

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 7, 2017 at 2:00 p.m.

1.	17-24000 -C-13	LYNDA STOVALL	CONTINUED OBJECTION TO
	AP-1	Peter Macaluso	CONFIRMATION OF PLAN BY HSBC
			BANK USA, N.A.
			7-25-17 [18]

Thru #3

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

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

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

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

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

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

The court's decision is xxxxxx

The Creditor, HSBC Bank USA, N.A., opposes confirmation of the Plan on the basis that the plan fails to provide for a cure of Creditor's pre-petition claim in full. Debtor listed the pre-petition arrears at \$12,827.69 whereas Creditor's claim lists pre-petition arrears at \$16,615.42.

As funded, the Plan provides the following:

A.	60 Plan Payments of \$2,980.00 each.....	\$178,800
B.	Chapter 13 Trustee Fees (Est. 7%).....	(\$ 12,516)
C.	Debtor's Counsel Fees.....	(\$2,500)
D.	Class 1 60 Current Mtg Payments \$2,423.29 each..	(\$145,397)
E.	Class 1 Arrearage Cure Payments.....	(\$16,651)
F.	5 and 7 Unsecured Claims.....	<u>(0.00% Dividend)</u>
	Net Surplus/(Insufficient) Funding.....	\$1,736

On its face, even with the higher arrearage amount it appears that Debtor has provided sufficient funds. However, that is premised on a Chapter 13 Trustee's fee of 7%. If it were to rise to 8%, the thin cushion is wiped out.

The hearing was continued to allow for discovery to be conducted in connection with the related motion to value secured claim.

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

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

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

IT IS ORDERED that Objection to confirmation of the Plan is xxxxxxxx.

2. [17-24000](#)-C-13 LYNDA STOVALL
[CJO](#)-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
SPECIALIZED LOAN SERVICING, LLC
7-27-17 [[30](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 27, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the objection.

The Creditor, PC Specialized Loan Servicing LLC. as servicer for the Bank of New York Mellon opposes confirmation of the Plan on the basis that the plan does not propose to cure the \$818.02 in pre-petition arrears owed to the Bank of New York Mellon. The plan proposes to pay Bank of New York Mellon \$0 because its interest in the collateral has a value of \$0.

However, debtor has not stated a basis for such valuation, nor has the debtor filed a Motion to Value Collateral.

The hearing was continued to allow for discovery to be conducted in connection with the related motion to value another secured claim. In light of the modest amount at issue, it appears that Debtor should be able to address this Objection through an amendment to the proposed plan.

Absent evidence that this objection has been addressed, the objection

will be sustained.

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

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

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

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

3. [17-24000](#)-C-13 LYNDA STOVALL
[DPC](#)-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-26-17 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 26, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the objection.

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

- A. Debtor is delinquent in play payments in the amount of \$2,980.00. Debtor has paid \$0 into the plan to date.
- B. The plan relies upon a Motion to Value. The motion to value was set for evidentiary hearing and judgment was entered such that the motion to value was denied..

The hearing was continued to allow for discovery to be conducted in connection with the related motion to value secured claim.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 4, 2017. Fourteen days' notice is required.

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

The court's decision is to overrule the Objection.

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

A. The plan will not complete within 60 months. The plan lists a debt to the Internal Revenue Service as \$1.00 but the IRS filed a proof of claim indicating priority unsecured debt of \$15,100.00.

However, debtor has apparently submitted a proposed order confirming to the Trustee which proposes to increase plan payments so as to conclude the plan within 60 months. The Trustee recommends confirmation of the plan with that change.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 23, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. [17-25610](#)-C-13 MEGAN ELLIOTT
[DPC](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-4-17 [[27](#)]

Thru #6

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 4, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. The plan relies upon debtor's motion to value. However, the motion to value was withdrawn by the debtor moving party prior to the hearing. No new motion to value has been filed.

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

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

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

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

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

6. [17-25610](#)-C-13 MEGAN ELLIOTT
[RTD](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY SCHOOLS FINANCIAL
CREDIT UNION
10-4-17 [[32](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 4, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

Creditor, Schools Financial Credit Union, opposes confirmation of the Plan on the basis that the plan does not propose to pay the secured claim in full. The plan relied upon a motion to value that was withdrawn by the debtor.

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

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

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

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

cause appearing,

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 2, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. The plan may not have been proposed in good faith. The plan required amendment due to 8 unsecured claims being filed that substantially increased the unsecured debts. All claims arise from personal guaranties allegedly signed by the debtor on behalf of MGA Trucking, Inc.

Discussion

The court previously heard a Motion to Confirm on September 19, 2017 at 2:00 p.m. At that time, the court denied the Motion to Confirm because the plan did not appear to be filed in good faith. Specifically, the court questioned how the debtor failed to list the 8 unsecured claims on his schedules. While the debtor responded that the claims were not included because the debtor had already transferred control of the business to his brother or brother's wife when the claims arose, the court questioned how this could be possible when at least three of the claims were signed by the debtor prior to the date of the alleged transfer of ownership of MGA Trucking, Inc.

The court questioned how and why the debtor would continue signing documents as president of MGA Trucking, Inc. months after allegedly

transferring control of the corporation to his brother or brother's wife. The court additionally questioned why the debtor had not objected to any of the 8 claims. The court questioned the validity of the transfer where the only document provided to the court was a Statement of Information.

In order to confirm the plan, the court needs, at the least, explanation about its specific concerns. The debtor filed declarations from himself and his brother, Fawad Atebar, in connection with the motion to confirm.

The court was concerned about how the debtor had made 3 guarantees prior to October 31, 2014 (the date of the purported transfer) and yet still did not list these claims. The declarations state that the reason these were not listed is that the debtor believed that only the corporation was responsible for those debts.

The court questioned why the debtor continued signing personal guaranties after allegedly transferring control of the corporation. The declarations indicate that debtor believes that the guaranties were not actually signed by him, rather an old signature of his was used by the creditor. The debtor additionally asserts that although he does not believe that he signed the documents, and offers into evidence a picture of his passport purporting to prove that he was not in the country at the time of signing, he does not have the evidence to object to the claims.

