UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 16.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–15, attempting to first address the items in which short oral argument is anticipated.

December 12, 2017, at 3:00 p.m.

1.	**17-27701-E-13** **FI-1**	**EDWARD/MYLINLINNY STEARNS** **Fred Ihejirika**	**MOTION TO EXTEND AUTOMATIC STAY** **11-27-17 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 27, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Extend the Automatic Stay is granted.

Edward Stearns and Mylinlinny Stearns ("Debtor") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 16-21883) was dismissed on May 31, 2017, after Debtor requested that the case be dismissed. *See* Order, Bankr. E.D. Cal. No. 16-21883, Dckt. 51, May 31, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor traveled unexpectedly to the Philippines to care for Debtor's elderly mother who had become sick. Dckt. 10 at 2:8–14. Debtor realized that the additional expenses from the trip would prevent them from completing the prior case, and so, they requested that the case be dismissed.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on November 29, 2017. Dckt. 13. The Chapter 13 Trustee states that he is uncertain whether Debtor has explained sufficiently why the prior case was dismissed. According to his records, Debtor was current on plan payments in the prior case.

DISCUSSION

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second

case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

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

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

The Chapter 13 Trustee's Response identified points that support extending the stay in this case. According to records, Debtor was current on plan payments in the prior case, but Debtor states that when they learned they needed to travel to the Philippines, they realized that the additional expenses would hinder the plan in the prior case. By choosing to dismiss the case, Debtor indicates to the court that they were prosecuting that case (and subsequently, this case) in good faith by not becoming delinquent on payments. Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

2.	**17-27724-E-13** **SDH-1**	**THOMAS/SHANNON SHUMATE** **Scott Hughes**	**MOTION TO EXTEND AUTOMATIC STAY** **11-28-17 [9]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 28, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Thomas Shumate and Shannon Shumate ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 16-20602) was dismissed on November 3, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 16-20602, Dckt. 102, November 3, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor could not afford mortgage payments; now, Debtor states that property will be sold, instead of proposing a plan to cure mortgage arrears. Dckt. 11 at 2:9–12.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on November 29, 2017. Dckt. 13. The Chapter 13 Trustee does not oppose the Motion because Debtor has proposed a plan that calls for Debtor to sell or surrender real property by December 2018.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay filed by Thomas Shumate and Shannon Shumate ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. **14-23652-E-13** **PHILIP/YVETTE HOLDEN**
SDB-8 **W. Scott deBie**

MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH METROPOLITAN VAN AND STORAGE, INC.
11-10-17 [145]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2017. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Philip Holden and Yvette Holden, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Metropolitan Van and Storage, Inc., a California Corporation ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Yvette Holden's claim for wrongful termination against Settlor.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 149):

A. A total settlement amount of $35,000.00;

B. Of the total amount, $15,750.00 in fees and $6,280.96 for cost reimbursement are designated to Movant's counsel (JML Law, APLC; Order Authorizing Employment, Dckt. 115); and

C. A balance of $12,969.04 to Movant.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on November 14, 2017. Dckt. 151.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant does not address the factors set forth by the Ninth Circuit specifically, but the court notes that three of the four factors are apparent in the pleadings, and they favor approving the compromise. First,

Movant's counsel in state court, Joseph Lovretovich, filed a declaration in this matter. Dckt. 147. In the declaration, he states that after Settlor offered to settle for $35,000.00, he informed Movant she could possibly receive a higher award through litigation, but counsel advised accepting the offer because it was "reasonable given the circumstances of [Movant's] case." *Id.* at 2:22–23.

Second, Movant's counsel expresses that Yvette Holden's "employment and the events leading to her termination were complex," involving substantial discovery, mediation, and eventually setting the matter for trial. *Id.* at 2:17–19.

Finally, the settlement will net $12,969.04 for Movant, which can be used in the best interest of creditors in this case. *Id.* at 3:2.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it ends what Movant alleges would be further complex litigation to obtain a recovery that may or may not be higher than the reasonable amount offered by Settlor. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Philip Holden and Yvette Holden, Chapter 13 Debtor, ("Movant") 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 for Approval of Compromise between Movant and Metropolitan Van and Storage, Inc., a California Corporation ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 149).

4. **17-25486-E-13** **CHERYL HANSEN**
SS-4 **Scott Shumaker**

MOTION TO MAKE TRIAL PERIOD PAYMENTS FOR A HOME LOAN MODIFICATION OF NOTE HELD BY NATIONSTAR MORTGAGE, LLC
11-27-17 [65]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Trial Loan Modification is granted.

The Motion to Approve Trial Loan Modification filed by Cheryl Hansen ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage, LLC, d/b/a Mr. Cooper ("Creditor") has agreed to a temporary loan modification that will reduce Debtor's mortgage payment from the current $1,669.76 per month to $1,367.94 per month for three months beginning in December 2017.

The Motion is supported by the Declaration of Cheryl Hansen. Dckt. 67. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on November 28, 2017. Dckt. 70. He states that he does not oppose the Motion.

RULING

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Trial Loan Modification filed by Cheryl Hansen ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Cheryl Hansen to enter into the Trial Loan Modification Agreement with Nationstar Mortgage, LLC, d/b/a Mr. Cooper ("Creditor"), which is secured by the real property commonly known as 3700 Far Niente Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dckt. 68).
>
> ~~**IT IS FURTHER ORDERED** that Debtor is authorized to make the trial loan modification payments directly to Creditor, rather than through the Chapter 13 Trustee, for the months **xxxx, 2017** through **xxxx, 2018**. Said payments shall be deemed as having been made through the Chapter 13 Trustee as a distribution in this case.~~

5. **17-26088-E-13** **DENNIS/PENNY MELUM**
Patricia Johnson

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC 10-16-17 [20]

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

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

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

FN.1. Creditor is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on October 16, 2017. By the court's calculation, 57 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Nationstar Mortgage LLC d/b/a Mr. Cooper ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan does not cure arrears owed to it.

