

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 12, 2017 at 2:00 p.m.

1.	<u>16-25101</u> -C-13	WALTER/NELLIE KENDRICKS	CONTINUED MOTION TO MODIFY PLAN
	<u>TLA</u> -3	Thomas Amberg	9-5-17 [<u>62</u>]

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 5, 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). At the hearing

The court's decision is to deny the Motion to Confirm the Modified Plan and the plan is not confirmed.

The Trustee does not oppose confirmation.

Creditor, Trinity Financial Services, LLC does oppose the motion. Trinity asserts that it withdrew its objections to confirmation because the debtors proposed a plan that pays 100% to all creditors. Now, the debtors claim a loss of income. Trinity believes that because the debtor is searching for new employment, modification of the plan is improper as debtor's financial situation has not changed permanently. Trinity further requests that the court allow Trinity to examine the debtors and examine their income situation. Trinity finally requests that the debtors be required to issue quarterly updates on their financial situation.

Debtors have an affirmative duty to update the court if debtor secures employment and their financial situation changes. The court does not find it necessary to deny the motion simply because the debtor may obtain employment in the future. Furthermore, the court does not find it necessary to issue an order to allow Trinity to examine the debtors based on the information before it. Trinity may issue a FRBP 2004 motion if it wishes to further

examine the debtors.

However, here the Debtor's plan is dependent upon Debtor currently receiving \$1,800 a month in unemployment benefits. Debtor admits that those benefits terminated in September 2017. Based on the income and expense statements provided in support of the Motion, without that income Debtor cannot make the current proposed \$127 a month plan payment. This is not a case where the debtor can make the current payment and only an increase in some future payment is dependant on Debtor increasing his or her employment income.

History of Case Proceedings

The court previously vacated the order valuing Trinity's secured claim at \$0.00. Order, Dckt. 39. An amended motion was to be filed and served by December 15, 2016. *Id.* No amended motion was filed. However, on December 12, 2016, Debtor filed a new Motion to Value Trinity's secured claim. Dckt. 40. An order valuing the secured claim at \$0.00 was filed on March 24, 2017. Dckt. 59. The Civil Minutes for the hearing on the new Motion to Value was based on the evidence presented by Debtor, Trinity not having filed any evidence in opposition (the court having allowed time for the parties to conduct discovery and Trinity to obtain an appraisal of the property securing its claim). Civil Minutes, Dckt. 5.

On March 20, 2017, Trinity filed a "Notice of Withdrawal" of its motion to vacate the first order valuing its secured claim at \$0.00. Dckt. 28. As stated above, the court had already issued its order vacating the first order valuing, with no further proceedings pending on the motion to vacate. Order, Dckt. 39. Though the "Withdrawal" could have been treated as an ex parte motion to dismiss (Fed. R. C. P. 41(a)(2), Fed. R. Bankr. P. 9014, 7041), there was nothing left to dismiss.

The "Notice of Withdrawal" also makes reference to a "Motion to Vacate Confirmation," but no such motion was filed with this court.

The "Notice of Withdrawal" states that Trinity was seeking to "withdraw" its motion (for which a final order had already been entered) because the plan provided for a 100% dividend for creditors holding general unsecured claims.

Debtors' Supplemental Declaration

Debtors filed a supplemental declaration indicating that they are receiving an additional \$700 per month drawing from retirement accounts and \$376 per month for caring for a 15 year old granddaughter. Debtors state that "with significant belt-tightening" this budget will work.

Discussion

Considering that debtors previously received \$1,800 per month from unemployment benefits, and in the absence of amended schedules indicating how the plan payments are possible, the court does not have the information necessary to confirm this amended 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.

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,

The Plan does comply 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 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 the Motion is denied and the proposed Chapter 13 plan is not confirmed.

Tentative Ruling: The Motion to Incur Debt 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 December 12, 2017. Fourteen days' notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) 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 Motion to Incur Debt is granted.

The debtor seeks authorization to incur a debt for a student loan. Debtor is in month 14 of a 60 month plan that proposes 98% to unsecured creditors. The loan will be dispersed on a semester basis with an approximate total of \$64,500.00. The interest rate for the unsubsidized portion is 6% and the interest rate for the subsidized portion is 7%. The loan will be through the U.S. Department of Education. Debtor does not make any payments until after he has completed his education.

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

Trustee's Opposition

The Trustee opposes the motion on the basis that the Motion and Declaration fail to identify what specific nursing degree the debtor is attempting to obtain and the typical employment salary for such a degree. Additionally, Trustee questions whether the motion is appropriate where the plan is paying \$145,885.72 to unsecured creditors and debtor wants to incur an additional \$64,500.00 in debt within 14 months of filing.

Debtor's Reply

Debtor filed a reply stating that the education will allow the debtor to have a greater earnings potential and that potential jobs have \$80,000 salaries.