The debtor did not introduce any additional documentation indicating transfer of the corporation. The debtor has the burden of proof to prove that the filing of the plan was not in bad faith. The court is not convinced that the plan is not filed in bad faith.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 4, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Section 2.11 of debtors' plan lists a Class 4 direct pay debt to Credit Acceptance for a 2016 Ford Fusion. The debt appears to be paid off in May 2022, which is within the 60 month term of the plan, therefore, the debt should be provided for in Class 2.

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

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

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

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

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

9. [17-25920](#)-C-13 LYUDMYLA GARNER
[APN](#)-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
10-4-17 [[25](#)]

Thru #10

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 4, 2017. Fourteen days' notice is required.

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

The court's decision is to overrule the Objection.

Creditor, Toyota Motor Credit Corporation, opposes confirmation of the Plan on the basis that the plan proposes to value their collateral under the amount listed in the proof of claim. Creditor additionally demands a 7.25% interest rate.

Discussion

The debtor filed and served a Motion to Value that came on for hearing on October 17, 2017. The court granted the Motion to Value the collateral of Toyota Motor Credit Corporation.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The court additionally approved a stipulation confirming the plan by the parties on October 30, 2017. As a result, an order overruling the objection will be entered.

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

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

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

IT IS ORDERED that the Objection is overruled.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 11, 2017. Fourteen days' notice is required.

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

The court's decision is to overrule the Objection.

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

A. Debtor's plan relies upon a motion to value.

The debtor filed and served a Motion to Value that came on for hearing on October 17, 2017. The court granted the Motion to Value the collateral of Toyota Motor Credit Corporation.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The court additionally approved a stipulation confirming the plan by the parties on October 30, 2017. As a result, an order overruling the objection will be entered.

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

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

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

IT IS ORDERED that Objection to confirmation of the Plan is overruled.

11. [14-25726](#)-C-13 TODD/DEBRA BURNS
[PGM](#)-5 Peter Macaluso

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LAW OFFICES OF
PETER G. MACALUSO FOR PETER G.
MACALUSO, DEBTORS' ATTORNEY
9-27-17 [[97](#)]

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 27, 2017. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.
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Peter Macaluso, the Attorney for Debtors, ("Applicant") for John and Darlene Louise Doerr, ("Clients"), makes an Additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period May, 2016 through July, 2016. Applicant requests fees in the amount of \$1,620.00 and costs in the amount of \$0.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

"(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Applicant prepared the order confirming the Plan.

If Applicant believes that there has been substantial and unanticipated

legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He may file a fee application and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant seeks compensation for unanticipated work performed in connection with a motion to dismiss and motion to modify plan. Applicant provides a task billing analysis and supporting evidence for the services provided at the hourly rate of \$300.00/hour.

Total Hours: 5.40 hours in attorney services for unanticipated work.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,620.00
Costs	\$0.00

The Chapter 13 Trustee filed a statement of nonopposition. Dkt 102.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing, Peter Macaluso is allowed the fees in the amount of \$1,620.00 and costs in the amount of \$0.00 as a professional of the Estate.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. The amended plan does not appear to be properly signed by the debtor. The plan appears to have a total of 8 pages filed rather than 7 and page 8 appears to have been uploaded erroneously. Trustee requests that the attorney produce the originally signed document for review.

Trustee filed a status report on 9/26/17 indicating that the Trustee received the signature page of a plan numbered "Page 5 of 6." It does not appear to be the same plan filed August 23, 2017. The additional provision box is now marked as "are not" appended to the plan, thus removing the Trustee's ability to disburse attorneys fees. The plan also does not contain a monthly dividend, rather it refers to the additional provisions, but no additional provisions exist.

The court continued the hearing to allow debtor to fix the problems in the plan. The court has no evidence that this has occurred. The debtors filed a declaration on October 19, 2017. The Trustee's concerns regarding attorneys fees and the additional provisions went unheard. To the court's knowledge, rather than supplying the Trustee with an appropriate signature page, the debtors have merely provided a declaration that states that they had signed the

petition.

The debtors attempt to blame a late response on the Trustee's filing of a "response" which "presupposes that there is prior opposition by the other party." This is not true. Furthermore, if it was true, it would not be a valid excuse for filing a late reply. The court assumes that the "reply" the debtors are referencing is this October 19, 2017 declaration. The Trustee filed a response on September 7, 2017. A response can be filed in response to a motion. There does not need to be "prior opposition by the other party" for a response to be warranted. Furthermore, on September 26, 2017, the Trustee filed a status report. The problems outlined in that status report still exist. The debtor had at least 23 days from the date of the status report filing to craft a reply. The declaration is slightly longer than one (1) page.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent in plan payments in the amount of \$2,000.00. Debtor has paid \$49,826.00 into the plan to date.

B. Debtor has not filed Supplemental Schedules I and J since December 5, 2014. Debtor has apparently changed jobs since then and the schedules do not appear to be an accurate representation of his current income and expenses.

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

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

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

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

and good cause appearing,

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

14. [17-25440](#)-C-13 JAMES SOARES
[THS](#)-1 Pro Se

MOTION TO DISMISS CASE
9-25-17 [[15](#)]

Final Ruling: No appearance at the November 7, 2017 hearing is required.

The court having previously granted the Chapter 13 Trustee's Motion to Dismiss,
**the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice as
moot and the matter is removed from the calendar.**

15. [15-21743](#)-C-13 DANIEL/LYNNETTE BAKER
[DBJ](#)-2 Douglas Jacobs

MOTION TO MODIFY PLAN
9-20-17 [[57](#)]

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

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

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

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

IT IS ORDERED that the Motion to Modify Plan is dismissed without prejudice.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 11, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Debtor is delinquent in plan payments in the amount of \$1,130.00. Debtor has paid \$0 into the plan to date.

B. Debtor's plan relies upon a motion to value, but no motion has been filed.

C. The plan appears to exceed 60 months due to the priority claim filed by the Internal Revenue Service.

D. Debtor has non-exempt equity totaling \$65,967.00 whereas the debtor is proposing a distribution of under 100% to unsecured creditors in the amount of \$16,678.00.