DEBTOR'S RESPONSE

Dennis Melum and Penny Melum ("Debtor") filed a Response on November 30, 2017. Dckt. 28. Debtor argues that there are no arrears because all of the payments have been made and that Creditor has

"failed and refused to apply [the payments] correctly." *Id.* at 1:25–26. Debtor argues that $3,558.72 was paid on July 16, 2017, to bring their account current, but Debtor disagrees with $1,162.50 that Creditor asserts is owed.

Debtor argues that $105.00 charges for "NSF checks" are more than the industry standard, that a $965.95 charge for "Amount Incurred" is ambiguous, that sixty-three property inspection fees are unnecessary, and that "'BPO' fees and 'adversary costs'" are unclear and unrelated to any adversary issue Debtor was aware of.

Debtor requests that the court overrule the Objection because Creditor misapplied payments and provided misleading information about how its claim was calculated.

RULING

Creditor's objection is well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim asserting $2,132.19 in pre-petition arrearages. The Plan does not propose to cure those arrearages. Debtor appears to be arguing an objection to Creditor's entire claim, not just about whether the proposed plan is confirmable. Instead of proposing how the Plan can cure the asserted arrearage, Debtor maintains that there is no arrearage.

To the extent that Debtor objects to Creditor's claim or to any notices of mortgage payment change, that type of objection must be raised as a separate pleading. At this time, Debtor has not presented any evidence that there is no arrearage. Debtor has only questioned the amounts listed by Creditor. That defense strategy is not sufficient overcome the Objection.

The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Nationstar Mortgage LLC d/b/a Mr. Cooper ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

6. **17-26088-E-13** **DENNIS/PENNY MELUM** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Patricia Johnson** **PLAN BY DAVID P. CUSICK**
11-15-17 [24]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 15, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Dennis Melum and Penny Melum ("Debtor") have not made any plan payments;

B. The Plan relies upon an unfiled motion to value;

C. Debtor cannot comply with the Plan because the proposed treatments for two ongoing mortgage payments are unclear;

D. The Plan does not indicate how attorney fees will be handled; and

E. The Plan fails the liquidation analysis.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $1,475.00 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Siskiyou Central Credit Union. Debtor has failed to file a Motion to Value the Secured Claim of Siskiyou Central Credit Union, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Chase Bank and Nationstar Mtg are listed in Class 1 each with arrears of $0.00. Schedule J includes $969.69 for additional mortgage payments above ongoing payments, however, making the Class 1 treatment unclear. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Section 2.06 of the Plan does not indicate whether Debtor's counsel will seek attorney fees by separate motion or pursuant to Local Bankruptcy Rule 2016-1(a). The Chapter 13 Trustee does not oppose confirmation on this basis if the court determines that fees may be approved in the order confirming or that they will be determined by separate motion.

Finally, the Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). While Debtor has reported non-exempt equity in the amount of $121,000.00, and Debtor is proposing a twenty-six percent dividend to unsecured claims, additional equity exists. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a twenty-six percent dividend totaling $24,994.99 when there may be upward of $121,000.00 in non-exempt equity.

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

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

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

7. 17-26735-E-13 GEORGE ALM MOTION TO CONFIRM PLAN
RPH-1 Robert Huckaby 10-25-17 [16]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 25, 2017. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

George Alm ("Debtor") seeks confirmation of the Plan to pay priority claims for the Internal Revenue Service and the Franchise Tax Board. Dckt. 18. The Plan proposes payments of $135.00 for sixty months.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on November 6, 2017. Dckt. 24. He argues that filing this Motion is premature. The Notice of Chapter 13 Bankruptcy Case was filed on October 27, 2017, and it indicates that the confirmation hearing will be on January 9, 2018. Dckt. 21. To oppose this Motion, the Chapter 13 Trustee would have to file a pleading before the first Meeting of Creditors.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an Opposition on December 6, 2017. Dckt. 27. He states that the first Meeting of Creditors was conducted and that Debtor did not appear. The Chapter 13 Trustee opposes confirmation because Debtor did not appear at the Meeting of Creditors, is $135.00 delinquent in plan

payments, failed to provide tax returns and business documents, mischaracterized a mortgage debt and loan modification, and failed to file a business attachment to Schedule I.

RULING

The Chapter 13 Trustee is correct that this confirmation hearing has been set early. January 9, 2018, is the date set for any objection to confirmation being set for a hearing on the proposed plan. Dckt. 21. Here, Debtor delayed in filing his Schedules and Plan, so the court could not set the First Meeting of Creditors. Then, when the Schedules were filed, Debtor filed his Plan and Motion to Confirm, and then "quick set" a hearing on the Motion even before the court set the date for the First Meeting of Creditors.

The current hearing date may have worked if Debtor had attended the November 30, 2017 First Meeting of Creditors. However, Debtor did not, precluding that meeting being completed before the hearing on Debtor's current Motion. Debtor has failed to provide the basic business documents necessary for the Chapter 13 Trustee to evaluate the Plan and this case.

On Schedule I, Debtor states that he has $3,700.00 per month in income from his business. Dckt. 15 at 2. However, Debtor provides no statement of business income and expenses. On Schedule J, Debtor lists having ($3,567.00) in monthly expenses, leaving only $133 in Monthly Net Income.

On his Statement of Current Monthly Income, Debtor states that he has $2,500.00 in monthly net income from his business and $1,200.00 in monthly net rental property income. *Id.* at 8.

The Chapter 13 Trustee's Opposition also asserts that Debtor is improperly trying to classify the Nationstar secured claim, for which there is a pre-petition arrearage, as a Class 4 Claim. Debtor had his prior Chapter 13 case, filed on July 20, 2016, converted to a Chapter 7 case on March 28, 2017, and discharge entered on August 14, 2017. 16-24727.

