estimate is $58,800.00.

The Estimate lists the following costs and repairs:

A.	$800.00	Plans & Permits
B.	$18,000.00	Remove and replace siding.
C.	$5,500.00	Remove and reset windows, and trim. Replace sliding door.
D.	$7,500.00	Remove and replace hvac unit.
E.	$5,500.00	Paint exterior
F.	$3,000.00	Remove and replace clay sewer line from the house to the street. Excavation to extend from the cleanout in the front yard to street gutter, no further.
G.	$2,400.00	Repair concrete drive way. Place, pour, and finish concrete.
H.	$6,500.00	Current fire place is unsafe to operate. Install fire place insert and flue.
I.	$1,400.00	Remove and replace damaged flooring in bathroom. Repair damaged flooring in entry.

J.	$1,200.00	Remove and replace water heater.
K.	$2,800.00	Remove and replace stove top, and wall ovens.
L.	$2,400.00	Remove and replace carpet.
M.	$1,500.00	Sand and refinish damaged hardwood floors in bedroom.
N.	$300.00	Repair leaking plumbing under kitchen sink.

Exhibit A, Dckt. 76.

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. 5-1 filed by Creditor appears to be the claim that may be the subject of the present Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $73,367.00. Creditor's second deed of trust secures a claim with a balance of approximately $70,208.07.

If the court were to accept Debtor's valuation of the Property, Creditor's claim secured by a junior deed of trust would be completely under-collateralized. Creditor has presented evidence, in the form of an inspection and an appraisal, that the value of the Property is $130,000.00.

Debtor moves to counter Creditor's assertion of value with evidence, in the form of a general contractor's written estimate, that repairs to the house total $58,800.00. If the court were to adopt $130,000.00 as the Property's value and then subtract the $73,367.00 owed to the first deed of trust and subtract the $58,800.00 asserted for repairs, then there would be no equity remaining for Creditor's claim. The court does not adopt that calculation, however.

Mr. Lockwood's declaration states that he went to Debtor's house at her request to provide her with "a written estimate to complete various repairs to her residence." Dckt. 75. Mr. Lockwood does not testify that the repairs are necessary, just that he provided Debtor with an estimate of what work could be done to the Property.

The court, in considering these estimates of value does not turn a blind eye to reality. Creditor has presented an Appraiser's Opinion of $130,000.00. What strikes the court about the appraisal is that the Appraiser states that the information in the Inspector's report does not change his opinion of value. Possibly, it could be that the Appraiser believes that he has already taken that into account. On the other hand, it may be that the Appraiser has locked in the value that Creditor needs, and that value will not be altered.

The court is also taken by the photographs provided by the Appraiser of the comparables and the Property. The comparables are significantly better properties. The photographs of the Property show that it is suffering from a serious lack of maintenance, no yard/landscaping, clutter, and damage.

Another Declaration has been filed in support of the Motion. This is by Rosaline Ayoub, the attorney for Creditor in this Contested Matter. Ms. Ayoub states under penalty of perjury that she has personal knowledge of the following facts and chooses to be a percipient witness for her client for the following:

A. She testifies that she personally knows that Exhibit C is a "true and correct" copy of the Notice of Merger of National City Bank into PNC Bank, N.A. Declaration ¶ 4, Dckt. 72.

B. She testifies that she personally knows that Exhibit D is a "true and correct" copy of the Equity Reserve Agreement dated June 14, 2005, that was executed in 2005 by Debtor. Declaration ¶ 5.

C. She testifies that she personally knows that the Deed of Trust filed as Exhibit E, dated June 14, 2005, was executed by Debtor. Declaration ¶ 6.

D. She proceeds to provide percipient witness testimony as to what she asserts Debtor testified at Debtor's First Meeting of Creditors. Declaration ¶ 7.

E. She then testifies that the "Zillow Valuation" for the Property is $193,641, which appears to be an attempt for counsel to provide expert witness testimony as to value of the Property. Declaration ¶ 8.

With respect to the merger of National City Bank and PNC Bank, N.A., the 2005 Equity Reserve Agreement, and the 2004 Deed of Trust, Ms. Ayoub provides no testimony as to how she has personal knowledge of such facts. Rather, it appears that Ms. Ayoub is providing such testimony because it "lets her client win."

The California State Bar reports that Ms. Ayoub was admitted to the State Bar in December 2006. Thus, the "facts" to which she testifies relate to when she was still a law student.

It appears that nobody at PNC Bank, N.A. could provide any testimony to properly authenticate the documents upon which it bases its claim in this case.

Determination of Value

The economic analysis of this property and Creditor's claim begins with the following:

BPO Valuation.....$130,000
Stated Repairs Required for Sale.....($ 58,000)

Value of Property Unrepaired.....$72,000

Claim Secured by Senior Deed of Trust.....($73,367)

Equity to Secure Creditor's Claim.....($ 1,367)

Debtor "found" just enough in repairs to reduce the value so that it is barely less than the obligation secured by the claim secured by the senior lien. Such a "convenient" series of expenses undermines Debtor's credibility and good faith in this case, not merely in connection with this Motion.

The evidence provided has convinced the court that the $58,000 in repairs is in addition to any "adjustments" made to the much nicer properties used as comparables.

Conversely, Creditor's contentions and litigation does not appear to be based on the value of the Property, but only to thwart a plan and ensure that the Property is lost to foreclosure to the first. The "repairs" are all in the nature of maintenance that goes directly to the "as-is" value of the Property (as opposed to added rooms/amenities to create new value in the Property). The Broker and Creditor do not counter these repairs or the costs.

Even if Debtor overstates the expenses and some get knocked out, say the $7,500 for a new HVAC unit (notwithstanding the Inspector testifying that it is at the end of its design life), there would be an apparent $5,000 in gross "value" for Creditor's lien. But in real world dollars, this would appear to be a loss for Creditors.

Value Adjusted for Exclusion of HVAC Replacement	$79,500
Costs of Foreclosure (Est. 2%)	($ 1,590)
Interest on Debt Secured by Senior Lien	($ 1,222)
Costs of Insurance for Nine Months (Foreclosure period and marketing)	($ 875)
Claim Secured by Senior Deed of Trust	($73,367)
Property Taxes	($ 1,000)
Sale Costs (Est. 8%)	($ 6,360)
Security Costs and Maintenance	($ 1,500)
Actual Economic Value to Creditor	($6,414)

In addition, Creditor has incurred the legal and expert costs and expenses in opposing this Motion. Conservatively estimating the legal fees to date being ($3,000) and the Broker's Price Opinion being ($500), the economic "gain" by Creditor in pursuing the opposition to this Motion is losing ($10,000).

Ultimately, the court finds more credible Debtor's evidence and determines the value of the Property to be $72,000.

The senior in priority first deed of trust secures a claim with a balance of approximately $73,367. Creditor's second deed of trust secures a claim with a balance of approximately $70,208.07. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments for Creditor's 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 Collateral and Secured Claim filed by Michelle Quinlivan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of PNC Bank secured by a second deed of trust recorded against the real property commonly known as 2685 Boneset Street, Redding,

California ("Property"), is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $72,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

17.	**17-24453-E-13** **RSA-1**	**MICHELLE QUINLIVAN** **Mark Briden**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PNC BANK, N.A.** **8-10-17 [28]**

Final Ruling: No appearance at the October 17, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2017. By the court's calculation, 33 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.

The Objection to Confirmation of Plan is overruled as moot.

PNC Bank, N.A., Successor by Merger to National City Bank, Creditor with a secured claim, opposes confirmation of the Plan on the basis that it relies upon the court granting a motion to value, specifically of Michelle Quinlivan's ("Debtor") real property and therefore of Creditor's claim.

SEPTEMBER 12, 2017 HEARING

At the hearing, the court continued the hearing on this Objection to 3:00 p.m. on September 19, 2017. Dckt. 53.

SEPTEMBER 19, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017, to be heard in conjunction with a motion to value. Dckt. 60.

RULING

Subsequent to the filing of this Objection, Debtor filed a Second Amended Plan and corresponding Motion to Confirm on September 26, 2017. Dckt. 66. FN.1. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

FN.1. Debtor filed the Motion to Confirm and Second Amended Plan as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. 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.

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 PNC Bank, N.A., Successor by Merger to National City Bank, Creditor with a secured claim, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled as moot, Debtor having filed an amended Chapter 13 Plan, replacing the one that is the subject of this Objection.