E. Plan does not appear to be debtor's best efforts.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 4, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Debtor is delinquent in plan payments in the amount of \$1,950.00. Debtor has paid \$0 into the plan to date.

B. Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms to the Trustee.

C. Debtor may not be able to make plan payments as the plan requires payment from family support but debtor has not provided evidence that debtor actually receives family support income or that this will continue for 60 months.

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

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

holding that:

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

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

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

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2017. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on October
3, 2017 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if
so approved, the Chapter 13 Trustee will submit the
proposed order to the court.

19. [17-25760](#)-C-13 LOUISE VICENTE
[DPC](#)-1 Lucas Garcia

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-4-17 [[13](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 4, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. The plan may not be debtors' best effort. Debtor's schedules lists 2% interest in her former spouses's business and values that interest at \$0. Debtor admitted at the first meeting of creditors that she receives some income from that interest each year.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 trustee, parties requesting special notice, and Office of the United States Trustee on October 24, 2017. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Capital One Auto Finance, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2009 Toyota Sequoia SR5 Sport Utility. The Debtor seeks to value the property at a replacement value of \$14,650.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2009, more than 910 days prior to the filing of the petition, with a balance of approximately \$17,448.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$14,650.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA, Inc. secured by a purchase-money loan secured against the Debtors' 2009 Toyota Sequoia SR5 Sport Utility, is determined to be a secured claim in the amount of \$14,650.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee opposes confirmation on the basis that:

A. Debtors' declaration references updated financial statements attached, but there does not appear to be any updated financial statements attached as exhibits.

B. Debtors' Supplemental Schedules I and J indicate a monthly net income of \$1,965.00, however the plan contemplates payments of \$1,985.00.

C. Whereas the debtors purport monthly income in the amount of \$4,700, trustee's review of debtors' bank statements from January through May 2017 show that the highest month of income was \$4,500.00.

Debtors' Reply

Debtors reply that the line about updated financial statements was not intended to be in the declaration. Debtor filed an amended Schedule J. Debtors assert that they will provide the Trustee with bank statements from June 2017 through September 2017 before the hearing.

Discussion

The court does not have evidence that bank statements have been provided to the Trustee. In their absence, it does not appear that the most recent Schedule I is correct, the debtors appear to be overestimating their income.

Schedule J lowers expenses by \$20, which would make plan payments work. However, the court is not convinced that debtors can make plan payments where their income appears to be inflated.

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

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

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

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

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

22. [17-22363](#)-C-13 MOHAMAD SALIM
[DPC](#)-3 W. Steven Shumway

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
10-6-17 [[59](#)]

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 6, 2017. Twenty eight days' notice is required. That requirement is met.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes Debtor's exemptions the basis that:

A. The Trustee was provided with the debtor's 2016 income tax return on September 1, 2017 which stated that the debtor's marital status was married, however debtor's Statement of Financial Affairs states that the debtor is not married. Debtor claimed exemptions under CCP § 703.140 and therefore debtor's spouse is required to file a Spousal Waiver for the use of the claimed exemptions. The debtor filed a Waiver of Claim of Exemption and Declaration by Non-Filing Spouse, however the waiver fails to indicate a sub-section under § 703 waiving exemptions under the California Code of Civil Procedure "except for those exemptions provided to them under CCP § 703." The waiver is improper.

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

IT IS ORDERED that Objection to Exemptions is sustained.

23. [17-20765](#)-C-13 DAVID SIMS
[MRG](#)-3 Peter Macaluso

CONTINUED EVIDENTIARY HEARING
RE: MOTION TO VALUE COLLATERAL
FILED BY CREDITOR BOSCO CREDIT,
LLC
6-19-17 [[63](#)]

Thru #25

Tentative Ruling: The Motion to Continue Evidentiary Hearing has been set for hearing on Shortened Time by order of the Court.

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2017. The court issued an order to shorten time setting this hearing on a shortened time.

The Motion to Continue Evidentiary Hearing been set for hearing on the notice required by Local Bankruptcy 9014-1(f)(3), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to set a status conference in this matter.

Movant, Bosco Credit LLC moves for an order continuing the evidentiary hearing set for a Motion to Value Collateral on the basis that counsel for the Movant, Wright Finlay & Zak, LLP, assert that they "discovered" a conflict of said counsel on the eve of the September 6, 2017 scheduled Evidentiary Hearing. It is asserted that this eve of Evidentiary Hearing "discovered" conflict necessitated vacating the Evidentiary Hearing date and allow the substitution of counsel, The Law Offices of Michelle Ghidotti, for Bosco Credit, LLC. This "discovered" conflict was asserted as now requiring a delay in conducting the Evidentiary Hearing so the new counsel could prepare for the Evidentiary Hearing. As discussed below, given the alleged conflict, such continuance on the eve of the Evidentiary Hearing was effectively a mandate by Bosco Credit, LLC and its attorneys Wright Finlay & Zak, LLP that the court remove the Evidentiary Hearing from its calendar and reschedule the Evidentiary Hearing at some later date.

Debtor's Response

Debtor opposes continuance on the basis that the creditor has asserted no legal basis for the continuance requested. **The original Motion to Value was filed on June 19, 2017 and the Movant had notice of**

the Motion to Value on April 20, 2017. Debtor questions why, taking Movant's contentions as true, Wright Finlay & Zak has not been subbed out of all cases in which they are attorney for Bosco Credit, LLC. The Movant had plenty of time to discover this conflict of interest and a continuance solely based upon Movant's failure to discover until the last moment is not warranted.

Unfortunately for Debtor, in light of the asserted eve of Evidentiary Hearing "discovery" of the asserted conflict, the Evidentiary Hearing was continued without any opportunity for Debtor to address such request before it was granted.