In Proof of Claim No. 1, creditor Nationstar Mortgage states that the pre-petition arrearage for its secured claim is $51,713.70. With a monthly payment of $1,947.21 (including escrow and private mortgage insurance), this would be approximately twenty-five months of payments.

Debtor seeks to confirm a Plan that does not work to cure the arrearage, requires only the $1,909.09 current monthly payment, and improperly modifies (there being no creditor consent) this creditor's claim secured by Debtor's residence. Though in this court creditors' counsel and debtors' counsel have worked out an adequate protection additional provision for making adequate protection payments through the plan for a debtor who in good faith is prosecuting a post-petition loan modification, Debtor has not availed himself of such opportunity available under the Bankruptcy Code.

The proposed Chapter 13 Plan fails to comply with the provisions of 11 U.S.C. §§ 1322 and 1325, and the Motion is denied.

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

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

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

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

8. 17-23464-E-13 MET-3 | **JOSEPHINE MELONE** **Mary Ellen Terranella** | **MOTION TO CONFIRM PLAN** **10-27-17 [97]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 27, 2017. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Josephine Melone ("Debtor") seeks confirmation of the Amended Plan to cure pre-petition arrears while making ongoing monthly mortgage payments. Dckt. 99 at 2. The Amended Plan proposes payments of $632.00 for five months followed by payments of $5,225.00 for the remaining fifty-five months. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

U.S. Bank, National Association, as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor") filed an Opposition on November 14, 2017. Dckt. 105. Creditor argues that Debtor does not have sufficient income to fund a Chapter 13 Plan. 11 U.S.C. § 1325(a)(6). According to Creditor, Debtor has not made five post-petition mortgage payments, and her schedules (after deductions for taxes and business expenses) do not show that she has sufficient income to fund the Plan.

Creditor's predecessor in interest filed Proof of Claim No. 3, which sates that there was a $42,181.51pre-petition arrearage on this claim. In the Opposition, Creditor asserts that there is a six-month post-petition arrearage that has also accrued. Though not providing evidence of such arrearage, in the Motion, Debtor acknowledges that post-petition payments were not made, the monies being used for other family purposes.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 22, 2017. Dckt. 107. He notes that the Amended Plan does not resolve how five post-petition payments due to Wells Fargo Home Mortgage shall be paid.

The Chapter 13 Trustee also questions some of the financial information provided by Debtor on Schedule I. Schedule I shows $3,500.00 in rental income (previously, $3,200.00), but the Motion and Debtor's declaration state that she moved into her residence. Debtor provided a lease agreement at the Meeting of Creditors on June 22, 2017, showing that the lease began on December 5, 2016, and terminates on December 4, 2018. Additionally, Schedule I includes $800.00 for "Side care giver job of mother-in-law," but Debtor has not presented any supporting evidence (outside of her declaration) for the income.

RULING

In her Declaration, Debtor testifies that she "mistakenly thought" that the sixty months of plan payments did not begin until the Plan was confirmed. Dckt. 99. As also stated, during this same time that the payments were "mistakenly" not made, Debtor was using the monies for other family purposes and not limiting her expenses to those stated on Schedule J.

Debtor testifies that she has converted her single family home into a multi-unit rental, her recently remarried husband and her living in one bedroom and then renting out the four other bedrooms and a loft to tenants. Declaration, Dckt. 99 at 3:12.5–16.5. She further testifies that turning her home into a multi-unit rental will generate an additional $3,500.00 in gross rents.

Though Debtor testifies that there have been substantial changes in income and expenses, Debtor has not filed Supplemental Schedules I and J. Debtor has elected to file exhibits showing her post-petition income and expenses. Exhibits A and B, Dckt. 100.

Though remarried, Debtor lists $0.00 in income for her non-debtor spouse. Exhibit A, Dckt. 100. She testifies in her declaration, "My husband operates Advanced Animal Wildlife Control in Solano County

and the greater Bay Area." Declaration, Dckt. 99 at 3:17.5–18.5. On Schedule A/B, Debtor states under penalty of perjury that she has no business-related property (Schedule A/B Question 37, Dckt. 1 at 15), has no licenses or franchises (Question 27, *Id*. at 14), and no interests in any incorporated or unincorporated business (Question 19, *Id.* at 13).

However, on Schedule I (Dckt. 1 at 29), Debtor states that she receives $1,636.00 net income from rental property or a business. This is stated as Debtor's business income, with NA listed under the non-debtor spouse column. On the employment attachment she states that she is employed by Advanced Animal Wildlife Control. *Id.* at 30. On her Statement of Financial Affairs, she states receiving income from operating a business in 2017, 2016, and 2015. Statement of Financial Affairs Question 4, *Id.* at 35. On the Petition, Debtor states that she has a dba, "Advanced Animal Wildlife Control." Petition Question 4, *Id.* at 2. It would appear that the business Debtor does not have is a business called Advanced Animal Wildlife Control, which is Debtor's "DBA," which Debtor's current (former ex-) husband "operates."

Looking at the asserted current expenses on Exhibit B, it appears that the purported $3,500.00 in multi-unit rental income has no expenses. No maintenance. No repairs. No utilities expenses for five tenants. No rental unit taxes. No self-employment taxes. No landlord insurance. No liability insurance.

Taken at face value, Debtor reports having gross income of $7,812.00, of which $800.00 is for her self-employment care revenue, $3,500.00 from her rental business, and $1,636.00 from operating her business (which she does not list on Schedule B but which is stated on the Petition as a DBA)—but only $204.00 per month in income taxes, Social Security taxes, and self-employment taxes. That results in Debtor having $93,744.00 in annual income for which she pays only ($2,448.00) in federal income taxes, state income taxes, and self employment taxes combined.

Debtor's $93,744.00 of income does not include any income of her non-debtor spouse who "operates Advanced Animal Wildlife Control in Solano County and the greater Bay Area" and other income the non-debtor spouse may receive.