18. **17-20054-E-13 TLA-2** | **TREVOR HARPER AND MYA MOORE-HARPER** | **MOTION TO MODIFY PLAN 8-29-17 [39]**

Thomas Amberg

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 29, 2017. By the court's calculation, 49 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.

Trevor Harper and Mya Moore-Harper ("Debtor") seek confirmation of the Modified Plan because they are receiving less in child support and because they have decided to surrender a vehicle. Dckt. 42. The Modified Plan calls for plan payments of $8,694.00 through August 2017, followed by payments of $2,198.00 for the remainder of the Plan. 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 October 3, 2017. Dckt. 51. The Chapter 13 Trustee asserts that Debtor is $2,198.00 delinquent in plan payments, which represents one month of the $2,198.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, the Chapter 13 Trustee opposes the treatment of Banc of California in Section 6.02. He notes that the Additional Provisions provide an interest rate and monthly dividend for the supplemental claim, but the Modified Plan does not propose a classification. Without the classification, the Chapter 13 Trustee cannot determine what order to pay claims if Debtor does not pay the full plan payment.

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 Trevor Harper and Mya Moore-Harper ("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.

19.	**17-24755-E-13** **CYB-1**	**ROBBIE/CHRISTI HOLCOMB** **Candace Brooks**	**CONTINUED MOTION TO VALUE COLLATERAL OF CELTIC BANK** **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.

OCTOBER 3, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017. Dckt. 27.

RULING

No further pleadings have been filed since the October 3, 2017 hearing.

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.

20. 17-24755-E-13 DPC-1 — ROBBIE/CHRISTI HOLCOMB — Candace Brooks — CONTINUED 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.

OCTOBER 3, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017. Dckt. 28.

RULING

No further pleadings have been filed since the October 3, 2017 hearing.

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 17, 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.

21. 17-23659-E-13 FRANCISCO DOMINGUEZ MOTION TO CONFIRM PLAN
TOG-1 Thomas Gillis 8-23-17 [25]

Final Ruling: No appearance at the October 17, 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 23, 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 granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Francisco Dominguez ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on September 26, 2017. Dckt. 33. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Francisco Dominguez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on August 23, 2017, is confirmed. Debtor's Counsel shall

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

22. 17-23560-E-13 NICOLE MOSBY — MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso — 8-31-17 [48]

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 31, 2017. By the court's calculation, 47 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 Mosby ("Debtor") seeks confirmation of the Amended Plan to save her home. Dckt. 50 at 1:26–27. The Amended Plan calls for $4,200.00 to be paid into the Plan through August 2017, with plan payments of $2,000.00 for the remaining fifty-seven months and a 0.00% 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 26, 2017. Dckt. 62. The Chapter 13 Trustee asserts that Debtor is $2,000.00 delinquent in plan payments, which represents one month of the $2,000.00 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).

DEBTOR'S REPLY

Debtor filed a Reply on October 9, 2017. Dckt. 66. Debtor's attorney promises Debtor will be current with plan payments before the hearing.

RULING

Unfortunately for Debtor, a promise to pay is not evidence of curing the delinquency. 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 Mosby ("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.

23. **17-24960-E-13** **DOUGLAS/VALERIE LUTES** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC**
NLG-1 **Peter Macaluso** **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 ("Debtor") 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.

OCTOBER 3, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017. Dckt. 39.

RULING

No further pleadings have been filed since the October 3, 2017 hearing.

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.

24. **11-29166-E-13 WW-6** | **MICHAEL/JENNIFER PETERS** **Mark Wolff** | **CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 4-25-17 [152]**

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 Creditor on April 25, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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 court set a briefing schedule and final hearing.

The Objection to Notice of Mortgage Payment Change is sustained.

Michael Peters and Jennifer Peters ("Debtor") object to a Notice of Mortgage Payment Change filed by MTGLQ Investors LP ("Creditor") on March 1, 2017. Debtor alleges that creditor violated Federal Rule of Bankruptcy Procedure 3002.1(c) by failing to file and serve Debtor, Debtor's attorney, and David Cusick (the Chapter 13 Trustee), with a notice itemizing all fees, expenses, and charges.

Debtor requests that the court, pursuant to Federal Rule of Bankruptcy Procedure 3002.1(i):

A. Preclude Creditor from presenting omitted information as evidence;

B. Determine that payment of the fees, costs, and expenses allegedly incurred in the past 180 days are not required by the underlying agreement and applicable bankruptcy law to cure a default or to maintain payments in accordance with 11 U.S.C. § 1322(b)(5);

C. Require Creditor to pay Debtor's incurred attorney's fees; and

D. Award sanctions to Debtor and against Creditor and Rushmore Loan Management Services.

Summary of Debtor's Objection

Debtor argues that Creditor has collected, or charged Debtor for, fees, costs, or expenses after December 1, 2011, without giving notice. A review of the docket shows that Creditor has not filed any Notice of Fees, Expenses, and Charges since December 1, 2011. Nevertheless, Debtor has asserted—and attached as Exhibit A—that Creditor has charged for various fees, including:

1/20/16	Property Preservation DI	$96.00
1/22/16	Property Preservation DI	$55.00
1/22/16	Property Preservation DI	$15.00
1/22/16	Property Preservation DI	$1.50
2/9/16	Property Preservation DI	$10.50
2/24/16	Property Preservation DI	$15.00
2/24/[16]	Property Preservation DI	$1.50
3/8/16	Misc Corporate Disbursem	$1.18
3/16/16	Misc Corporate Disbursem	$1.18
3/25/16	Property Preservation DI	$1.50
3/25/16	Property Preservation DI	$15.00
4/28/16	Property Preservation DI	$15.00
4/28/16	Property Preservation DI	$1.50
5/5/16	Misc Corporate Disbursem	$1.18
5/20/16	Property Preservation DI	$15.00
5/20/16	Property Preservation DI	$1.50
5/24/16	Misc Corporate Disbursem	$1.18
5/31/16	Misc Repayment	$109.00
6/2/16	Misc Corporate Disbursem	$1.18
6/23/16	Property Preservation DI	$1.50
6/23/16	Property Preservation DI	$15.00
6/27/16	Misc Corporate Disbursem	$1.18
7/7/16	Misc Corporate Disbursem	$1.18

7/8/16	Misc Repayment	$1.18
7/15/16	Attorney Advance Disburs	$215.00
7/25/16	Misc Corporate Disbursem	$1.18
7/25/16	Property Preservation DI	$55.00
7/27/16	Property Preservation DI	$96.00
7/27/16	Property Preservation DI	$15.00
7/27/16	Property Preservation DI	$1.50
8/1/16	Property Preservation DI	$10.50
8/2/16	Escrow Advance	$10,859.60
8/10/16	Misc Corporate Disbursem	$1.18
8/10/16	Misc Corporate Disbursem	$0.29
8/29/16	Property Preservation DI	$15.00
8/29/16	Property Preservation DI	$1.50
9/6/16	Misc Corporate Disbursem	$1.18
9/26/16	Property Preservation DI	$15.00
9/26/16	Property Preservation DI	$1.50
9/29/16	Corporate Advance Disbursem	$1.18
10/26/16	Corporate Advance Disbursem	$1.18
10/26/16	Property Preservation DI	$15.00
10/26/16	Property Preservation DI	$1.50
10/31/16	Misc Corporate Disbursem	$1.18
11/1/16	Misc Corporate Disbursem	$0.79
11/23/16	Property Preservation DI	$15.00
11/23/16	Property Preservation DI	$1.50
11/29/16	Misc Corporate Disbursem	$1.18
12/1/16	Escrow Advance	$2,443.05
12/7/16	Misc Corporate Disbursem	$0.63
12/30/16	Property Preservation DI	$1.50

12/30/16	Property Preservation DI	$15.00
5/6/15	Corp. Advance Adjustment	$5,327.95
5/27/15	Property Preservation	$1.50
5/27/15	Property Preservation	$15.00
6/26/15	Property Preservation	$15.00
6/26/15	Property Preservation	$1.50
7/16/15	Property Preservation	$96.00
7/28/15	Attorney Advances	$25.00
7/28/15	Property Preservation	$55.00
7/28/15	Misc. F/C and B/R expenses	$1.44
7/28/15	Misc. F/C and B/R expenses	$1.44
7/30/15	Property Preservation	$15.00
7/30/15	Property Preservation	$1.50
7/30/15	Property Preservation	$9.50
8/3/15	Property Preservation	$9.50
8/27/15	Property Preservation	$15.00
8/27/15	Property Preservation	$1.50
9/11/15	Attorney Advances	$150.00
9/25/15	Property Preservation	$15.00
9/25/15	Property Preservation	$1.50
10/27/15	Property Preservation	$1.50
10/27/15	Property Preservation	$15.00
11/30/15	Property Preservation	$15.00
11/30/15	Property Preservation	$1.50
12/10/15	Misc Corporate Disbursement	$1.18
12/10/15	Misc Corporate Disbursement	$1.18
12/23/15	Property Preservation	$15.00
12/23/15	Property Preservation	$1.50

	Total	**$19,977.25**

Debtor argues that Creditor's charges were discovered only recently. Debtor believed that an escrow account had been established to pay Creditor and that Creditor was collecting its necessary amount through the Chapter 13 Plan.

