IT IS SO ORDERED.
Signed May 27, 2014

Arthur S. Weissbrodt
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re	Case No. 13-52521-ASW
WILLIE JOHN RILEY,	Chapter 13
Debtor.	Date: May 6, 2014
	Time: 2:30 p.m.

DECISION SUSTAINING CREDITOR'S OBJECTION

This matter came before the Court for a hearing on February 4, 2014, and on May 6, 2014, on an objection to confirmation filed by Creditor Saratoga Capital, Inc. The Creditor is represented by attorney Elaine Seid, and the Debtor, Willie John Riley, is represented by attorney David Boone. The Chapter 13 Standing Trustee, Devin Derham-Burk, also appeared. Having considered the written and oral arguments of counsel, the Court sustains the Creditor's objection.[1]

[1] On March 17, 2014, this decision was issued as a tentative decision. The parties were given an opportunity to object to the tentative decision prior to the hearing on May 6, 2014. No party has made any arguments against the tentative decision. Instead, the Debtor has filed a Third Amended Plan.

The Creditor holds the first deed of trust on the Debtor's real property located at 3604 Cobbert Drive in San Jose, California (hereafter, "the Property").[2] The Creditor objects to the treatment of the Creditor's loan in the Debtor's Second Amended Plan. Under the Second Amended Plan, the Debtor proposes to make monthly payments to the Creditor in the amount of $2,734.38 for the duration of the plan. However, the Second Amended Plan also provides: "The due date of the term of the balloon payment loan with Saratoga Capital shall be extended for as long as this Chapter 13 case is pending." The Creditor objects to a balloon payment and to the interest-only payments over the plan term, and asserts that the Second Amended Plan violates the "equal monthly payments" requirement of 11 U.S.C. § 1325(a)(5)(B).

The Trustee has made a related objection and states that the Second Amended Plan's treatment of the Creditor's loan may be an impermissible modification under § 1322(c)(2). The Trustee's argument presumes that the Property is the Debtor's principal residence.

The Debtor has responded that because the Property is the Debtor's principal residence, the Debtor may propose a plan which extends the maturity date of the loan in accordance with § 1322(c)(2). However, the Creditor has correctly pointed out that it is immaterial in this case whether the property is the Debtor's residence.

Section 1322(c)(2) provides an exception to the general rule that a loan secured by a principal residence cannot be modified.

[2] Under the Third Amended Plan, the Debtor proposes to sell this Property by September 1, 2014.

By contrast, a loan secured by any property which is not a principal residence can be modified in accordance with § 1325(a)(5). Section 1322(c)(2) simply allows for modification of certain loans secured by principal residences in accordance with § 1325(a)(5), and states: "in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title."[3] Here, there is no dispute that the last payment on the loan at issue became due on August 23, 2013, which is during the plan term, and prior to the final plan payment. Therefore, the loan may be modified in accordance with § 1325(a)(5).

The dispute, here, is whether the proposed Second Amended Plan satisfies the requirements of § 1325(a)(5). Under § 1325(a)(5), there are several circumstances in which the Court can confirm a plan that modifies a secured claim. First, under § 1325(a)(5)(A), the Court can confirm a plan if the holder of a secured claim accepts the plan; this is not the case, here, because the Creditor objects to the Second Amended Plan. Second, § 1325(a)(5)(C) allows for confirmation if the debtor surrenders the property; here, the Debtor has not surrendered the property.

[3] Mr. Boone argued at the hearing that § 1322(c)(2) specifically says that a debtor can "extend the due date." This language does not appear in § 1322(c)(2). Rather, the statute limits modification of a claim to what is allowed by § 1325(a)(5).

This leaves section 1325(a)(5)(B). This statute provides that the Court shall confirm a plan "with respect to each allowed secured claim provided for by the plan" if:

> (i) the plan provides that--
> (I) the holder of such claim retain the lien securing such claim until the earlier of--
> (aa) the payment of the underlying debt determined under nonbankruptcy law; or
> (bb) discharge under section 1328; and
> (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
>
> (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
>
> (iii) if--
> (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and
> (II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan[.]