Movant's Reply

Movant specifies that the Motion to Value was filed on June 19, 2017 and opposition filed July 18, 2017. Movant states that while preparing for the evidentiary hearing, the conflict of interest was discovered. **The conflict of interest arose as prior counsel represents Ocwen in other matters and the position of Bosco in this evidentiary hearing would run contrary to the interests of Ocwen in this case.**

Stated Conflict Asserted by Prior Counsel and Bosco Credit, LLC on Eve of September 6, 2017 Evidentiary Hearing

The present Motion to Value was filed by Debtor on June 19, 2017. Dckt. 63. It was served on Bosco Credit, LLC on June 19, 2017. Cert. of Serv., Dckt. 68. On July 18, 2017, Nichole Glowin of Wright, Finlay & Zak, LLP filed an eight-page Opposition. Dckt. 75. The Opposition is based on the contention by Bosco Credit, LLC, as advanced by its attorneys, Wright, Finlay & Zak, LLP, that some portion of the claim secured by the senior deed of trust securing the claim of Ocwen Loan Servicing, LLC, was subordinated to that of Bosco Credit, LLC. *Id.* It is argued by Bosco Credit, LLC, through its attorneys Wright, Finlay & Zak, LLP, that due to the conduct of Ocwen Loan Servicing, LLC in modifying its loan with the Debtor, the modification created prejudice to Bosco Credit, LLC such that based on California law a portion of the Ocwen Loan Servicing, LLC claim was subordinated.

Asserting such subordination, Bosco Credit, LLC and Wright, Finlay & Zak, LLP contend that at least a portion of the Bosco Credit, LLC claim is secured by value in the Property and therefore there is purpose to be served by valuing the Property. 11 U.S.C. § 1322(b)(2), *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

At the August 3, 2017 hearing on the Motion, at the behest of Bosco Credit, LLC and Debtor, the court set the Evidentiary Hearing to resolve the factual disputes for September 6, 2017. Civil Minutes, Dckt. 84; Order, Dckt. 85. This date was set with the participation and concurrence of Bosco Credit, LLC, appearing through its attorneys Wright, Finlay & Zak, LLP.

On August 30, 2017, a mere two working days before the

Evidentiary Hearing (there being a weekend and the Labor Day Holiday between the August 30, 2017 disclosure of the "discovered" conflict and the September 6, 2017 Evidentiary Hearing), a Motion to Continue the Evidentiary Hearing was filed by Bosco Credit, LLC, through a new attorney, Kristin Zilberstein of the Law Office of Michelle Ghidotti. Dckt. 96. In this Motion Bosco Credit, LLC asserts that only "recently" Wright Finlay & Zak, LLP "discovered" a conflict of interest necessitating it withdrawing as counsel for Bosco Credit, LLC. Being on the eve of the Evidentiary Hearing and having its counsel, Wright Finlay & Zak, LLP leaving Bosco Credit, LLC unrepresented, the Law Office of Michelle Ghidotti, as stated new replacement counsel, requested that the Evidentiary Hearing be continued.

The September 6, 2017 Evidentiary Hearing was removed from the calendar and the hearing on this Motion to Continue the Hearing was set for September 19, 2017. Having "discovered" the asserted conflict only on the eve of the Evidentiary Hearing, Bosco Credit, LLC and Wright Finlay & Zak, LLP forced the court to "grant" the continuance *ex parte*, without any opportunity for opposition by Debtor. Order, Dckt. 105.

The purported conflict "discovered" only on the eve of the Evidentiary Hearing is asserted to be that Wright Finlay & Zak, LLP also represent Ocwen Loan Servicing, LLC - the very person whom Wright Finlay & Zak, LLP has argued has subordinated its deed of trust due to its conduct in modifying the loan secured by the first deed of trust. Declaration, Dckt. 114. While contending that a conflict was "discovered" on the eve of the Evidentiary Hearing, Nicole Glowin offers no testimony as to how she and her firm did not "recall" that they do work for Ocwen Loan Servicing, LLC, how Wright Finlay & Zak, LLP would file an Opposition which directly attacked the lien priority of Ocwen Loan Servicing, LLC, and what reasonable conflicts check was conducted prior to launching the Bosco Credit, LLC attack on the alleged rights and interests of Owen Loan Servicing, LLC.

Misidentification of Creditor

The Opposition filed by Wright Finlay & Zak, LLP and the declaration of Nichole Glowin affirmatively state that Ocwen Loan Servicing, LLC is the creditor having the claim secured by the first deed of trust, that Ocwen Loan Servicing, LLC is a client of Wright Finlay & Zak, LLP, and based upon Bosco Credit, LLC having attacked the deed of trust held by Ocwen Loan Servicing, LLC, Wright Finlay & Zak, LLP "discovered" a conflict only on the eve of the Evidentiary Hearing.

This contention is premised on a wrong fact - the identify of the creditor holding the claim secured by the first deed of trust. As clearly stated in Proof of Claim No. 2 which is filed for the claim secured by the first deed of trust, the creditor is stated to be Deutsche Bank National Trust Company, as Trustee for Morgan Stanley Home Equity Loan Trust Series 2006-3 ("DBNTC, Trustee"). Nowhere in Proof of Claim No. 2 is it stated that Ocwen Loan Servicing, LLC is the creditor, that Ocwen Loan Servicing, LLC has a claim, or that Ocwen Loan Servicing, LLC has an interest in the deed of trust securing the DBNTC,

Trustee Claim. Ocwen Loan Servicing, LLC did file Proof of Claim No. 2 for DBNTC, Trustee, clearing identifying itself solely as the "agent" for DBNTC, Trustee. Proof of Claim No. 2, p. 3. On the attachment to Proof of Claim No. 2, Owen Loan Servicing, LLC is stated to be the "Servicer."

To the extent that Wright Finlay & Zak, LLP does represent Ocwen Loan Servicing, LLC in other matters, Ocwen Loan Servicing, LLC is not the creditor whose rights and interests are attacked by Bosco Credit, LLC. in this Contested Matter. Thus, it is not clear what "conflict," if any, that Wright Finlay & Zak, LLP actually "discovered" on the eve of the Evidentiary Hearing that has derailed the Evidentiary Hearing.