Debtor provides a task billing for the attorney fees incurred with this Objection and asserts that the total amount of fees is $8,695.00.

MAY 9, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on July 11, 2017. Dckt. 160. The court instructed Creditor to file supplemental pleadings on or before June 2, 2017, and Debtor to reply, if at all, on or before June 19, 2017.

CREDITOR'S RESPONSE

Creditor filed a Response on June 2, 2017. Dckt. 167. Creditor argues that Debtor has failed to pay property taxes during the bankruptcy case. Creditor explains that when Rushmore Loan Management Services, LLP ("Rushmore") acquired the loan in May 2015, it learned from the records that Debtor had not been paying property taxes and were deficient by $12,000.00. Additionally, Rushmore allegedly payed the following tax advances on Debtor's behalf:

A. $8,948.04 on August 1, 2016;

B. $1,911.56 on August 2, 2016;

C. $2,443.05 on December 1, 2016; and

D. $2,433.05 on March 20, 2016.

Creditor argues that it was not required to file a Notice of Postpetition Fees, Charges, and Expenses pursuant to Federal Rule of Bankruptcy Procedure 3002.1 because tax payments were made on Debtor's behalf by Rushmore as escrow account disbursements, charged toward Debtor's escrow account.

Creditor notes that Debtor has routinely been paying $2,366.00, which—while being $128.78 in excess of the required monthly payment of $2,237.22—is not sufficient to support a $407.18 monthly escrow payment.

Creditor states that Rushmore filed a Response to the Notice of Final Cure Payment, indicating that Debtor was current with post-petition payments. Rushmore, allegedly intended to reflect only that post-petition payments were current, not that the escrow deficiency had been cured. Creditor states that Rushmore will be amending its Response.

Finally, Creditor states that it will be waiving all other fees, charges, and expenses because they were not noticed property according to Federal Rule of Bankruptcy Procedure 3002.1.

DEBTOR'S REPLY

Debtor filed a Reply on June 19, 2017. Dckt. 173. Debtor argues that Creditor's Response fails to:

A. Address the May 22, 2017 escrow account disclosure statement sent to Debtor;

B. Acknowledge or show how Creditor applied $8,901.00 paid for escrow by the Trustee;

C. Show how Creditor applied the post-bankruptcy escrow payments;

D. Detail the fees, expenses, or charges that make up the asserted $27,457.90 escrow shortage;

E. Address or explain why Creditor should be excused from its failure to file or provide Debtor with:

1. Payment change notices pursuant to Federal Rule of Bankruptcy Procedure 3002.1(b) during this case,

2. Notice of fees, expense, and charges pursuant to Federal Rule of Bankruptcy Procedure 3002(c) during this case,

3. Annual Escrow Account and disclosure statements required by RESPA during this case, and

4. Annual accountings of the escrow account as required by the Deed of Trust; and

F. Explain how Creditor should be exempt from Federal Rule of Bankruptcy Procedure 3002.1(c) based upon an "escrow account disbursement" exception when Creditor took no action consistent with maintaining an escrow account and did not "analyze and impound the escrow account until March 2017."

Dckt. 173 at 2.

Debtor does not oppose setting a monthly payment of $2,664.40, but Debtor opposes a shortage of thousands of dollars as unexplained. Debtor notes that the excess funds that were being paid monthly were put into an account that Creditor labeled "other" without any explanation of how those funds were applied to escrow or to Debtor's loan.

Debtor argues that Creditor does not account for $3,407.12 that Debtor paid in each of March, April, and May 2017. Additionally, Debtor contains to maintain that Creditor has not accounted for and itemized a $27,457.90 escrow shortage. Debtor argues that Creditor has owned the loan since 2011 but has only provided documentation for escrow advances since August 1, 2016, and has not provided evidence of charges approximating $12,000.00 prior to May 2015.

In response to Creditor stating that Rushmore analyzed and impounded the escrow account in March 2017, Debtor argues that no accountings were provided to Debtor as required by RESPA and the Deed of Trust.

Regarding Creditor's argument that it was not required to file a Notice of Postpetition Fees, Charges, and Expenses, Debtor makes three arguments. First, Debtor argues that no escrow account was created until March 2017, well after Creditor allegedly advanced funds for expense payments. Second, Debtor argues that property preservation fees and other expenses can be run through the escrow account to bypass reporting requirements. Third, Debtor argues that an implied exception to Federal Rule of Bankruptcy Procedure 3002.1(c) for escrow account disbursements comes with an implied requirement that Creditor will comply with RESPA and Federal Rule of Bankruptcy Procedure 3002.1(b) and will disclose all escrow charges in an annual escrow account and disclosure statement.

JULY 11, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 15, 2017, at the parties' request, believing that they were close to negotiating an agreed-upon resolution. Dckt. 179.

AUGUST 15, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 29, 2017. Dckt. 183.

AUGUST 29, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017. Dckt. 186.

DISCUSSION

No further pleadings have been filed since the August 29, 2017 hearing. No settlement has been proposed for the court's review.

Federal Rule of Bankruptcy Procedure 3002.1(c) states that a claimholder must file and serve a notice of fees, expenses, and charges "within 180 days after the date on which the fees, expenses, or charges are incurred."

On April 24, 2017, Creditor filed its Response to Notice of Final Cure Payment, expressly affirming under penalty of perjury, that:

> "Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim."

and

> "Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.
>
> The next postpetition payment from the debtor(s) is due on: 04/24/2017"

Creditor Response to Notice of Final Cure Payment (Form 4100R), April 24, 2017 Docket Entry, Filed as part of Proof of Claim No. 5-1.

This Response confirms that Creditor admits that the Chapter 13 Trustee's Notice of Final Cure Payment (Dckt. 145) is correct and that there is no outstanding pre-petition or post-petition arrearage as of the February 2017 completion of Plan payments. Despite Creditor's assertion that Rushmore understood it to refer to post-petition fees only, Rushmore has not amended the Response.

It is worth restating, verbatim, exactly what Creditor confirmed under penalty of perjury in responding to the Notice of Final Cure Payment:

"Part 2: Prepetition Default Payments

Check one:

☒ Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim

☐ Creditor disagrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim. Creditor asserts that the total prepetition amount remaining unpaid as of the date of this response is: $_____

Part 3: Prepetition Default Payments

Check one:

☒ Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

The next postpetition payment from the debtor(s) is due on: 04/24/2017

☐ Creditor states that the debtor(s) are not current on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

Creditor asserts that the total amount remaining unpaid as of the date of this response is:

a. Total postpetition ongoing payments due: (a) $ _____

b. Total fees, charges, expenses, escrow, and costs outstanding: + (b) $ _____

c. Total. Add lines a and b. (c) $ _____

Creditor asserts that the debtor(s) are contractually obligated for the postpetition payment(s) that first became due on: _ __/___/___"

Response to Notice of Final Cure Payment, Filed April 24, 2017, p. 1. It appears that this Response crossed in the mail with the Objection to Notice of Mortgage Payment Change.

Creditor provides the declaration of Barkley Sutton in response to the Motion. Declaration, Dckt. 168. Mr. Sutton testifies under penalty of perjury that he is an Assistant Vice President for Rushmore Loan Management Services, LLC, the servicer and attorney in fact for Creditor. He then goes further to testify that he, or possibly Rushmore, is not a party to this "action." Declaration, p. 2:2–4; Dckt. 168.

Mr. Sutton testifies that Rushmore, and not the Creditor, has made advances for property taxes on the Property that secures Creditor's claim. As stated above, Rushmore is not a party to this "action" and does not purport to be the creditor having a claim in this case, but is merely the loan servicer for Creditor.