Discussion

The court is convinced that, in light of the substantial distribution in plan payments, and the fact that (a) the payments on the loan will not be due until very late in the plan and (b) the debtor stands to increase their earnings potential by a great amount due to the loan, the debt will not disrupt plan payments and will allow the debtor to have a fresh start. The motion will be granted.

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

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

The Motion to Incur Debt filed by 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 Gregory Boyd, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 91.

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 November 15, 2017. Fourteen days' notice is required.

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

The court's decision is to continue the Objection to December 19, 2017 at 2:00 p.m.

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

A. Debtor did not attend the meeting of creditors held on November 9, 2017. The next meeting of creditors is scheduled for December 14, 2017. Trustee requests that this objection be continued to December 19, 2017.

The court will continue the objection to December 19, 2017.

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

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

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

IT IS ORDERED that Objection to confirmation of the Plan is continued to December 19, 2017 at 2:00 p.m.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 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 grant the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that:

A. The language of the plan requires a payment in November 2017 in accordance with the proposed plan, whereas the Trustee is bound by the terms of the confirmed plan to make a payment in November 2017 in accordance with the confirmed plan.

Debtor's Reply

Debtor responds that there is no opposition to amending the language of the plan to adjust the start dates for the new monthly payments.

The Plan does comply 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 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 is granted, Debtor's Chapter 13 Plan filed on November 6, 2017 is confirmed, and counsel for the Debtor shall prepare an

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

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

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

Below is the court's tentative ruling.

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

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

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Americredit Financial Services, Inc. will be set for evidentiary hearing.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2008 Mazda. The Debtor seeks to value the property at a replacement value of \$2,455.00 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 more than 910 days prior to the filing of the petition, with a balance of approximately \$15,097.95.

Creditor's Response

Creditor, Americredit Financial Services, Inc., filed an opposition alleging that the true valuation of the property is \$8,825.00 based on NADA guide retail value.

Debtors' Reply

Debtors reply that creditor's valuation is not supported by evidence.

The court finds that genuine issue as to material facts exist, and an evidentiary hearing is necessary to determine the value of the property.

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 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 will be set for an evidentiary hearing.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 1, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

- A. Debtor has not made any plan payments and is \$4,000 delinquent under the terms of the plan.
- B. The duration of the plan is stated to be 60 months, but the language in Section 6.01 appears to contemplate a different length of time, or at least one not consistent with 60 months. The plan proposes to pay \$4,000 for 24 months then to modify the plan to pay the IRS after receiving additional income from a property. No proof that the IRS has agreed to this treatment has been provided to the court.

Debtor's Reply

Debtor asserts that he will be current on plan payments at the date of the hearing. Debtor states that although the IRS has not agreed to the treatment, it also has not objected therefore the plan should be confirmed.

The court does not currently have evidence that debtor is current on plan payments. The treatment of the IRS under the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and the plan is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 15, 2017. Fourteen days' notice is required.

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

The court's decision is to continue the Objection to December 19, 2017 at 2:00 p.m.

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

A. Debtor has not filed tax returns for 2014 and 2016. The meeting of creditors was continued to December 14, 2017 and the Trustee requests that this objection be continued to December 19, 2017.

The court will continue the objection to December 19, 2017.

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

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

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

IT IS ORDERED that Objection to confirmation of the Plan is continued to December 19, 2017 at 2:00 p.m.

Final Ruling: No appearance at the December 12, 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 24, 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 October 24, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Compel is denied.

Debtor moves this court for either an order compelling Wells Fargo to turnover to the debtor certain funds, now in the estate, that have been properly claimed as exempt, or an order compelling Wells Fargo to turn-over title to the subject property to the debtor in full satisfaction of the claim by Wells Fargo against the subject property. In fact, what the debtor appears to request is for Wells Fargo to release its lien on the property of the debtor at 203 Forrest Hill Ave., Auburn CA.

Debtor asserts that the full amount of Wells Fargo's secured claim was paid during the pendency of the plan.

Trustee's Response

Trustee responds that:

- A. Debtor has not cited legal authority for the motion. This is especially important here, where the debtor has not made clear the requested relief.
- B. Debtor's requested relief is not consistent and does not appear to be appropriate.
- C. Trustee confirms that \$145,210.00 in principal and \$15,691.33 in interest was paid to Wells Fargo during the plan. Wells Fargo paid \$18,790.86 for post-petition advances for tax and insurance.

Creditor's Opposition

Creditor asserts first that it cannot turnover the property as it does not have title to the property. If the debtor is requesting that the creditor release its lien, creditor objects because it paid post-petition escrow advances totaling

\$18,790.76. The Trustee confirms this. Therefore, it is premature for Wells Fargo to release its lien until the outstanding escrow advances have been paid.

The court finds that until the outstanding escrow advances have been paid, there is no requirement for Wells Fargo to release its lien.

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

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

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

IT IS ORDERED that the Motion is denied.

* * * *