Failure to Prosecute the Contested Matter

What has come to light is that while the Debtor and his counsel complied with the Evidentiary Hearing Scheduling Order and Local Bankruptcy Rule 9017-1 to lodge with the court the required direct testimony statements and exhibits, nothing was lodged with the court by Bosco Credit, LLC. By the time the conflict was "discovered" and the Motion to Continue filed, Bosco Credit, LLC had already failed to comply with the order, leaving it with no evidence for which to prosecute the contention that the a portion of the first deed of trust held by DBNTC, Trustee to secure its claim had been subordinated.

Additional Judicial Concerns Drawn From September 19, 2017 Hearing

At the September 19, 2017 hearing no good reason was given for the conflict being "discovered" only on the eve of the Evidentiary Hearing - for which Bosco Credit, LLC and Wright Finlay & Zak, LLP had provided no evidence. Further, in listening to the arguments advanced, it could well appearance that Ocwen Loan Servicing, LLC and Bosco Credit, LLC, as orchestrated by Wright Finlay & Zak, LLP (which purports to represent both) and the Law Office of Michelle Ghidotti, are manufacturing a purported subordination of some small amount to create the (mis)appearance that there was some value in the Property for Bosco Credit, LLC's second deed of trust so as to create the (mis)appearance that Bosco Credit, LLC has a secured claim in this case.

Payment of Legal Fees and Costs

The Debtor has incurred the costs and expenses of his counsel preparing for the unilaterally aborted September 6, 2017 Evidentiary Hearing by Bosco Credit, LLC and Wright Finlay & Zak, LLP and the September 19, 2017 hearing on this Motion. These costs and expenses create an undue burden on and prejudice this Chapter 13 Debtor and the creditors in the bankruptcy case.

As set forth in Local Bankruptcy Rule 9014-1(d), failure to file the direct testimony statements, other evidence, and legal authorities for a scheduled evidentiary hearing may result in the imposition of sanctions. The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders

(such as the order scheduling the Evidentiary Hearing in this Contested Matter). *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehtinen*, 564 F. 3d at 1058.

Further, Federal Rule of Civil Procedure 16(f) and Federal Rules of Bankruptcy Procedure 7016 (made applicable in this contested matter by this court), 9014 provides for the imposition of corrective sanctions for the failure of a party to comply with the order of the court in the prosecution of litigation. Federal Rule of Civil Procedure 16(f)(2) goes so far as to mandate the imposition of attorney's fees and costs when there is the failure of a party to comply with the court's scheduling order - such as the court's order setting the Evidentiary Hearing in this Contested Matter.

Additionally, as discussed by the Bankruptcy Appellate Panel for the Ninth Circuit in *Kostecki v. Sutton (In re Sutton)*, 2015 Bankr. LEXIS 4084, *19-20 (B.A.P. 9th Cir. 2015):

A bankruptcy court's inherent powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). In appropriate cases, a court may select from the menu of sanctions available under its inherent powers the draconian sanction of dismissal to "the 'less severe sanction' of an assessment of attorney's fees," *Chambers*, 501 U.S. at 44-45, to an intermediate sanction of the exclusion of some evidence or testimony, see *Dillon v. Nissan Motor Co.*, 986 F.2d 263, 266-69 (8th Cir. 1993).

In considering the proper corrective sanction, the court notes that the primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003).

As discussed above, it appears questionable whether the eve of Evidentiary Hearing claim of a conflict actually exists (the purported other "creditor" being misidentified by Bosco Credit, LLC).

Bosco Credit, LLC's strategy of ignoring what, if its current contention of a conflict is correct, should be an obvious conflict for its counsel - expressly asserting a defect in the asserted lien rights of Ocwen Loan Servicing, LLC (which has been shown by Proof of Claim No. 2 not to be the creditor whose rights and interests at issue) - has

caused the Debtor (and the creditors in the Chapter 13 case) significant monetary prejudice. Debtor has been forced to waste limited financial resources in preparing for the Evidentiary Hearing that Bosco Credit, LLC aborted on the eve of such hearing based on the eleventh and one-half hour "discovered" conflict.

Rather than denying the continuance, the court has taken the more measured approach in allowing Bosco Credit, LLC its day in court and merely requiring Bosco Credit, LLC to reimburse Debtor for the costs and expenses in preparing for the aborted Evidentiary Hearing and having to address the eve of Evidentiary Hearing demand for a continuance. Requiring Bosco Credit, LLC to reimburse Debtor for the reasonable attorney's fees and costs for the aborted Evidentiary Hearing is a very limited and reasonable corrective, compensatory sanction. Bosco Credit, LLC is not being "punished," but merely have to pay compensatory damages caused by its decision to abort the September 6, 2017 Evidentiary Hearing.

Therefore, as condition of having the September 6, 2017 Evidentiary Hearing continued, the court orders Bosco Credit, LLC to pay the attorney's fees and costs of Debtor as set forth below.

Further Hearing on Attorney's Fees to be Awarded as Compensatory Sanction

The court ordered that on or before September 26, 2017, Peter Macaluso, counsel for Debtor, shall file a statement of the fees and costs incurred in preparing for the September 6, 2017 Evidentiary Hearing, preparing for and attending the September 19, 2017 hearing, preparing the statement of fees and costs being requested, an hour of time for the October 3, 2017 hearing at which the court will consider the fees requested and reschedule the Evidentiary Hearing. On or before September 29, 2017, Bosco Credit, LLC shall file and serve a Reply to the fees requested. The court determines that the reply period is appropriate because the parties have been directed to discuss the amount requested, with the issue for the court to determine at the October 3, 2017 hearing the reasonable amount of such fees.

On September 26, 2017, Mr. Macaluso filed a statement of fees indicating that the amount of time he spent on the above listed items is **\$3,300.00**. Bosco has filed no response to the declaration.

The court delays the preparation and filing of the fee documents to afford the Debtor, Bosco Credit, LLC, and their respective counsel time to meet and confer - not only as to the reasonable amount of the fees (which if agreement can be reached Bosco Credit, LLC can "save" having to pay for the preparation of the fee pleadings and the hearing concerning the fees), but also to the actual merits of Bosco Credit, LLC's contentions as advanced by Wright Finlay & Zak, LLP.