Put somewhat differently, under § 1325(a)(5)(B), a plan that modifies a secured claim can be confirmed if four requirements are met. The first concerns a creditor's retention of a lien, which is not at issue in this case. The second requires that the value of the property to be distributed under the plan (as of the plan's effective date) not be "less than the allowed amount" of the secured claim. See Rake v. Wade, 508 U.S. 464, 469-70 (1993)

("§ 1325(a)(5)(B)(ii) guarantees that property distributed under a plan on account of a claim, including deferred cash payments in satisfaction of the claim, . . . must equal the present dollar value of such claim as of the confirmation date[,]" and present value implies the payment of interest.); see also In re Barnes, 32 F.3d 405, 407 (9th Cir. 1994) (a plan which proposed to distribute property to pay approximately $25,000.00 of a secured claim of $43,000.00 could not be confirmed because the amount to be distributed during the 5-year plan term was less than the allowed amount of the secured claim). Here, the Creditor does not contend that the proposed payments during the plan term are for less than the allowed amount of the secured claim; rather, the Creditor takes exception to the manner in which the claim is paid. Third, if the plan provides for periodic payments, the payments must be equal; on this point, the Creditor opposes the Second Amended Plan as providing for unequal payments. Fourth, if the claim is secured by personal property, the payments must be sufficient to provide adequate protection. Here, the claim is not secured by personal property.

The Debtor contends that the Second Amended Plan meets the requirements of § 1325(a)(5). The Debtor argues that the Debtor does not contemplate avoiding the Creditor's lien, that the Debtor will attempt to refinance the Creditor's loan after resolving an adversary proceeding against a second lienholder, and that the proposed payments will adequately protect the Creditor while the adversary proceeding moves forward. The Debtor also argues that the Debtor is not required to pay the entire matured loan over the life of the plan, which would "clearly be unfeasible," and that the

Debtor simply wants to extend the due date for the loan to a date during the term of the plan. The Debtor also contends that equal monthly payments are only required for loans secured by personal property and pre-petition mortgage arrears, and are not required for loans which mature during the bankruptcy case for which there are no arrears.[4]

At the hearing on February 4, 2014, the Debtor's attorney stated that the Second Amended Plan does not propose a balloon payment, but simply seeks to extend the due date of the loan. This statement was confusing; the Second Amended Plan specifically refers to a balloon payment. However, the Court understands the Debtor's position to be that the Debtor is not proposing a new balloon payment, and that the due date of the existing balloon payment can be extended to a later period in time, so long as the full payment becomes due prior to the last plan payment. The Debtor's attorney proposed a due date of February 1, 2016. The Debtor believes that under § 1322(c)(2), such extension of the due date is permitted, otherwise § 1322(c)(2) serves no purpose.

At the hearing, the Trustee agreed with the analysis of Debtor's counsel and thought that § 1322(c)(2) allowed for the due date to be extended without the Creditor's consent. The Trustee clarified that the Trustee was concerned, primarily, with the feasibility of the Second Amended Plan, because the Trustee did not think that the Debtor would be able to pay the entire amount due

[4] The Debtor argues that there are no pre- or post-petition arrears owed to the Creditor, and that the cases addressing the application of § 1325(a)(5) should be distinguished on that basis. The Creditor disagrees, and contends that the entire loan is in arrears because the loan matured and was not paid in full. For reasons which shall become apparent in this Decision, it is not necessary to resolve this dispute.

over the five years of the plan. However, the Trustee opined that the feasibility concern could be overcome if the plan provided that the property would be sold or refinanced by a date certain.

The Creditor disagreed with the positions taken by the Debtor and the Trustee. The Creditor also opposed any extension of the due date to February 1, 2016.

As for the Debtor's assertion that § 1322(c)(2) serves no purpose if the due date of a loan cannot be extended to a date certain within the plan term, this is not entirely accurate. Under § 1322(c)(2), if a loan becomes fully payable before the filing of a bankruptcy petition, then payment of the amount due can be spread out over a period of up to 60 months after the loan's original due date. If a loan becomes fully payable after a petition is filed, but prior to the final plan payment, the amount due can be spread out past the loan's due date to the date of the last plan payment. In either scenario, full payment of the loan is not due on the original due date, affording a debtor some relief.

The Debtor's assertion that the equal payments requirement applies only to loans secured by personal property or pre-petition arrears is unsupported. The equal monthly payments provision in § 1325(a)(5)(B) was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), which requires that periodic payments for "every allowed secured claim . . . be made in equal monthly amounts." See Hamilton v. Wells Fargo Bank (In re Hamilton), 401 B.R. 539, 543 (B.A.P. 1st Cir. 2009); see also 8 COLLIER ON BANKRUPTCY, ¶ 1325.06[3][b][ii][A] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2013) (section 1325(a)(5)(B)(iii) precludes, "absent a creditor's acceptance, a plan that provides

for a series of payments followed by a balloon payment in a larger amount.") (citing Hamilton). Congress added this requirement "in response to creditors' concerns about balloon and quarterly payments" and to prevent debtors from "back loading payments to secured creditors or paying them other than on a monthly basis." Hamilton, 401 B.R. at 543.