Mr. Sutton offers no testimony as to why Debtor has an obligation to pay Rushmore any amounts.

Mr. Sutton provides the further testimony under penalty of perjury that "10. Rushmore did not analyze the Loan to recover the above tax payments until th Notice of Mortgage Payment Change was filed on 03/01/2017." Declaration, p. 4:1–2; Dckt. 168. He provides no testimony about why, if Rushmore had a belief that it had a right to be repaid for more than $12,000 in property taxes paid during the period March 2015 through December 2016 (Declaration, p. 3:16–21; *Id.*), it would have known of such prior to waiting until March 2017 to "analyze the Loan."

The March 1, 2017 Notice of Mortgage Payment Change (filed as part of Proof of Claim No. 5) filed by Creditor states that the current monthly principal and interest payment is $2,237.22. On top of this, Creditor states that the escrow payment is an additional $1,169.90. The attachment states that there is a ($27,457.90) escrow shortage, almost double the $15,735.70 in alleged property tax payments by Rushmore (not asserted to be advances by Creditor).

Attached to the Notice of Mortgage Payment Change is an Escrow Analysis Disclosure Statement dated February 23, 2017. That Statement identifies the Principal and Interest Payment to be $2,237.22. In addition, the "required escrow payment" is stated to be $407.18. In "double addition," the Statement says that there is an additional $762.72 that must be paid for "shortage/Surplus Spread."

On Proof of Claim No. 5, Creditor states under penalty of perjury that there was a $31,475.58 pre-petition arrearage. Exhibit A to Proof of Claim No. 5 states that the total monthly payment is $2,237.22, with that amount subject to either a change in the escrow requirement or interest rate. The arrearage is stated to consist of $31,321.08 for fourteen missed monthly payments and $134.50 for appraisal and inspection fees.

The confirmed Modified Plan provided for curing this arrearage in full through the Plan. Plan, ¶ 2.08(c); Dckt. 89. In his final report, the Chapter 13 Trustee confirms that the pre-petition arrearage on Creditor's secured claim was paid in the amount of $31,475.58. Dckt. 163 at 3.

As provided in the testimony of Debtor (Declaration, Dckt. 154), the 2016 Mortgage Interest 1098 Statement issued by Creditor (that was received in 2017) shows that Creditor and Rushmore were assessing various "Property Preservation DI" charges, with multiple charges in each month. No such "fees" and "charges" were disclosed in this bankruptcy case. The 1098 Statement also states that there was an escrow advance of $2,443.05 in December 1, 2016 for "county tax." Exhibit A, Dckt. 156.

Exhibit B is the Annual Escrow Account Disclosure Statement dated December 27, 2016, advising Debtor that the monthly mortgage payment was going to increase to $4,032.56. *Id.* Further, Creditor and Rushmore asserted that there was a $25,422.03 escrow shortage (taking the "starting balance" shown on the statement).

The Statement continues, indicating that prior to 2016 there was a negative escrow balance of $12,119.38, and in 2015, Creditor and Rushmore made payments of $11,392.09 for "County/Paris" and $1,911.56 for "County Tax." This ballooned the stated shortfall to $25,422.03. *Id.* The Statement does not indicate what a "County/Paris" disbursement is for with respect to Debtor's loan.

As addressed above, Creditor has confirmed/admitted under penalty of perjury that there are no pre- or post-petition arrearages to be addressed, with Debtor starting with the loan as current as of February 28, 2017. Response under penalty of perjury, filed with Proof of Claim No. 5, April 24, 2017 Docket Entry.

Creditor's admission is bolstered by there having been no notice of any fees, expenses, or charges as required by Federal Rule of Bankruptcy Procedure 3002.1(c). If any had actually existed, they would have been raised timely, and Debtor would then have had the opportunity to address them during the five years of the bankruptcy plan. If such actually existed and Creditor failed to provide the notice (and waited until the case was completed to spring them on the consumer debtor), then such non-compliance clearly works a prejudice on Debtor caused by Creditor's non-compliance.

As provided in Federal Rule of Bankruptcy Procedure 3002.1(e) and (h), the final notice of cure having been given, the confirmation that all pre- and post-petition obligations of Debtor under the loan are current through February 2017, the proof of claim specifying the pre-petition arrearage, and there being no notice during the bankruptcy case of any such post-petition, the court confirms that there are no pre-petition or post-petition (through February 2017) fees, expenses, charges, or arrearages due on the loan upon which Proof of Claim No. 5 is based.

Possible Tax Obligation

Rushmore, who admits it is not a party to this "action," appears to have sprung on these least-sophisticated debtors that there has been a "gift" of property tax payments made by Rushmore in 2016, paying property taxes for some unstated period of time. A skeptical person could well believe that

Rushmore made such a gift in an attempt to try to create a trap for Debtor and take the Property by asserting a default for taxes intentionally allowed by Rushmore to fester.

Conversely ever for the most least sophisticated creditor, Debtor has not addressed how Debtor could have some good faith belief that it could continue to live in the Property and not pay property taxes. On the Statement of Expenses filed in support of the Motion to Confirm the Modified Plan, Debtor confirmed that the property tax payment was not included in the monthly mortgage payment. Dckt. 87 at 3. Debtor further stated that each month Debtor was spending (saving to timely pay) $283 for the current real estate taxes and $75.00 for "back taxes." The $283.00 per month amount equates to $3,396.00 annually for taxes. Over five years, that totals $16,980.00, an amount suspiciously close to the $15,735.70 property tax payment gift made by Rushmore.

Even if given such a gift, then Debtor has not account for $16,980.00 in additional projected disposable income for this phantom expense not paid by Debtor.

DETERMINATION OF TAX OBLIGATION, IF ANY

Creditor and Rushmore have squarely presented the court with the issue of whether, now, as of the conclusion of this case there is any obligation of Debtor to pay a post-petition property tax arrearage. Creditor will have to show first that there is an obligation to pay Creditor under the Note and Deed of Trust for what appears to have been a "reorganization gift" made by Rushmore.

Debtor also needs to address for the court, the Trustee, and creditors, where the $16,980.00 of post-petition property taxes are if not paid by Debtor.

Award of Attorneys' Fees

Federal Rule of Bankruptcy Procedure 3002.1(f)(2) further authorizes the award of attorney's fees and costs related to the failure to provide the required notice of fees, expenses, and charges. In this case, Creditor having filed a Notice of Mortgage Payment Change and sent a Statement purporting to state Debtor owed payment for charges, fees, expenses, advances for which no Notice had been given, Debtor was forced to both investigate this contention and then file the Objection to Notice of Mortgage Payment Change.

Creditor has ameliorated the problem a bit with its admission in the Reply that there are no pre- or post-petition (through February 2017) arrearages owed by Debtor. However, Creditor did not rescind its Notice of Mortgage Payment Change and file a new one accurately stating the payment amount and that there were no pre- or post-petition (through February 2017) arrearages owed under the loan. This inaction required Debtor and Debtor's counsel to continue in having to prosecute the Objection. Then, Creditor's Response after the May 9, 2017 hearing necessitated more work for Debtor's counsel.

Debtor's counsel has provided copies of time records for work asserted to have been done in connection with the December 27, 2016 Annual Escrow Account Disclosure Statement and the more than doubling the amount of the asserted regular mortgage payment to $4,932.56. No declaration of counsel is provided authenticating the records.

The billing records state a total of $8,345.00 in fees requested. That is 21 hours of time at $350.00 per hour and 3 hours at $250.00 per hour by Mark Wolff, counsel for Debtor. No task billing analysis is provided. The court organizes the legal work into several task areas:

A. Communications with Client and Initial Review of Statement Doubling Payment and Stating Arrearage..... 3.7 hours

B. Communications with Counsel for Creditor..... 1.4 hours

C. Research in Preparation of Objection..... 5.5 hours

D. Drafting Objection Pleadings.....10.5 hours

E. Meeting with Client Re Objection, Declaration..... 3.6 hours

For the above 24.7 hours, the total fees average $337.85 per hour, not an unreasonable hourly rate.

The need for Debtor to have counsel address the Notice of Mortgage Payment Change that doubled Debtor's mortgage payment was driven by the Notice itself and Creditor asserting theretofore undisclosed charges, fees, advances, and costs purported to have been piled up by Creditor and its loan servicer.