Valuation

The court notes that debtor's opinion of the value of the property is

\$240,000.00. There does not appear to be any contest on the issue of valuation of the property. As a result, the court is inclined to grant the Motion to Value the Collateral at \$240,000.00. However, in light of the issue of the valuation of Claim 2-1, the court will stay the Motion to Value the Collateral until adjudication of Bosco's Objection to Claim of Deutsche Bank 2-1. A status conference in this matter will be set.

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

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

The Motion to Continue Evidentiary Hearing filed by Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED THAT a status conference in this matter will be set at the hearing.

24. [17-20765](#)-C-13 DAVID SIMS
[MRG](#)-4 Peter Macaluso

OBJECTION TO CLAIM OF DEUTSCHE
BANK NATIONAL TRUST COMPANY,
CLAIM NUMBER 2-1
10-3-17 [[125](#)]

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

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

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

Local Rule 3007-1 Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's attorney, Chapter 13 trustee, parties requesting special notice, and Office of the United States Trustee on October 3, 2017. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Proof of Claim will be set for evidentiary hearing.

Bosco Credit, LLC, the Creditor, ("Objector") requests that the court disallow the claim of Deutsche Bank National Trust Company ("Deutsche"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$423,494.79. Debtor executed a deed of trust with Wilmington Finance (eventually transferred to Deutsche) in the amount of \$350,000.00. Objector asserts that on March 15, 2012 debtor executed a Loan Modification Agreement wherein the new principal balance of the loan will be \$85,278.57. Ocwen (servicer on the loan) filed a proof of claim in this case in the amount of \$423,494.79 with a \$350,922.06 deferred balance.

On August 17, 2016 Bosco obtained a Payoff Quote from Ocwen for the

amount due and payable through September 15, 2016. The amount required to payoff the Ocwen loans as of September 15, 2016 was \$76,218.24. There was no reference to a deferred balance. Bosco obtained two additional payoff quotes dated March 10, 2017. One stated that the current balance due and owing was \$75,899.56 while the other stated that it was \$150,901.66. Neither payoff quote listed any deferred balance due. Ocwen received yet another payoff quote dated September 12, 2017 that listed the payoff amount at \$75,767.46.

Bosco argues that where the proof of claim includes a deferred principal balance of \$350,922.06, that amount should be disallowed from the proof of claim.

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

The court will set an evidentiary hearing for determination of the true and correct amount of the claim of Deutsche Bank, Claim 2-1.

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

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

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

IT IS ORDERED that the objection to Proof of Claim will be set for evidentiary hearing.

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

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

Below is the court's tentative ruling.

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

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

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

The court's decision is to xxxxxxxx.

The Trustee opposes confirmation on the basis that:

A. The Plan relies upon a Motion to Value.

The court continued the Motion to Value, as a result this matter will be continued to the same date and time as the Motion to Value. The court notes that on September 6, 2017, the Motion to Value was taken off calendar and a Motion to Continue Evidentiary Hearing was set for September 19, 2017.

The court continued the Motion to Confirm plan to October 3, 2017. No tentative ruling is appropriate as the motion to confirm plan relies upon the outcome of the evidentiary hearing.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

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

IT IS ORDERED that Motion to Confirm the Plan is xxxxx

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Debtor is delinquent in plan payments in the amount of \$245.00. Debtor has paid \$0 into the plan to date.

B. Claim #3 reflects that debtor is "proprietor of I Cook." Debtor has not adequately disclosed this business interest on Schedule I, Schedule B, or the Statement of Financial Affairs.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee opposes confirmation on the basis that:

A. The plan will complete in 138 months. It appears that the debtor did not consider the \$88,587.89 second deed of trust as part of the unsecured claims.

B. Debtor does not specify a monthly dividend for Section 2.09 2B Internal Revenue Service, but rather refers to an attachment. There is an attachment of additional provisions but it does not address the monthly dividend.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 11, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. Debtor failed to appear at the first meeting of creditors held on October 5, 2017. The Meeting of creditors was continued to November 2, 2017. There is no information on the docket pertaining to that meeting.

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

The court's decision is xxxxxxxxxxxxxxxx

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

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

Creditor's Response

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

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

Debtors' Reply

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

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

Discussion

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

Debtor's Supplemental Motion in Support

Igloo is alleging an escrow shortage resulting from undisclosed fees, costs or charges. Igloo did not file or serve on parties a notice itemizing all fees, expenses, or charges incurred as required by Rule 3002.1(c). There is no prima facie presumption of validity for notice of payment changes filed under 3002.1(b) and (d). Igloo asserted that part of the fees came from a Forced Placed Insurance, yet the debtor asserts that the account had been impounded for taxes and insurance since at least 2012 and the debtor maintained insurance through State Farm since at least 2012.

In 2016, debtor paid Igloo \$6,979.86 and Igloo paid only \$4,857.34 for taxes and \$659.00 for homeowners insurance, and therefore debtor does not understand how a negative escrow could arise.

Creditor's Supplemental Response

Creditor asserts that notice was not required under Rule 3002.1 because notice is required when there are fees, expenses, and charges incurred. Here, the increase was caused by an escrow event (loan matured in 2017) not fees, expenses, and charges. Therefore, Creditor met its burden under Rule 3002.1.

The escrow shortages have been waived and credited back to the account. This includes the forced placed insurance. Creditor asserts that the only issue remaining is attorneys fees as the underlying issues have been resolved.

A new escrow analysis will need to be run to determine what the new balance will be after the credit back to debtor's account.

Debtor's Supplemental Reply

Debtor filed a supplemental reply indicating that Igloo is continuing to charge debtors an increased escrow amount for the collection of the alleged escrow shortage.

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

Findings of Fact and Conclusions of Law are stated in the Civil

Minutes for the hearing.