The Chapter 13 Trustee is correct—Debtor's financial information is suspect, and her testimony under penalty of perjury not credible. It appears that Debtor's information is a fabrication, existing only as she desires it to be to serve her demands.

The "testimony" of Debtor and the other conflicting information provided under perjury tells a tale of a conscious decision to provide inaccurate information to the court. This appears to be part of a larger scheme, in bad faith, to abuse the Bankruptcy Code and federal judicial system.

The court does not find it credible that Debtor has no expenses for having five tenants that live in her home. The court does not find it credible that in a house with seven adults (Debtor and non-debtor spouse, with five tenants) that the electricity and natural gas (or other heating) expenses are only $200.00 per month as stated on Exhibit B. The court does not find it credible that the garbage, water, and sewer expenses for Debtor, debtor's spouse, and five tenants are only $150.00 per month. *Id.* The court does not find it credible that Debtor has only $204.00 per month in income, self-employment, and Social Security taxes. The Court does not find it credible that Debtor has no rental expenses for providing housing to five tenants. *Id.*

Debtor has not only failed to show that the Plan is feasible, but has demonstrated that Debtor is prosecuting this case in bad faith.

Denial of this Motion may be the least of Debtor's concerns in federal court. The court will refer this matter to the U.S. Trustee for review and consideration of whether Debtor's conduct and statements under penalty of perjury warrant further action—whether in this court, the District Court, or by referral to other offices in the Department of Justice.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed. FN.1.

FN.1. The court notes that this is not Debtor's first foray into bankruptcy court. In 2014, Debtor commenced a Chapter 13 case in which she was represented by the same counsel as in this case. 14-29966. That case was dismissed by order filed on April 12, 2017. The Chapter 13 Trustee in that case filed a Motion to Dismiss that case because Debtor was $6,716.00 in default in plan payments (two months) as of the March 1, 2017 filing of that Motion. Debtor's monthly plan payment in that case was $3,358.00. 14-29966; Motion to Dismiss, Dckt. 33.

Debtor having begun the default in payments with January 2017 and continuing through at least November 2017, there is $33,580.00 of plan payments unaccounted for (other than Debtor stating that some money was used for moving expenses). This assumes that Debtor's purported expenses are accurate and Debtor has "only" $3,358.00 per month to fund a plan as stated in the prior case.

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

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

9. 17-25403-E-13 DPC-3 | **BYLLIE DEE** **Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **11-7-17 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on November 7, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Objection are appropriate.

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Byllie Dee's ("Debtor") claimed exemptions under California law because Debtor claimed exemptions under 11 U.S.C. § 522(b)(2). California Code of Civil Procedure § 703.130 does not allow the federal exemptions. A review of Debtor's Schedule C shows that Debtor has claimed federal exemptions, not California exemptions. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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 Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed federal exemptions are disallowed in their entirety as violating California Code of Civil Procedure § 703.130.

IT IS FURTHER ORDERED that the disallowance is without prejudice to Debtor filing an Amended Schedule C stating the exemptions claimed in this case, with said Amended Schedule C to be filed and served on the Chapter 13 Trustee on or before **xxxxxxxxxx, 2018**.

10.	**17-24407-E-13** **RPH-1**	**PATRICK/MARGUERITE SEEHUETTER** **Robert Huckaby**	**MOTION TO AVOID LIEN OF INTERNAL REVENUE SERVICE AND/OR OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM, NO. 1** **10-18-17 [34]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion to Avoid Lien other relief and supporting pleadings were served on Creditor, Chapter 13 Trustee, creditors on October 18, 2017. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Lien is denied, and all other claims for relief are dismissed.

Patrick Seehuetter and Marguerite Seehuetter, Chapter 13 Debtor, ("Objector") requests that the court avoid the lien of the of the Internal Revenue Service ("Creditor"), Amended Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Motion asserts other claims for relief beyond avoiding the lien. The Claim is asserted to be secured in the amount of $17,196.00 and unsecured in the amount of $55,357.23.

Objector asserts that Creditor filed a Notice of Federal Tax lien on February 9, 2016, showing taxes owed for 2009 and 2010. Objector asserts that they do not have any real property, with the only attachable non-exempt (pursuant to 26 U.S.C. § 6334) property being dirt bikes (approximately $3,500.00)

and bank deposits (approximately $3,700.00). Objector states that they have agreed to pay 2013 and 2015 taxes as secured claims in this case, and those claims total $6,707.60. Additionally, Objector argues that Creditor was overpaid for 2016.

Objector moves for relief under 11 U.S.C. § 522(f).

The Motions states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds and requested relief:

A. The Motion is made pursuant to 11 U.S.C. § 522(f)(1)(A).

B. Debtor filed income tax returns for 2009 and 2010, which are more than three years prior to the 2017 filing of this bankruptcy case.

C. The Internal Revenue Service filed a Notice of Federal Tax Lien on February 9, 2016, in Nevada County, California, asserting a tax lien to secure the 2009 and 2010 tax obligations. The claims asserted in this bankruptcy case for those two tax years are $8,853.36 and $13,585.04, respectively.

D. Pursuant to Internal Revenue Code section 6334, most of Debtor's assets are exempt from execution by the government except for dirt bikes with a value of $3,500.00 and bank deposits of $3,700.00. Debtor asserts that any tax obligation in excess of those amounts is unsecured.

E. Debtor agrees to pay a secured claim in the amount of $6,707.60, which is the value of the non-exempt equity in the personal property assets securing the Internal Revenue Service claim.

Motion to Avoid Lien, Dckt. 34. The "motion" also requests that the court rule on Debtor's objection to the claim as a secured claim in that amount, also issue a declaratory ruling that taxes for 2009 are not secured, also issue a declaratory ruling that taxes for 2010 are not secured, also issue a declaratory ruling that all 2009 and 2010 taxes are dischargeable, and issue a tax determination judgment that Debtor owes no taxes to the Internal Revenue Service for 2016. As discussed below, there is no procedural basis for appending these additional claims for relief with the Motion to Avoid Lien, nor for ignoring the requirement for filing an adversary proceeding when seeking declaratory relief (Federal Rule of Bankruptcy Procedure 7001).