In Hamilton, the debtor proposed a plan that bifurcated the mortgage on a multi-family dwelling into secured and unsecured claims. The plan proposed to pay the secured claim in monthly installments of $4,029.77 over the plan's term, but in the 60th month, the debtor planned to refinance the mortgage and make a balloon payment. The court in Hamilton ruled that the proposed balloon payment violated the equal monthly payments provision in § 1325(a)(5)(B)(iii)(I), stating: "Overwhelmingly, courts have held that by its very terms, a balloon payment is not equal to the payment that preceded it, and thus violates § 1325(a)(5)(B)(iii)(I)." Id. at 541-43. The court further explained that, absent a creditor's consent, § 1325(a)(5) governs the payment of a secured creditor's claim. Id. at 545.

The decision in Hamilton was followed by Chief Judge Jaroslovsky's decision in the unpublished case of In re Acosta, No. 08-11411, 2009 WL 2849096 (Bankr. N.D. Cal. 2009). In Acosta, the creditor held a first deed of trust on the debtors' real property. Id. at *1. The property was not the debtors' principal residence, so the anti-modification provisions in § 1322(b)(2) did not apply. Id. In the proposed plan, the debtors sought to pay the creditor in full by making adequate protection payments to the trustee, then paying the principal in a final installment upon the refinance or

sale of the property before the final plan payment. Id. Chief Judge Jaroslovsky ruled that this proposal violated the equal payments provision in § 1325(a)(5)(B)(iii)(I), stating: "Section 1325(a)(5)(B)(iii)(I) provides that if the plan calls for payments to a secured creditor, those payments shall be in equal monthly amounts." Id. In so ruling, Chief Judge Jaroslovsky rejected the debtors' argument that the equal payments provision did not apply to "adequate protection payments" -- which debtors said were not "periodic payments" -- characterizing the debtors' argument as "sophistry" and stating that "payments are payments." Id. at *3. The Acosta decision also explains the rationale for the decision that the payments must be equal:

> Before 2005, the court over the years confirmed hundreds, or maybe even thousands, of balloon payment Chapter 13 plans. The court doubts that even a dozen of these cases was actually performed. Debtors retained the absolute right to dismiss, and always exercised the right when a creditor or the Chapter 13 trustee demanded performance. In some cases, the debtors did refinance outside Chapter 13 so that at least the secured creditor was paid. In many cases, the promise to sell or refinance was conveniently forgotten. In the worst cases, tolerated in far too many jurisdictions, the debtors merely filed new Chapter 13 cases and asked for another four or five illusory years. This abuse was undoubtedly one of the reasons Congress enacted § 1325(a)(5)(B)(iii)(I).

Id.

The Debtor has attempted to distinguish Acosta, stating that the debtors in Acosta attempted to pay pre-petition arrears. However, the decision in Acosta -- like the decision in Hamilton -- clearly states that if the plan provides for periodic payments to a secured creditor, the payments must be equal, and balloon payments

are not allowed. The court in Acosta paid no particular note to the type of secured interest.

The same holds true for Hamilton; there, the court did not focus on the type of secured interest being paid. In Hamilton, the debt was bifurcated into secured and unsecured components, but the entire secured debt was to be paid through the plan. There was no focus on an arrearage or its significance. Quite to the contrary; the focus was on the fact that the debt was secured.

In addition to Hamilton and Acosta, there is a surprising amount of law on the applicability of § 1325(a)(5)(B), some published, some not.[5] The cases draw a distinction between loans that mature before the last payment is due under the plan -- meaning loans which mature either before or during the bankruptcy -- contrasted with loans which mature after the bankruptcy.

When the loans mature before the bankruptcy, courts routinely hold that the claim must be paid in full during the life of the plan in equal monthly installments. In the case of In re Cupolo, Slip Copy, 2013 WL 486338, *1-2 (Bankr. E.D. Ky. 2013), the loan on the debtor's residence matured pre-petition,[6] and the debtor's proposed plan provided for monthly payments to the creditor for four and a half years, to be followed by either a balloon payment or a sale or refinance of the property. Following Hamilton, the

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[5] Apart from Hamilton and Acosta, the Debtor has cited no additional cases.