The Objection to Notice of Mortgage Payment having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Notice of Mortgage Payment is ~~XXXXXXXXXXXXXXXXXX~~

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 12, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved,

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

31. [12-41278](#)-C-13 NICOLAS BUTLER AND RENEE MOTION TO AVOID LIEN OF CACH,
[CYB](#)-3 CASTRO LLC
Candace Brooks 10-11-17 [[63](#)]

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

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

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

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

Correct 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 October 11, 2017. Fourteen days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

A judgment was entered against the Debtor in favor of CACH, LLC for the sum of \$11,891.86. The abstract of judgment was recorded with Yolo County on February 10, 2012. That lien attached to the Debtor's residential real property commonly known as 1883 Donner Road, West Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$300,000.00 as of the date of the petition. The unavoidable consensual liens total \$465,802.56 on that same date according to Debtor's Schedule D. The Debtor are entitled to claim an exemption on the property pursuant to CCCP § 704.730. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

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

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

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

IT IS ORDERED that the judgment lien CACH, LLC, Yolo County Superior Court Case No. 34-2011-00110394 recorded on February 10, 2012, with the Yolo County Recorder, against the real property commonly known 1883 Donner Road, West Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

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

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

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

The court's decision is xxxxxxxx

Debtors bring this motion for an order to recover the interest on exempt property (i.e. exempt wages) being held by the El Dorado County Sheriff after garnishment by creditors Smedberg et al. Debtor listed \$3,875.00 of funds being held by the El Dorado County Sheriff as exempt. Debtors assert that as the wages are exempt, interest on the wages should be exempt too.

Trustee's Response

Trustee responds that he is uncertain what legal authority the debtor is citing to as justifying the relief requested.

Debtors' Reply

Debtors reply that the El Dorado County Sheriff does not oppose the motion. The debtors list 2 sections in the bankruptcy code, one other section, and two sections from the CCCP. Although the debtors do not explicitly lay out why any of these sections are relevant, the gist seems to be that interest on exempt assets is exempt.

El Dorado County's Response

Despite debtors contention that the El Dorado County Sheriff does not oppose the motion, the Sheriff's Department opposes the motion on the basis that the debtors have introduced no competent evidence to support the motion and that the service to the County of El Dorado is untimely. Debtors' tried to file this motion pursuant to LBR 9014-1(f)(1), however did not give 28 days' notice. The motion is still timely as a 9014-1(f)(2) motion. As a result, El Dorado did receive proper service.

The County explains that the debtors' contention that the Sheriff holds interest that accrued on exempt garnished wages is based upon an incorrect reading of the County's documents. In fact, the documents show that the \$638.94 "reflect two wage garnishment checks. . . used to make an adjustment to the interest on the debt" and that these funds are shown as deducted from the Interest on Principal of the debt.

Debtor's Supplemental Pleading

Debtors submitted copies of check stubs for March 2011 proving garnishment. Debtors request a full accounting from the sheriff due to the confusion between how much the sheriff received and to whom the sheriff paid those funds and when.

County's Opposition and Supplemental Opposition

The county filed a supplemental opposition on October 6, 2017. County opposes the motion on the grounds that there is no evidence to support debtors' claims. County asserts that the "interest column" refers to interest on the judgment and debt rather than interest on garnished wages.

Debtor's Supplemental Reply

Debtor requests that the sheriff modify their case profile and other records to reflect that Robin is not and never has been a judgment debtor for any money judgment in favor of Smedbergs and to pay the debtors the sum of \$683.94 plus interest.

DISCUSSION

The court does not find that the debtors have introduced competent evidence to support granting of the motion. The debtors do not explain how garnished wages of \$3,875.00 could garner interest in the amount of \$638.94, nor have the debtors introduced evidence indicating that this \$638.94 is in fact the interest on the exempt wages. Debtors are adamant that they are allowed to receive the interest on exempt wages, however have failed to prove that the amount requested is in fact interest on exempt wages.

Issues Raised in Pleadings Filed by Debtor and Sheriff

Attached as an Exhibit to Debtor's Motion is a spread sheet that is identified as stating the wage garnishment monies received by the Sheriff. Dckt. 295 at 3. For March 15, 2011 and March 20, 2011, it identifies receipts for "Wage Gasnis[text cut off], as being Received From "Converted Receipt" for "interest" in the amounts of \$343.41 and 340.53, respectively. Debtor argues that if there is \$683.94 in interest which exists for the wages garnished, Debtor should receive that money.

In the Opposition, the Sheriff argues that the \$638.94 amounts in the interest column "reflect two wage garnishment checks...used to make an adjustment to the interest on the debt." Opposition, p. 3:6-9; Dckt. 315. The Opposition directs the court to the Declaration of Marianne Saindon on this point. Ms. Saindon, who states she is the Assistant Public Administrator and Civil Unit Manager in the County of El Dorado Sheriff's Office, testifies, in pertinent part on this point:

"I explained to Mr. Toste that the law and our State Procedure Manual required that the money collected prior to his filing of bankruptcy was forwarded to the Creditor and that the amounts of \$343.41 and \$340.53 (that total \$683.94) were received from the employer on 03/05/2011 and 03/29/2011 , respectively; this money was applied to Mr. Toste's debt, held for 30 days per Code of Civil Procedure section 706.026 and then released to the Creditor on 04/25/2011 and 04/28/2011 , respectively. (See attached copy of CCP Section 706.26)

Civil Unit business records indicate that Mr. Toste filed bankruptcy on 04/06/2012 and the Civil Unit received notice of the bankruptcy on 04/10/2012.

Declaration, p. 2:13-24; Dckt. 317. This statement appears to be inconsistent with the statement in the Opposition that the "interest" amount is an "adjustment to the interest on the debt." It appears that Ms. Saindon's testimony is that the wage garnishment monies were received and disbursed to the judgment creditor prior to the bankruptcy case being filed.

Ms. Saindon's testimony continues, explaining a discussion that she had with Mr. Toste explaining that interest does not accrue on monies held by the Sheriff pursuant to a garnishment. However, that appears to

be inconsistent with the spread sheet which has a column for "interest."