CREDITOR'S RESPONSE

Creditor filed a Response on November 28, 2017. Dckt. 45. Creditor argues that Objector is mistaken "that the tax lien may be avoided and discharged because some of [Objector's] property is exempt from levy." *Id.* at 1:23–24. Creditor asserts that Ninth Circuit law is well-established that a "priority tax claim can be secured by Chapter 13 debtors' household effects and other property which were otherwise exempt from administrative levy." *Id.* at 1:24–26 (citing *United States v. Barbier*, 896 F.2d 377 (9th Cir. 1990)).

Creditor asserts that a federal tax lien has value that is independent of its ability to proceed against property by administrative levy. Additionally, Creditor argues that 26 U.S.C. § 6334's protection against an immediate seizure of a limited amount of a taxpayer's property is not frustrated by acknowledging a tax lien in a Chapter 13 plan. *Id.* at 3:14–16 (*citing Barbier*, 896 F.2d at 380). Creditor states that it is not even trying to foreclose or levy against property, but that what is really is at stake is a determination of whether (and how much of) its claim is secured.

DISCUSSION

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

First, this Objection attempts to combine two separate claims for relief under the Bankruptcy Code. The Federal Rules of Civil Procedure do not allow for multiple claims for relief to be put together in one contested matter. Federal Rule of Bankruptcy Procedure 9014 does not incorporate Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018, which allow for the combining of multiple claims for relief in one adversary proceeding into one contested matter. The Motion to Avoid/Object/Declare/Adjudicate multiple years of tax claims is not permitted under the Federal Rules of Bankruptcy Procedure.

Second, Local Bankruptcy Rule 9014-1(d)(d) states:

> Every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules. Without incorporation by reference to any other document, exhibit or supporting pleading, the motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Where the motion combines requests for relief with differing notice periods or persons entitled to notice, the movant shall give notice consistent with the more expansive notice requirements.

The core request for relief sought is to "avoid" the lien of the Internal Revenue Service pursuant to 11 U.S.C. § 522(f). The court will determine that request for relief, dismissing the other relief without prejudice, rather than dismissing this combined "MoVoidJectDecReleifTaxDet" pleading filed.

Objector has combined grounds under 11 U.S.C. § 506 with a request to avoid Creditor's lien pursuant to 11 U.S.C. § 522(f). The Internal Revenue Service has filed its secured claim in the amount of $17,196.00, with the balance as a general unsecured claim in the amount of $55,357.23. Amended Proof of Claim No. 1, filed November 29, 2017. This reduces the amount of the secured claim from the Original and First Amended Proof of Claim No. 1 filed by Creditor.

The Internal Revenue Service states in the Second Amended Proof of Claim that it asserts the basis for its lien and perfection thereof as being 26 U.S.C. § 6321, which provides:

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

It has long been held that this tax lien is not subject to various exemptions imposed under state law. *See In re Voelker*, 42 F.3d 1050 (7th Cir. 1994); *United States v Heffron*, 158 F.2d 657 (9th Cir. 1947), *cert denied*, 331 U.S. 831.

As the Internal Revenue Service points out, in *United States v. Barbier*, 896 F.2d 377 (9th Cir. 1990), the Ninth Circuit discussed the difference between Congress creating a lien on all property of a tax debtor and imposing limits on executing against property of a tax debtor. This discussion by the Ninth Circuit includes:

> The difference between a levy and a lien also suggests why a lien should still attach to property exempt from levy. A levy forces debtors to relinquish their property. It operates as a seizure by the IRS to collect delinquent income taxes. *See American Acceptance Corp. v. Glendora Better Builders, Inc.*, 550 F.2d 1220, 1223 (9th Cir. 1977); *see also Interfirst Bank Dallas, N.A. v. United States*, 769 F.2d 299, 304-05 (5th Cir. 1985), *cert. denied*, 475 U.S. 1081, 89 L. Ed. 2d 716, 106 S. Ct. 1458 (1986); *Chevron, U.S.A., Inc. v. United States*, 705 F.2d 1487, 1489–90 (9th Cir. 1983) (levy operates as a seizure). The IRS's levying power is limited because a levy is an immediate seizure not requiring judicial intervention. National Bank of Commerce, 472 U.S. at 720–21. A levy connotes compulsion or a forcible means of extracting taxes from "a recalcitrant taxpayer." *Interfirst Bank*, 769 F.2d at 305. A taxpayer subject to an IRS levy is provided certain protections such as notice and an opportunity to pay the taxes due before the seizure. *National Bank of Commerce*, 472 U.S. at 720-21; *Interfirst Bank*, 769 F.2d at 305; *Martinez v. United States*, 669 F.2d 568, 569 (9th Cir. 1981).
>
> A lien, however, is merely a security interest and does not involve the immediate seizure of property. A lien enables the taxpayer to maintain possession of protected property while allowing the government to preserve its claim should the status of property later change. If, for instance, the debtor later sells his exempt personal property for cash, the IRS would be entitled to obtain such proceeds.
>
> Reading sections 6334 and 6321 together leads to the conclusion that the former section is a limitation on the government's ability forcibly to seize the taxpayer's property, but not a bar to the government's ability to assert a security interest in such property. **The plain words of section 6321 allow a tax lien to be**

> **attached to all of the taxpayer's property, including property exempt from IRS levy.**
> . . .
>
> Section 6334's protection against an immediate seizure of a limited amount of taxpayer's property is not frustrated by acknowledgment of the government's tax lien in a Chapter 13 plan. A Chapter 13 plan allows the debtor to make deferred payments, and claims may be satisfied out of future income. See 11 U.S.C. § 1322. Other protections of the bankruptcy court are available to the debtor, as well. It is also significant here that the IRS is making no attempt to enforce the tax lien by means of levy or foreclosure. Thus, no matter what our holding, the Barbiers are not being required to relinquish their exempt property. **Rather, as the government states the issue, "[all] that is involved here is a determination of the extent to which the government is the holder of a secured claim, and, thus, entitled to periodic payments under the debtor's plan."**
>
> In short, Congress has provided the IRS with at least two distinct procedural devices for collecting taxes. We find no indication that Congress intended section 6334 exemption from summary collection proceedings to frustrate the IRS's status, arising under section 6221, as a secured creditor.