After the May 9, 2017 hearing, Debtor's counsel filed a Declaration listing additional hours (with an invoice) of work done in this matter. Dckt. 174. Debtor's counsel states that he spent an additional 6.6 hours on this matter: 5.0 hours reviewing Creditor's Response and drafting the Reply, 1.2 hours communicating with Debtor and preparing a declaration, and 0.4 hours compiling billing and drafting Debtor's counsel's Declaration regarding time spent. *Id.* Debtor's counsel states that his hourly rate is $350.00. The total additional incurred fees are $2,310.00.

From a review of the pleadings, the potential attorneys' fees award has grown to $9,380.00. That could be viewed as allowing for 26.8 hours of the 31.3 hours of work at $350.00 per hour, or it could be viewed as lowering the hourly rate to $300.00 for 31.27 hours for the above work. Either way, the court is convinced that $9,380.00 in attorneys' fees were reasonably incurred in having to address the Notice of Mortgage Payment Change purporting to double the Debtor's monthly mortgage payment. The court notes that counsel for Debtor did attempt to communicate with counsel for Creditor for two weeks before beginning to work on the Objection.

Presumably, as these proceedings continue and Creditor belatedly shows a basis for asserting that there is an obligation to pay it for the property tax payment gift that Rushmore states it made for Debtor, the attorneys' fees cost demanded by Debtor will rise.

Requested Award of Sanctions

The Objection also requests the additional award of Sanctions, citing the court to Federal Rule of Bankruptcy Procedure 3002.1(i)(2) "other appropriate relief" language as the legal basis. Debtor also

directs the court to *In re Gravel* for the contention that Rule 3002.1 provides that the court can issue an order for sanctions pursuant thereto. 556 Br. 561 (Bankr. D. Vt. 2016).

First, the court is not as convinced as Debtor that Rule 3002.1 "explicitly" empowers the court to issue corrective sanctions. While there may be other grounds for doing so, they are not now before this court. Second, the court is ordering the payment of $9,380.00 in compensatory attorneys' fees as damages. That is not an insignificant amount.

The court denies, without prejudice, any request for sanctions.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment Change filed by Michael and Jennifer Peters, 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 is sustained, and the Notice of Mortgage Payment Change filed on March 1, 2017, for Proof of Claim No. 5 by MTGLQ Investors, LP is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** that all pre-petition and post-petition monetary defaults and arrearages were cured, and all obligations therefore owing by Debtor to Creditor MTGLQ Investors, LP ("Creditor"), or any other person, for the debt that is the basis for Proof of Claim No. 5 filed by Creditor were current as of February 28, 2017.
>
> **IT IS FURTHER ORDERED** that Debtor is awarded $7,070.00 in attorney's fees against MTGLQ Investors, LP.
>
> **IT IS FURTHER ORDERED** that the request for "sanctions" is denied without prejudice.
>
> This Order constitutes a judgment (FED. R. CIV. P. 54(a) and FED. R. BANKR. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure (including FED. R. CIV. P. 69 and FED. R. BANKR. P. 7069, 9014).

25. 17-22866-E-13 ABEL RUSFELDT MOTION TO CONFIRM PLAN
DAO-3 Dale Orthner 8-23-17 [79]

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, parties requesting special notice, and Office of the United States Trustee on August 23, 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.

Abel Rusfeldt ("Debtor") seeks confirmation of the Amended Plan to reflect that his home is community property and to modify a mortgage. Dckt. 81. The Amended Plan includes a first mortgage and proposes plan payments of $4,272.00, with a 0.5% 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 18, 2017. Dckt. 97. The Chapter 13 Trustee opposes confirmation on the limited basis that the Amended Plan fails to state clearly when the Chapter 13 Trustee is supposed to begin disbursements to the ongoing mortgage now listed in Class 1. The Chapter 13 Trustee believes that payments are supposed to begin on September 25, 2017.

The Chapter 13 Trustee also notes that Debtor has not informed the court whether he made the first four post-petition mortgage payments called for in the plan dated April 28, 2017, or if any post-petition mortgage arrears exist.

The Chapter 13 Trustee believes that the issues can be resolved in an order confirming if Debtor's intent to for payments to Nationstar to begin with the funds received on September 25, 2017.

CREDITOR'S OPPOSITION

Home Ally Financial, LLC ("Misidentified Creditor") filed an Objection on October 3, 2017. Dckt. 103. Misidentified Creditor argues that Debtor cannot reorganize the debt owed to Misidentified Creditor because it is owed solely by Debtor's non-filing spouse.

Misidentified Creditor argues that Maria De Los Angeles Torres Lopez executed a note secured by a first deed of trust on June 1, 2005, in the amount of $64,000.00. The original holder of the note (allegedly) was First Franklin, a Division of Nat. City Bank of IN. Misidentified Creditor alleges the following:

A. That National City Bank was acquired by PNC Bank, National Association on November 7, 2009;

B. That PNC Bank National Association, Successor by Merger to National City Bank assigned all beneficial interests to Dreambuilders Investments, LLC on February 10, 2015;

C. That Dreambuilder Investments, LLC assigned all beneficial interests to Home Ally Financial II, LLC on February 10, 2015; and

D. That Home Ally Financial II, LLC assigned all beneficial interests to Certis PN 1, LLC on March 13, 2015.

Misidentified Creditor argues Debtor's and his non-filing spouse's attempt to classify their residence as community property fails because the property was acquired in June 2005, Debtor and his spouse have lived in the property for more than eleven years, but neither party took any effort to effect a transmutation of the property away from its legal status as being owned solely by the non-filing spouse—the only named party on the borrowing note and deed of trust.

Without being community property, Misidentified Creditor argues that the corresponding debt cannot be treated as community debt. That in turn prevents Debtor from modifying the loan in this case, according to Misidentified Creditor.

DEBTOR'S REPLY

Debtor filed a Reply on October 10, 2017. Dckt. 107. Debtor asserts that he and his non-filing spouse have established that they have been married and living in the subject property for more than eleven years and that they have used community income to pay both mortgages on the property.

Debtor asserts that the "*pro tanto* community property interest" in California gives the community an interest in property that is paid with community income. *Id.* at 1–2 (citing *In re Marriage of*

Green, 56 Cal. 4th 1130 (2013); *Forbes v. Forbes*, 118 Cal. App. 2d 324, 325 (1953)). Debtor argues that a community interest in the property allows Debtor to provide for it in his plan.

DISCUSSION

First, the court addresses the misstatements presented to the court by Misidentified Creditor. Misidentified Creditor holds itself out to the court as a secured creditor, but that is incorrect. "Secured creditor" is not a term that is defined in the Bankruptcy Code; it is a term from the Commercial Code. In bankruptcy, there can be creditors with secured claims and unsecured claims, but there is no such entity as a secured creditor.

Additionally, Home Ally Financial, LLC is not the actual creditor. According to the supporting documents filed with Proof of Claim No. 20-1—which, coincidentally, was filed by the same attorney who filed Misidentified Creditor's Opposition—Home Ally Financial, LLC, was actually the servicer for Home Ally Financial II, LLC. Home Ally Financial II, LLC, assigned the Deed of Trust to Certis PN 1, LLC, in January 2015, however. Misidentified Creditor's misstatements about its identity could lead to the court granting relief to a party that is not the true Misidentified Creditor.

Finally, Misidentified Creditor asserts that it "holds a deed of trust encumbering the real property," but that phrase is also a misstatement because the actual obligation is evidenced by a Note "held" by the Misidentified Creditor, for which the Deed of Trust dutifully follows and is not held by "Misidentified Creditor."

Misidentified Creditor does raise a substantial issue in questioning what and how property is appearing in this bankruptcy case. Debtor cannot state what interest he actually has, providing only a cryptic description of the interest as being an "equitable interest," apparently admitting that he has no "legal interest" in the Property. Dckt. 84.

Misidentified Creditor has provided the court with a copy of the note and deed of trust at issue with Misidentified Creditor's Motion for Relief from the Stay. Exhibits 1, Note, and 2, Deed of Trust, Dckt. 39; authenticated by Declaration, Dckt. 37. The borrower on the note is "Maria Lopez" and is dated June 1, 2005. The Deed of Trust is identified as a "Secondary Lien," with Ms. Lopez identified as "a married woman as her sole and separate property."