With respect to the "interest" amounts shown on the spread sheet, Ms. Saindon testifies:

"I note that Mr. Toste only includes the second page of the Case Profile-11005012 report with his MOTION and this page includes a "Receipts and Adjustments" section with two entries in the "Interest" column that reflect two wage garnishment checks, mentioned above; these two checks were used by the Civil Unit to make an adjustment to the interest on the debt in this case, and the deduction of these monies is clearly shown as deducted from the Interest on Principal, on the top of the first page of the Case Profile report as a deduction (adjustment) of the interest on the principal portion of Mr. Toste's total debt; this is not "interest earned" on the money the EDSO held in stay status. The amount Mr. Toste is asking for as "interest earned" is the exact amount of the money applied to pay down his interest on the principal of his debt."

Id. at p. 3:22-29, 4:1-5. It appears that Ms. Saindon is testifying that the Sheriff makes a determination of how the monies garnished from Debtor's wages are to be applied to a state court judgment creditor's judgment - what monies are properly applied to interest, what monies are properly applied to post-judgment fees and costs, and what monies are properly applied to the principal amount of the judgment.

Ms. Saindon does not explain why there are adjustments for those dates and how the adjustment are for "interest." Possibly, she is testifying that the creditor, in specifying the amount owed on the judgment listed the principal amount and interest that has accrued on the judgment, and the Sheriff presumes that the monies were applied to the interest portion of the judgment. The Opposition does not provide the court with applicable California law that provides for the levying officer to make such determinations for the parties.

Non-Appearence of Counsel for the Sheriff at the September 8, 2017 Hearing

From the presentation by Debtor at the hearing and reading the Opposition and declarations filed by the Sheriff, the court infers several things. First, there is no love lost between the parties, with there being a complete breakdown in communications. At the hearing, Debtor stated that though counsel for the Sheriff wanted to discuss the matter on the phone, they refused, asserting they were uncomfortable having such telephonic discussions.

Reviewing the Declarations and Oppositions, it is clear that from the Sheriff's side the monies at issue have not been clearly explained. It is stated to be interest, but then it is stated to be monies collected and disbursed prior to the commencement of the bankruptcy

case. While the court can guess what the simple answer is to Debtor's inquiry, the Sheriff has not made it clear and the spread sheet confuses the situation.

Unfortunately, the Sheriff's counsel elected not to appear at the September 12, 2017 hearing. If counsel had been present, the court may well have been able to have teased the fact from fiction in this dispute, helped the parties engage in a constructive discussion and brought this matter to a conclusion, rather than merely dismissing it due to service of process issues. FN.1. Rather than dismissing without prejudice and having Debtor start over in a vacuum, the court is setting this matter for further briefing and a continued hearing.

FN.1. The court was able to have Debtor and the Chapter 13 Trustee engage in a constructive discussion concerning the plan, identification of the payments necessary to complete the last month of the Plan, and Debtor's successful conclusion of the case. While not conclusively resolved, it appears from the hearing that Debtor and counsel for the Chapter 13 Trustee appear to have developed a common language in which to discuss the finances of the plan and computation of the final plan payment amount.

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 Recover Interest on Exempt Property Held by El Dorado County Sheriff filed by the Gerald D. Toste and Robin D. Toste, the Debtors, was presented to the court. In light of the Debtors prosecuting this in pro se, no evidence having been filed in support of the Motion, the court not finding the Opposition providing an adequate explanation of the source of the monies in dispute, 1, and good cause appearing,

IT IS ORDERED that xxxxxxxxxx

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

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

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

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

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

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

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 17-26371) was filed on September 26, 2017 and dismissed on October 16, 2017, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c) (3) (B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c) (3) (c).

In determining if good faith exists, the court considers the

totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Here, the Chapter 13 Trustee opposed the motion on the basis that the debtor still had not filed schedules in this instant case. Therefore, there did not appear to be any information on any change of circumstances.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor voluntarily converted this case to one under chapter 7 on November 1, 2017. At that time, debtor filed all schedules and documents required by the court. As a result, debtor appears to be in a position to properly conform with the requirements of the bankruptcy code and this court.

The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this court.

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

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

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

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

34. [17-25852](#)-C-13 MARGO STUESSY
[BPC](#)-1 Steele Lanphier

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
O.S.T.
10-31-17 [[33](#)]

PACIFIC SERVICE CREDIT UNION
VS.

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(3).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 31, 2017. The court granted an order to shorten time to hear this motion on November 7, 2017.

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

The Objection to Confirmation of Plan is overruled as moot and the Motion for Relief from the Automatic stay is denied without prejudice.
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Pacific Service Credit Union objects to plan confirmation and in the alternative, seeks relief from the automatic stay with respect to the debtor's 2015 Ford F150. The moving party has provided the Declaration of Jeff Rodgers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rodgers Declaration states that the Debtor has not made payments since August 18, 2017. The declaration does not state the number of post-petition payments unpaid, and does not list the total amount in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this

property is determined to be \$39,901.43 (including \$32,402.00 secured by movant), as stated in the Rodgers Declaration, while the value of the property is determined to be \$26,636.00, as stated in Schedules A and D filed by Debtor.

The court notes that the objection to plan is moot. Debtor filed an amended plan on November 3, 2017. Therefore, any objection to plan confirmation must be in reference to the amended plan.

Local Bankruptcy Rule 4001-1 deals with Motions for Relief from Stay. That rule proscribes that a movant must file and serve as a separate document completed Form EDC 3-468, Relief from Stay Summary Sheet. That has not been provided in this case.

Furthermore, that rule requires that the movant include a verified statement showing, among other things, the obligations that have accrued post-petition. That was not provided in this motion.

A mere statement that cause exists to grant relief from stay, absent sufficient evidence for such a determination, is not enough to induce the court to grant relief from stay. The court will deny the motion without prejudice, so as to grant the movant an opportunity to bring sufficient evidence and to properly notice and serve a proper motion in accordance with the rules of this bankruptcy court.

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation is overruled as moot.

IT IS FURTHER ORDERED that the Motion for Relief from the Automatic Stay is denied without prejudice.