United States v. Barbier, 896 F.2d at 379 (emphasis added); *see also IRS v. White (In re White)*, 487 F.3d 199 (4th Cir. 2007); *Sills v. Department of the Treasury, IRS (In re Sills)*, 82 F.3d 111 (5th Cir. 1996); *United States v. White*, 340 B.R. 761 (N.D. N.C. 2006); *United States v. Parmele*, 171 B.R. 895 (N.D. Okla. 1994).

Substantively, Objector's implied argument that Creditor's lien can be disallowed because the Internal Revenue Code prevents levying against certain exempt property falls short. The Internal Revenue Service has a secured claim for the value of all the personal property. Debtor can keep that property and satisfy the secured claim of the Internal Revenue Service, paying it over the five years of the Plan. In so paying the secured claim over the five years, Debtor can ensure that it never fear the Internal Revenue Service swooping in to claim any proceeds from the sale of the property any time in the future. Debtor can also use Chapter 13 to free Debtor from liability on the balance of the unsecured claim.

What Debtor cannot do is destroy the Internal Revenue Service lien under the guise of 11 U.S.C. § 522(f) by asserting that the prohibition on levying on the property is a *de facto* expungement of the statutory lien.

Based on the evidence before the court and established law in the Ninth Circuit, the Motion to Avoid Lien is denied, and all other claims for relief improperly combined in this Motion are dismissed without prejudice. The court has not adjudicated the value of the personal property or whether the Internal Revenue Service's assertion that it has a value of $17,196.00 is valid in denying this motion to avoid pursuant to 11 U.S.C. § 522(f).

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

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

The Motion to Avoid Lien of the Internal Revenue Service, Creditor, filed in this case by Patrick Seehuetter and Marguerite Seehuetter ("Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid Lien is denied, and all other claims for relief stated in the Motion are dismissed without prejudice.

11. 17-24407-E-13 RPH-2 | **PATRICK/MARGUERITE SEEHUETTER** **Robert Huckaby** | **MOTION TO CONFIRM PLAN** **10-18-17 [29]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and creditors on October 18, 2017. The Office of the United States Trustee has not been served. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has not been set properly for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.

Patrick Seehuetter and Marguerite Seehuetter ("Debtor") seek confirmation of the Amended Plan, but they do not provide the court with any explanation as to why, instead just parroting the Code provisions as though that is sufficient to support confirmation. Dckt. 31. The Amended Plan provides for some claims

by the Internal Revenue Service to be paid $128.00 for three months and then $200.00 for fifty-seven months. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

SUFFICIENT NOTICE NOT PROVIDED

The United States Trustee Guidelines for Region 17 indicate that the United States Trustee is supposed to be served with plans in Chapter 13 cases. According to the Proof of Service, Debtor did not serve the United States Trustee with a copy of the Amended Plan. Debtor is required to serve plans to the United States Trustee. Therefore, sufficient notice for this Amended Plan has not been provided. The Motion is denied for insufficient service.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 28, 2017. Dckt. 42. A review of Debtor's Plan shows that it relies on the court disallowing a claim by the Internal Revenue Service. The court has heard that objection and has overruled it.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's net income on Schedule J is $130.36, and Debtor has not demonstrated how plan payments of $200.00 will be possible beginning in month four. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Finally, the Chapter 13 Trustee notes that he opposed a prior proposed plan on the grounds that all pay advices had not been provided, that the Plan was not Debtor's best effort, and that the Statement of Financial Affairs omits any income in 2016. The Chapter 13 Trustee states that none of those issues has been addressed.

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

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

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

12.	**17-26467-E-13** **DPC-1**	**TARYN WESGATE** **John Maxey**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-14-17 [19]**

APPEARANCE OF JOHN MAXEY, COUNSEL FOR DEBTOR REQUIRED FOR DECEMBER 12, 2017 HEARING

TELEPHONIC APPEARANCE PERMITTED

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 14, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Taryn Wesgate ("Debtor") cannot comply with the Plan, and

B. The Plan fails the liquidation analysis.

DEBTOR'S RESPONSE

Debtor filed a Response on December 6, 2017. Dckt. 27. Debtor promises to address the grounds raised by the Chapter 13 Trustee by proposing an amended plan.

RULING

Unfortunately for Debtor, an amended plan and motion to confirm have not been filed.

The Chapter 13 Trustee's objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the first Meeting of Creditors that she does not receive any spousal support from her estranged spouse, and she has been unemployed since 2006. The expenses listed on Schedule J are below the Internal Revenue Service's ("IRS") national standards, and Debtor failed to disclose a foreclosure attempt by the IRS. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee also raises issues with the proposed plan. The proposed plan payment is $0.00. The plan duration is zero months. Attorney fees of $3,000.00 are listed to be paid through the Plan even though there is no plan payment. Section 2.15 states unclearly:

"***Creditor unsecured gen claim est percent paid NU***%."

No box is checked to indicate whether there are additional provisions. A claim for the IRS was listed without any interest rate or monthly dividend.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). He states that Debtor has non-exempt equity of at least $314,700.00 and that she has not disclosed all of her assets. The Plan does not propose a dividend to unsecured claims despite there being non-exempt equity in Debtor's assets. FN.1.