In the Motion for Relief from the Stay, Misidentified Creditor states that Maria Lopez has filed her own prior bankruptcy case, No. 16-27069 ("Maria Bankruptcy Case"). That case was filed on October 24, 2016, and dismissed on April 12, 2017. Ms. Lopez's attorney in the Maria Bankruptcy Case is the same attorney as for Debtor in this case. In the Maria Bankruptcy Case, a Chapter 13 Plan was confirmed. 16-27069; Order, Dckt. 71. That confirmed Chapter 13 Plan required monthly plan payments of $3,248.00 for sixty months. *Id.*; Plan, Dckt. 7. Under that Chapter 13 Plan, there were no Class 1 claims paid, Class 2 provided for paying several car loans and paying Misidentified Creditor's $111,000.00 claim with 3% interest at the rate of $1,994.52 (providing for fully amortizing the loan over the sixty months of the Chapter 13 Plan).

The Maria Bankruptcy Case was dismissed in April 2017 because of $9,744 in defaults. *Id.*; Civil Minutes, Dckt. 79. The Trustee's Final Report discusses that only $3,248.00 was paid into the Chapter 13 Plan for the five months of the Plan (with monthly payments of $3,248.00 each). *Id.*, Final Report, Dckt. 85.

On Schedule A in the Maria Bankruptcy Case, Maria Lopez stated under penalty of perjury that she owns the Property that secures Misidentified Creditor's claim and that she is the only person who has an interest in the Property. *Id.*; Dckt. 1 at 11. That appears to be in conflict with Debtor in the current case stating that he is the only person having an interest in the property. On her Schedule I, Debtor states that she has no income but that her spouse has gross income of $9,300 per month. *Id.* at 29–30. On Schedule J, Ms. Lopez states that her household consists of two persons, Maria Lopez and her husband. *Id.* at 31.

On Schedule J in the current case, Debtor states under penalty of perjury that the household consists of four persons—Debtor, Maria Lopez, a nine-year-old daughter, and a twelve-year-old son. Dckt. 84 at 13. Debtor's statement under penalty of perjury in this case is in conflict with Maria Lopez's statement under penalty of perjury in 2016.

Debtor and Maria Lopez have a third bankruptcy case that they filed jointly in 2013, No. 13-28581. In that Chapter 7 case, they were represented by an attorney who is not the same one who represents them in their individual Chapter 13 cases. Debtor and Maria Lopez obtained their Chapter 7 discharges on October 15, 2013. 13-28581; Discharge Order, Dckt. 15. On Schedule I filed in the Chapter 7 case, Debtor and Maria Lopez state under penalty of perjury that their family unit is four persons, the two adult debtors and two children (ages six and nine). *Id.*; Dckt. 1 at 39. On Schedule A in the Chapter 7 case, Debtor and Maria Lopez state under penalty of perjury that they both own the property securing Misidentified Creditor's claim with their interests being those of joint tenants. *Id.* at 12.

It is unclear whether Debtor has any interest in the property that secures Misidentified Creditor's claim, Debtor and Maria Lopez providing conflicting statements under penalty of perjury. At this juncture, it is not clear that Debtor owns property that secures Misidentified Creditor's obligation and that Misidentified Creditor has a secured claim in this bankruptcy case.

Debtor is not in contractual privity with Misidentified Creditor. While 11 U.S.C. § 1332(b)(3) allows for the curing of a default by the debtor in a contract, Debtor is not in default—a non-debtor is in default.

At least one court has addressed "whether a Chapter 13 debtor who is not in contractual privity with the mortgagee can repay a secured loan to that mortgagee through a Chapter 13 bankruptcy plan." *In re Flucker*, 466 B.R. 342, 345 (Bankr. D.S.C. 2011). In that case, the debtors did not hold legal title to the questioned property, and in this case, Debtor asserts only that he has an equitable interest in property. *Id.* at 346. Despite acknowledging that 11 U.S.C. § 1322(b)(3) provides for curing any arrearage, the court ruled that the Chapter 13 debtors could not provide the claim in question in their plan because they did not hold title to the property and were not obligated on the note and mortgage.

Debtor has not addressed the effect of having only Debtor (assuming he has an interest in the property) as a non-recourse, no personal liability debtor, providing for the secured claim in a bankruptcy plan. Though Debtor may provide for the claim, the question arises as to Maria Lopez's obligation on the

Note and the encumbrance of her interest in the property. Debtor continues to assert on his amended schedules that his interest in his residence is an equitable interest, not any legal interest.

Proof of Claim Nos. 6 & 20

Misidentified Creditor has not filed a proof of claim in this bankruptcy case. However, Proofs of Claim 6 & 20 filed in this case by Deutsche Bank National Trust Company, as Trustee for HSI Asset Securitization Corporation Trust 2005 I1 Mortgage Pass Through Certificates, Series 2005 I1 ("Deutsche") and Certis PN 1, LLC ("Certis") provide some additional information.

The Deutsche proof of claim includes an Adjustable Rate Note dated June 1, 2005, in which Maria Lopez agreed to pay $512,000.00 to First Franklin A Division of Nat. City Bank of IN. The deed of trust lists the borrower as "MARIA LOPEZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY." The claim also includes a Modification of Deed of Trust and an Agreement to Maintain Escrow Account, each dated December 28, 2016, that are signed by Maria Lopez and "Abel Rusfelrt" as borrowers.

Additionally, Proof of Claim 6 contains two assignments. One assignment on June 9, 2005, is from First Franklin, A Division of National City Bank of Indiana to First Franklin Financial Corporation. The second assignment is from First Franklin Financial Corporation to Deutsche on March 18, 2008.

The Certis proof of claim in this bankruptcy case includes a Note and Security Agreement dated June 1, 2005, in which Maria Lopez agreed to pay $64,000.00 to First Franklin A Division of Nat. City bank of IN. The Secondary Lien Deed of Trust lists the borrower as "MARIA LOPEZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY." The claim also includes three assignments and a workout agreement.

The real party in interest creditor whose rights Debtor intends to modify not being before the court or included in the Plan, confirmation is denied—without prejudice. Additionally, Debtor has not provided the court with legal authority that he may modify the contract of another.

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 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 to Confirm the Amended Plan is denied without prejudice, and the proposed Chapter 13 Plan is not confirmed.

26. 17-24967-E-13 BARBARA GRAVES — MOTION TO AVOID LIEN OF DISCOVER BANK
FF-1 Paul Bindra — 9-18-17 [17]

Final Ruling: No appearance at the October 17, 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, Creditor, and Office of the United States Trustee on September 18, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank N. A. (" Creditor") against property of Barbara Graves ("Debtor") commonly known as 23548 Robin Road, Pioneer, California ("Property").

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on October 3, 2017. Dckt. 28.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of $9,951.53. An abstract of judgment was recorded with Amador County on July 12, 2016, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $170,000.00 as of the date of the petition. The unavoidable consensual liens that total $169,558.86 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Barbara Graves ("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 judgment lien of Discover Bank N.A., California Superior Court for Amador County Case No. 16-CV-9520, recorded on July 12, 2016, Document No. 2016-0005294-00, with the Amador County Recorder, against the real property commonly known as 23548 Robin Road, Pioneer, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

27. 17-24967-E-13 FF-2 | **BARBARA GRAVES** **Paul Bindra** | **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** **9-18-17 [22]**

Final Ruling: No appearance at the October 17, 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, Creditor, and Office of the United States Trustee on September 18, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. (" Creditor") against property of Barbara Graves ("Debtor") commonly known as 23548 Robin Road, Pioneer, California ("Property").

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on October 3, 2017. Dckt. 30.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of $10,580.22. An abstract of judgment was recorded with Amador County on February 7, 2017, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $170,000.00 as of the date of the petition. The unavoidable consensual liens that total $169,558.86 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Barbara Graves ("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 judgment lien of Capital One Bank (USA), N.A., California Superior Court for Amador County Case No. 16-CV-9865, recorded on February 7, 2017, Document No. 2017-0001023-00 with the Amador County Recorder, against the real property commonly known as 23548 Robin Road, Pioneer, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

28. 17-24967-E-13 DPC-1 | **BARBARA GRAVES** **Paul Bindra** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-6-17 [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 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 overruled.

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.

OCTOBER 3, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017, to be heard in conjunction with two motions to avoid judicial lien. Dckt. 32.

RULING

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 were heard and granted 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 motions were granted at the October 17, 2017 hearing, however, which resolves this Objection.

At the hearing, Debtor reported that the Additional Provisions should be amended to state xxxxxxxxxxxxx.