FN.1. This is a very concerning contention by the Chapter 13 Trustee. If Debtor has such large non-exempt equity and is unable to prosecute a plan to pay creditors, it may fall to an independent fiduciary to liquidate the property of the estate and pay creditors' claims.

Taken at face value, Debtor's statements under penalty of perjury in the schedules include:

A. Debtor has an interest in real property, which interest has a value of $343,000.00.

B. Debtor owns no vehicles.

C. Debtor owns no jewelry.

D. Debtor has no cash.

E. Debtor has no checking, saving, or other accounts at any financial institutions.

F. Debtor has no stock, investment, or retirement accounts. Debtor has no pension.

G. Debtor states she has a nonspecific "beneficiary interest" with a value of $0.00. In an attachment to Schedule A/B, Debtor states:

> "Attachment 1: Real Property
>
> Property is held in The Lorraine M. Harris 2002 Family Trust. Debtor is the sole beneficiary of the property. The IRS has a tax lien recorded against the property for 1040 income taxes owed by Lorraine M. Harris Family Trust. Debtor is in the process of getting the trustees of the trust to pay the tax bill."

Schedule A/B, Dckt. 1.

Debtor claims no Exemptions on Schedule C. *Id.* at 12–13. On Schedule I, Debtor states she is not employed and has $0.00 in income. *Id.* at 24. On the Statement of Financial Affairs, Debtor states she is married. *Id.* at 29, Question 1. No income is listed for a spouse on Schedule I. Surprisingly, in an attachment to the Statement of Financial Affairs, Debtor states:

> "Attachment 1
>
> Debtor has no interest in this business although spouse filed tax return naming her as proprietor. Business is owned and operated by non-filing spouse and daughter. Spouse filed joint tax returns, however, no income was derived by Debtor"

Id. at 41. Debtor affirmatively states that neither she nor her non-debtor spouse have any income.

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

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

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

13. **17-26719-E-13** **BART SETTER** **OBJECTION TO CONFIRMATION OF**
JCW-1 **Pro Se** **PLAN BY WELLS FARGO BANK, N.A.**
11-16-17 [19]

APPEARANCE OF JAVONNE PHILLIPS AND JENNIFER WONG, COUNSEL FOR WELLS FARGO BANK, N.A., REQUIRED FOR DECEMBER 12, 2017 HEARING

TELEPHONIC APPEARANCES PERMITTED

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on November 16, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

Wells Fargo Bank, N.A., ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Bart Setter's ("Debtor") plan does not provide for arrearages owed to Creditor.

Creditor's objection could be well-taken, if Creditor and counsel had made the effort to provide the court with any evidence of the *facts* argued by Creditor's counsel. The objecting creditor holds a secured claim for which the collateral is Debtor's residence. Schedule D, Dckt. 1. Creditor has not filed a proof of

claim in this case, however. Creditor offers no testimony of there being any arrearage. Rather, Creditor merely relies on the argument (not evidence) by its attorney that an arrearage exists. Though one could *assume* that such a default would prompt the filing of a bankruptcy case, the court is unaware of any Federal Rule of Evidence by which this creditor is allowed to present *evidence* merely by dictating asserted facts to the court.

Given that Creditor regularly appears in this court, as does Creditor's counsel, and both are well aware that the Federal Rules of Evidence are actually applied in this court in determining facts, the court concludes that such *dictating* to the court is a conscious, intentional act.

Though a Chapter 13 plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments or the surrender of the collateral for this claim (11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B)), Creditor has not provided the court with any evidence that an arrearage exists.

The Objection to Confirmation is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A., ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled.

14. 17-26719-E-13 DPC-1 | **BART SETTER** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-14-17 [11]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on November 14, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Bart Setter ("Debtor") did not appear at the First Meeting of Creditors;

B. Debtor has not provided his tax returns and pay advices; and

C. The plan, schedules, and other required documents are incomplete.

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

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

Finally, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The monthly plan payment is listed as $0.00, but Schedule J shows monthly net income of $1,132.00. The Plan is also listed as lasting zero months. Schedules D & J include an ongoing payment of $3,400.00 to Wells Fargo that is not included in the Plan. Schedule E lists no priority claims, but the Internal Revenue Service has filed a claim for $54,412.28 entitled to priority. No personal property listed on Schedule B, and Schedule C is blank. Schedule F may not be filled out correctly because it is blank, too, and the Statement of Financial Affairs is incomplete: Debtor listed income in question #4 but did not provide any information for the rest of the document. Schedule J includes $680.00 for a car payment, but the other schedules and the Plan do not discuss that payment. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is, confirmable.

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

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

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

15. 16-25321-E-13 JAY COHEN MOTION TO MODIFY PLAN
SLE-2 Steele Lanphier 10-31-17 [95]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

Jay Cohen ("Debtor") seeks confirmation of the Modified Plan because he recently found a salaried job that will pay regular wages. Dckt. 97. The Modified Plan proposes paying $27,580.00 through month 14 and then paying $2,953.00 per month for the remainder of the Plan with a zero percent dividend to unsecured claims. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 27, 2017. Dckt. 107. The Chapter 13 Trustee notes that Debtor has actually paid $30,233.00 through fourteen months of the Plan. He does not oppose an amendment in the order confirming correcting total amount paid so far.

The Chapter 13 Trustee's primary reason for opposing the Motion is that the Plan proposes to pay $30,493.00 in Class 1 arrears to a claim that was filed on March 27, 2017, without any arrears listed. That creditor has not amended its claim to include arrears, Debtor has not objected to the claim, and Debtor has not filed a claim for the pre-petition arrears.

In the Original Chapter 13 Plan, Debtor listed a $30,493.00 arrearage for this Claim. Dckt. 7 at 2. This is repeated in the First Amended Plan. Dckt. 31. This is repeated in the Second Amended Plan. Dckt. 71. The Second Amended Plan was confirmed. Order, Dckt. 86.

The proposed Modified Plan filed on October 31, 2017, again listed this Claim as having a $30,493.00 arrearage. Dckt. 98 at 2. Debtor has been consistent in stating this Claim and what Debtor computes the arrearage to be in this case.

For the Creditor's part, on September 29, 2016, counsel for Ditech Financial, LLC, asserting that it was the creditor having the Class 1 secured claim to be paid through the Chapter 13 Plan in an Objection to the Original Plan in this case. Dckt. 20. Ditech's argument was that Debtor could not afford to make the required Class 1 current mortgage payment and the arrearage payment. Ditech does not provide any evidence to support the contention that it was the creditor, nor did Ditech file a proof of claim.

On March 27, 2017 (seven months after this case was filed), U.S. Bank Trust, N.A., as Trustee, filed Proof of Claim No. 13 in this case. U.S. Bank Trust, N.A. asserts in Proof of Claim No. 13 that it is the creditor holding the Class 1 secured claim in this case. No assignment of the underlying Debt or the claim from Ditech has been filed.

U.S. Bank Trust, N.A. in Proof of Claim No. 13, under penalty of perjury, fails to state any arrearage owed for the Class 1 Claim, electing to state under penalty of perjury that the information appropriate in response to the required information was "Notice Only for purpose of complying with 3002.1." Thus, it appears that there is admitted to be no arrearage on the claim secured by Debtor's residence.

On March 29, 2017, U.S. Bank Trust, N.A., as Trustee, filed a Notice of Post-Petition Fees, Expenses, and Charges stating that only a post-petition advance of $1,996.65 for property taxes and $397.69 for insurance were made by U.S. Bank Trust, N.A., as Trustee.

ADMISSION OF NO PRE-PETITION ARREARAGE

Though Debtor believed that there was a pre-petition arrearage, it appears that U.S. Bank Trust, N.A., as Trustee, has admitted that there is no arrearage. This admission may be intentional or may be part of a plan/scheme/program to mislead the court or have a debtor make additional payments to favor U.S. Bank, N.A. Trust.

At this juncture, the court is considering several responses. One would be to refer this matter to the U.S. Trustee to investigate and take such action as appropriate as related to Proof of Claim No. 13 filed under penalty of perjury. Unfortunately, this would not address Debtor's immediate needs concerning confirming a modified plan.

Another would be for the court to have Debtor file an objection to Proof of Claim No. 13 and force U.S. Bank Trust, N.A. to correct its admission under penalty of perjury that there is no pre-petition arrearage. In prevailing on the Objection and forcing U.S. Bank Trust, N.A. to recant its admission under

penalty of perjury so Debtor could pay more money to U.S. Bank Trust, N.A., Debtor presumably would request that it be awarded prevailing party attorney's fees under the contract.

However, that does not address for the court the apparent abuse of the federal judicial system if, as Debtor believes, an arrearage exists and U.S. Bank Trust, N.A., as Trustee's, under penalty of perjury not stating any arrearage. This court could issue an order to show cause why the court should not accept such admission and determine that there is no pre-petition arrearage to be cured by Debtor. This would necessitate ordering Ditech, counsel for Ditech, U.S. Bank Trust, N.A., and the person filing Proof of Claim No. 13 to appear, in person, at the hearing on such Order to Show Cause to address the issues of: (1) who is the Creditor and (2) the admission that there is no arrearage.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Jay Cohen ("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.
>
> **IT IS ORDERED** that the Motion is **xxxxxxxxxxx**.

FINAL RULINGS

16.	**16-27135-E-13** **HLG-3**	**MARY HAWTHORNE** **Kristy Hernandez**	**MOTION TO APPROVE LOAN MODIFICATION** **11-8-17 [47]**

Final Ruling: No appearance at the December 12, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Mary Hawthorne ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $1,703.98 per month to $1,425.95 per month (after one month's payment of $1,522.26). The modification will capitalize the pre-petition arrears and provide for an interest rate of 3.918% for 210 months.

The Motion is supported by the Declaration of Mary Hawthorne. Dckt. 49. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on November 27, 2017. Dckt. 52. The Chapter 13 Trustee states that he does not oppose the Motion.

RULING

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Mary Hawthorne ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Mary Hawthorne to amend the terms of the loan with Wells Fargo Home Mortgage ("Creditor"), which is secured by the real property commonly known as 150 Kenyon Way, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit C in support of the Motion (Dckt. 50).

17. 17-26813-E-13 DPC-1 — FREDDIE/PAMELA SELLS — Mikalah Liviakis — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 11-14-17 [17]

Final Ruling: No appearance at the December 12, 2017 hearing is required.

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

Additionally, the court entered an order confirming the Plan on November 28, 2017. Dckt. 25.

18. 17-24965-E-13 DAT/KAMYIN LUONG MOTION TO CONFIRM PLAN
MRL-1 Mikalah Liviakis 10-27-17 [25]

Final Ruling: No appearance at the December 12, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 27, 2017. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Dat Luong and Kamyin Luong ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on November 28, 2017. Dckt. 31. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Dat Luong and Kamyin Luong ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on October 27, 2017, is confirmed. Debtor's Counsel shall

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

19. 17-26590-E-13 DPC-1 | **RICHARD HUETTNER** **Matthew DeCaminada** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-14-17 [16]**

Final Ruling: No appearance at the December 12, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 14, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Objection. The defaults of the non-responding parties in interest are entered.

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on December 19, 2017.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Richard Huettner ("Debtor") appeared at the first Meeting of Creditors, but he did not present verification of his Social Security number, and he was not sworn in or examined.

The Chapter 13 Trustee requests that the Objection be continued to 3:00 p.m. on December 19, 2017, which is after the continued Meeting of Creditors that is scheduled for 11:00 a.m. on December 14, 2017.

Appearance at the Meeting of Creditors is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The hearing on the Objection to Confirmation is continued to 3:00 p.m. on December 19, 2017, to allow Debtor to appear at the continued Meeting of Creditors and be examined.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on December 19, 2017.