The Objection to Confirmation is overruled, and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by 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 is overruled, and Barbara Grave's ("Debtor") Chapter 13 Plan filed on July 28, 2017, as amended to xxxxxxxxxxxxx, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. 16-26568-E-13 ALICIA LOFTIN MOTION TO MODIFY PLAN
ALF-2 James Pitner 9-8-17 [39]

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 September 8, 2017. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Alicia Loftin ("Debtor") seeks confirmation of the Modified Plan because since filing for bankruptcy, Debtor's home needs roof repairs totaling $900.00. Dckt. 41. The Modified Plan reduces her plan payments for one month to allow her to save up for the cost of that repair. Dckt. 39. 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 October 3, 2017. Dckt. 47. The Chapter 13 Trustee notes that Section 3.02 of the confirmed plan and Schedule G indicate the lease for a 2014 Chevrolet Traverse LS with a monthly payment of $336.92. Debtor's proposed Modified Plan rejects the lease now, but supplemental Schedule J lists car payments of $336.92.

DEBTOR'S RESPONSE

Debtor filed a Response on October 5, 2017. Dckt. 50. Debtor states that omitting the lease from the Modified Plan was a clerical error, especially considering that Debtor's budget for the plan accounts for paying the lease. Debtor intends to continue with the lease and proposes an amendment to the order confirming stating that the lease is assumed.

RULING

Debtor has explained satisfactorily that not including the vehicle lease in the Modified Plan was an oversight. Debtor's Schedule J accounts for the vehicle lease payments, which Debtor proposes to assume in the Modified Plan. The Modified Plan, as amended to assume the vehicle lease, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Alicia Loftin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on September 8, 2017, as amended to assume a lease with U.S. Bank, N.A., for a 2014 Chevrolet Traverse LS with a monthly payment of $336.92, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. 14-30877-E-13 PGM-6 | **TROY HARDIN** **Peter Macaluso** | **MOTION TO APPROVE LOAN MODIFICATION** **9-15-17 [145]**

Final Ruling: No appearance at the October 17, 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, and Office of the United States Trustee on September 13, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification filed by Troy Hardin ("Debtor") seeks court approval for Debtor to incur post-petition credit. Seterus, Inc. (" Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $1,451.99 per month (Dckt. 99) to $1,331.51 per month. The modification will set the interest rate at 2.00%, starting on September 1, 2017, and will stay constant for the first five years of the loan. The interest rate will increase to 3.00% in the sixth year of the loan and will increase to 3.50% from year seven through maturity of the loan on September 1, 2057. Dckt. 145.

The Motion is supported by the Declaration of Troy Hardin. Dckt. 147. The Declaration does not affirm Debtor's desire to obtain the post-petition financing nor does it provide evidence of Debtor's ability to pay this claim on the modified terms. Moreover, the Notice of Mortgage Payment Change filed by Creditor indicates that the new monthly mortgage payment equals $1,394.91 Dckt. 3., different than the $1,331.51 asserted by Debtor in his Motion. Nevertheless, the Chapter 13 Trustee does not oppose this Motion.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on October 3, 2017. Dckt. 150.

RULING

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 Troy Hardin ("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 Troy Hardin to amend the terms of the loan with Seterus, Inc. (" Creditor"), which is secured by the real property commonly known as 5705 Eugenia Court, Orangevale, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 148).

31. 17-22980-E-13 COBURN WALKER — MOTION TO CONFIRM PLAN
JLK-1 James Keenan — 9-1-17 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on September 5, 2017. By the court's calculation, 42 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 granted.

Coburn Walker ("Debtor") seeks confirmation of the Amended Plan, but he does not explain why except to state that he needs to reorganize his debts. Dckt. 30 at 3:15–16. The Amended Plan provides for payments of $100.00 per month for the first three months, and $500.00 for the remaining fifty-seven months, with a 100% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 18, 2017. Dckt. 38. The Chapter 13 Trustee believes that the Plan is Debtor's best effort, but his review of Debtor's pay advices showed that Debtor's net income lower than reported.

The Chapter 13 Trustee states that other parties may not be able to determine that Plan is confirmable because Debtor has not filed Amended Schedules I & J to show that his disposable income is closer to $500.00 per month than $900.00 per month.

AMENDED SCHEDULES I & J

On October 10, 2017, Debtor filed Amended Schedules I & J. Dckt. 41. The schedules show that Debtor's disposable income is $500.00, which corresponds to what is proposed as a plan payment.

RULING

Debtor has amended his schedules to support the proposed plan payment, and the court concurs with the Chapter 13 Trustee's analysis that the proposed amended plan is Debtor's best effort and is confirmable. The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Coburn Walker ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 1, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. **17-24484-E-13** **MELISSA CHAMBERS** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Bonnie Baker** **PLAN BY DAVID P. CUSICK**
9-21-17 [18]

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 21, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

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

A. Melissa Chambers ("Debtor") has not made any plan payments;

B. The attorney fee provisions are unclear;

C. Debtor's net income on Schedule J may not be accurate;

D. The information on Schedule F is inaccurate; and

E. The Chapter 13 Trustee cannot calculate non-exempt equity because Debtor has claimed exemptions under California Code of Civil Procedure §§ 703 & 704.

DEBTOR'S RESPONSE

Debtor filed a Response on October 6, 2017. Dckt. 31. Debtor states that she has made the plan payments and that she amended Schedule F to show the balance of legal fees incurred in state court. She also amended Schedule J to correct the rent amount and the car payment discrepancy with the Plan. She explains that she is disabled and is on a restricted diet and has limited consumption capacity. Nevertheless, she increased her transportation and food expenses by $50.00.

On Schedule F, Debtor states that she clarified attorney's fees for Karen Smith now that her fees are no longer pending, and she replaced the "unknown" amount for Mark Gwaltney with a pre-determined allocation for him while he continues to incur fees.

On Schedules B and C, Debtor states that she "simplified" them to account for pending adversary and state court proceedings relating to spousal support and child custody. She moved an interest in farm animals to an interest in community property claims.

RULING

Debtor filed amended schedules on October 6, 2017, and they address Debtor's net income on Schedule J and the claimed exemptions for Schedule C. The Chapter 13 Trustee had filed a separate Objection to Claimed Exemptions, but after Debtor correct Schedule C, he has withdrawn that objection, and the court infers that Debtor has also addressed his concern for this Objection. *See* Dckt. 38.

At the same time, Debtor's Counsel—Bonnie Baker—provided a declaration clarifying that she incurred attorney's fees of $24,000.00 for Debtor in a family law matter in state court, which is reflected on the Amended Schedule F filed on September 24, 2017, along with other attorney's fees.

Debtor appears to have addressed all of the Chapter 13 Trustee's concerns and has alleged that she is current with plan payments. At the hearing, the Chapter 13 Trustee reported that Debtor is current with plan payments.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by 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 is overruled, and Melissa Chambers's ("Debtor") Chapter 13 Plan filed on July 21, 2017, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the

proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

33. 15-26886-E-13 MJD-2 | **DANA THOMPSON** / **Matthew DeCaminada** | **MOTION TO MODIFY PLAN** / **9-8-17 [46]**

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 September 8, 2017. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Dana Thompson ("Debtor") seeks confirmation of the Modified Plan because she will be hospitalized for longer than expected, leading to a temporary decrease in income. Dckt. 48. The Modified Plan calls for $32,951.50 to be paid into the Plan through August 2017 and proposes plan payments of $510.00 for the remainder of the Plan. 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 October 3, 2017. Dckt. 52. 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's calculation for Debtor's income while disabled would be $5,190.00, but Schedule I

lists $3,925.00. No supporting documentation has been provided. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee questions Debtor's expenses on Schedule J because no utility cost is listed other than Line 6c, and Debtor's transportation expense has not changed despite stating that she expects to be hospitalized for six weeks and then on home rest for another six months.

Finally, the Chapter 13 Trustee notes that Debtor has paid slightly more into the Plan than called for in the Additional Provisions: She has actually paid $33,680.00, not $32,951.50.

RULING

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 Dana Thompson ("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.

34. **17-26287-E-13 MET-1** | **BENJAMIN/DANIELLE GONZALEZ** Mary Ellen Terranella | **MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.** 10-3-17 [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 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 October 3, 2017. By the court's calculation, 14 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 Bank of America, N.A. (" Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Benjamin Gonzalez and Danielle Gonzalez ("Debtor") to value the secured claim of Bank of America, N.A. (" Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3287 Lagunita Circle, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $457,000.00 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).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on October 6, 2017. Dckt. 22. The Chapter 13 Trustee questions why Debtor has reduced the Property's value on Schedule A from $475,000.00 to $457,000.00. *Compare* Dckt. 1, *with* Dckt. 15.

DEBTOR'S REPLY

Debtor filed a Reply on October 9, 2017. Dckt. 24. Debtor explains that the Property's value was always $457,000.00 and that the listing of $475,000.00 was an error. As support for that position, Debtor has included a copy of a pre-petition appraisal of the Property. *See* Exhibit A, Dckt. 26.

DISCUSSION

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).

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a Creditor that appears to be for the claim to be valued, and Creditor has not opposed the Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $505,870.00. Creditor's second deed of trust secures a claim with a balance of approximately $81,698.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments 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 Collateral and Secured Claim filed by Benjamin Gonzalez and Danielle Gonzalez ("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 Bank of America, N.A. (" Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 3287 Lagunita Circle, Fairfield, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $457,000.00 and is encumbered by a senior lien securing a claim in the amount of $505,870.00, which exceeds the value of the Property that is subject to Creditor's lien.

35. **17-24488-E-13** **JANELLE GILMORE** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Peter Macaluso**
8-24-17 [31]

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 24, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

B. The Plan relies upon a pending motion to value.

SEPTEMBER 19, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017, to allow Debtor time to file the missing tax returns, which she stated were being filed. Dckt. 51.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken. Janelle Gilmore ("Debtor") admitted at the Meeting of Creditors that the federal income tax return for the 2016 tax year has not been filed still. Since the September 19, 2017 hearing, there has not been any indication that the tax returns have been filed. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of First Investors Servicing Corporation. That motion was heard at the September 12, 2017 hearing and was granted at a higher value than sought by Debtor. At the September 19, 2017 hearing, Debtor agreed to raise the interest rate on First Investors Servicing Corporation's claim, resolving its objection to confirmation. Dckt. 52.

Debtor has not resolved the tax return issue, nor has Debtor shown that the Plan is feasible with the higher value and interest rate.

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.

36. 16-20289-E-13 ROGELIO/CATALINA VENTURA MOTION TO MODIFY PLAN
TOG-1 Thomas Gillis 8-29-17 [29]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on August 29, 2017. By the court's calculation, 49 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.

Rogelio Ventura and Catalina Ventura ("Debtor") seek confirmation of the Modified Plan because unsecured claims were filed $34,098.00 higher than anticipated. Dckt. 32. The Modified Plan proposes that Debtor self-pay student loans, and the plan payment was increased by $70.00. 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 October 3, 2017. Dckt. 37. The Chapter 13 Trustee argues that the Modified Plan may not have been filed in good faith and that Debtor may not be able to pay. Specifically, he argues that Schedule J does not reflect expenses for Debtor paying student loans directly, instead of through the Modified Plan. Debtor has not provided details for two student loan claims regarding their monthly payment amounts or if the payments are suspended under the terms of the loans. The Chapter 13 Trustee argues that Debtor has not explained how paying them directly is *not* preferential treatment.

The court concurs with the Chapter 13 Trustee that Debtor does not appear able to make payments on the various claims now that student loans are proposed to be paid outside of the Modified Plan. Amended Schedule J lists Debtor's disposable income as being $690.00, which is what the Modified Plan proposes to pay for months twenty through sixty. *See* Dckts. 28 & 30.

Amended Schedule J does not include the payment to student loans, and the court does not see how Debtor will be able to afford plan payments and pay the student loans directly without supporting evidence for the proposed payment scheme. *See* 11 U.S.C. § 1325(a)(6).

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 Rogelio Ventura and Catalina Ventura ("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.

37. 17-22489-E-13 MRL-1 | **EUGENE NIERI** / **Mikalah Liviakis** | **MOTION TO MODIFY PLAN** / **8-29-17 [39]**

Final Ruling: No appearance at the October 17, 2017 hearing is required.

Eugene Nieri ("Debtor") 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 Motion to Confirm Modified Plan was dismissed without prejudice, and the matter is removed from the calendar.**

38. 17-25091-E-13 DPC-1 | **JULIET DACPANO** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-21-17 [27]**

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

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 September 21, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

B. Debtor failed to provide the Chapter 13 Trustee with pay advices and tax returns; and

C. Debtor did not file the Plan or case in good faith.

The Chapter 13 Trustee's objections are well-taken. Debtor cannot comply with the Plan under 11 U.S.C. § 1325(a)(6) because the provisions do not work. Debtor has filed a plan proposing to pay $350.00 per month, but she lists $3,300.00 monthly installments to Bank of America. In addition, Schedule J does not show a mortgage expense but only shows a $400.00 expense for food and housekeeping. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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). While Schedule I states that Debtor is not employed, Debtor admitted at the 341 Meeting of Creditors that she is employed part-time as a caregiver for $18/hour. 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 Chapter 13 Trustee states that Debtor reported only one prior bankruptcy case within the prior eight years (Case No. 17-23475, filed May 23, 2017), but she did not report any prior bankruptcy cases (Case Nos. 16-25760, 16-20597, 12-52338, 12-51767, 10-54677, and 10-27358). Debtor was required to report any bankruptcy cases filed within the prior eight years. Additionally, her Plan only provides for three claims, but several have been filed, including two of the three listed in the Plan for significantly larger amounts.

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.

39. 17-25091-E-13 JULIET DACPANO
TGM-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
8-30-17 [24]

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*), Chapter 13 Trustee, and Office of the United States Trustee on August 30, 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.

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certifcateholders of the CWALT, Inc., Alternative Loan Trust 2006-OA10 Mortgage Pass-Through Certificates, Series 2006-OA1O (" Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan does not account for Creditor's secured claim, filed as Claim No. 2-1; and

B. The Plan violates the anti-modification provision of 11 U.S.C. § 1322(b)(2). FN.1.

FN.1. Creditor filed the Objection 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, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by

Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. 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's objections are well-taken. Creditor asserts a claim of $1,531,773.75 in this case. Debtor's Schedule D does not include the claim, and the Plan does not provide for 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.

The objecting Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $602,185.31 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certifcateholders of the CWALT, Inc., Alternative Loan Trust 2006-OA10 Mortgage Pass-Through Certificates, Series 2006-OA1O (" 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.

40. 17-25191-E-13 DPC-1 | **RONNIE DAVIS Lauren Rode** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-21-17 [19]**

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 21, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan is not Ronnie Davis's ("Debtor") best effort;

B. Debtor may not be able to afford Plan payments or comply with the Plan;

C. Debtor may not have listed all assets; and

D. Debtor admitted that his name is not listed correctly on the petition.

The Chapter 13 Trustee's objections are 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.

First, the Debtor appears to be over median income, while the proposed plan payments provide a 53% dividend to unsecured Creditors.

Moreover, Debtor has supplied inaccurate information relating to his assets, leading the Chapter 13 Trustee to question Debtor's asserted inability to pay unsecured Creditors. For example, while Debtor shows gross income for calendar year 2016 in the amount of $115,560.00 ($9,630.00 per month), Schedule I reports Debtor earned only $8,626.00 per month. In addition, according to Debtor's Federal and California Tax Returns for 2016, Debtor received $13,469.00 in total refunds for tax year 2016. However, Debtor does not project any future tax refund on Schedule I. Finally, Debtor understated his gross income on Schedule I. According to Debtor's paystubs, Debtor has an average gross income of $10,386.73, which is different than the $8,626.00 monthly income listed on Schedule I. Therefore, the Plan undervalues Debtor's projected disposable income, and the court may not approve the Plan under 11 U.S.C. § 1325(b)(1).

Moreover, 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 lists a handful of reasons for this assertion.

First, the Chapter 13 Trustee asserts that Debtor fails to list Wells Fargo as Creditor for the garnishment of $201.50 listed in Schedule I, even though Debtor admitted at the 341 Meeting of Creditors that this garnishment is for Wells Fargo, Line of Credit.

Second, the Chapter 13 Trustee argues that Schedule J fails to list the VW Credit listed in Class 4 in the amount of $468.00 per month and that VW Credit should be listed on Schedule G and Section 3.02 of the Plan.

Third, the Chapter 13 Trustee contends that Debtor's transportation expenses may be higher than the $400.00 per month currently listed in the Plan because Debtor works in Oakland, California.

Finally, the Chapter 13 Trustee argues that Debtor did not list all of his personal assets on Schedule B, failing to list his 401K or other electronics, jewelry, or cash. 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 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.