[6] Interestingly, the debtor in Cupolo argued -- like the Creditor in the case at bar -- that the entire debt was in arrears because the debt matured two weeks before the petition was filed. Ultimately, the court in Cupolo paid no note to whether the secured debt was comprised of an arrearage and instead focused on the fact that the debt was secured.

court in Cupolo stated that the default had to be paid in full, in equal monthly payments, during the 60-month plan, and that a balloon payment violated the statute. Id. at *2-3.

Similarly, in the case of In re Henning, 420 B.R. 773, 777-78 (Bankr. W.D. Tenn. 2009), the loan on the debtors' residence also matured pre-petition.[7] The creditor moved for relief from stay, and the motion was granted. Id. at 779. Less than a month later, a plan was confirmed. Id. The plan included monthly payments of $3,011.80 for the ongoing payment and $189.00 for the arrearage, and the debtors were to make a balloon payment to the creditor in the 59th month of the plan. Id. at 779, 786. The debtors asked the court to alter or amend the order lifting the stay, arguing that the proposed treatment of the creditor's debt in the plan was allowable. Id. at 786. In response, the creditor argued that the plan did not comply with § 1325(a)(5)(B)(iii). Id. at 781.

Citing § 1322(c)(2), the court in Henning explained that Congress amended § 1322 to allow debtors to modify loans on their residences in limited circumstances. Id. at 786. The court then concluded that when a loan matures before a bankruptcy petition is filed, this is a situation in which the last payment is due before the final plan payment, and thus falls within § 1322(c)(2). Id. at 787. The court in Henning also stated: "If a debt secured only by the debtor's residence either matures pre-petition or will become due in full prior to conclusion of the plan, the debtor may modify

[7] The secured debt in Henning consisted of a construction loan which came due, in its entirety, approximately 13 months before the petition was filed. The secured claim included the loan of approximately $476,000.00 and an arrearage of approximately $10,000.00. As in Cupolo, the court in Henning focused on the fact that the debt was secured, not on the debt's composition.

the terms of the loan and pay the balance due over the life of the plan," but any modification must comply with § 1325(a)(5). Id. at 786. The court explained:

> When the wide-ranging bankruptcy reforms went into effect in 2005, § 1325(a)(5)(B) was amended to expand the requirements for plans proposing to retain property over the objection of a secured creditor. Now, not only must a plan provide that the creditor will retain their lien and that the value of the property distributed under the plan is not less than the allowed amount of the claim, but if the plan proposes to distribute property by making periodic payments, "such payments shall be in equal monthly amounts."

Id. at 788. Finally, the Henning court concluded that the balloon payment in the 59th month of the plan violated § 1325(a)(5)(B)(iii), but was clearly not content with the outcome:

> The Court finds this decision a difficult one to make because the Hennings appear to be exactly the type of debtors the bankruptcy process was designed to protect: the honest, but unfortunate ones. Were the Court able to assist them in any way in retaining their house, it would. Ideally this would be a situation in which the debtors and creditor worked together to make remaining in the house a possibility for the Hennings, but the Court cannot force Wells Fargo to provide the Hennings a place to live.

Id. at 789, 791.

The Debtor argues that when a loan matures during the bankruptcy case, there should be a different result. However, the Debtor's counsel has not cited a single case or treatise that says so, and the Court's research shows that the same result follows when a loan comes due after the filing of a bankruptcy petition but prior to completion of a plan.

The case of In re Lemieux, 347 B.R. 460 (Bankr. D. Mass. 2006), bears some resemblance to the case at bar. In Lemieux, the

debtors were divorced, and the debt on one of the debtors' residences came due during the pendency of the bankruptcy case.[8] Id. at 461. The debtors proposed a 36-month plan with periodic payments made to the creditor and a balloon payment in the final month, to be paid through a refinance. Id. at 461-62. The creditor opposed the plan and moved for relief from the stay. Id. at 462. In the context of the motion for relief from stay, the creditor argued that the plan violated § 1325(a)(5)(B)(iii)(I). Id. The court agreed with the creditor. Id. at 463-64.

The court in Lemieux also rejected an argument by the debtors that the equal payments requirement applied only to loans secured by personal property -- an argument made by the Debtor, here -- because subsections (I) and (II) of § 1325(a)(5)(B)(iii) operated independently. Id. at 465. The court explained:

> Section 1325(a)(5)(B)(iii) sets forth the required treatment for allowed secured claims beginning with the word "if" followed by subsections (I) and (II) reproduced above. The word "if" precedes both subsection (I) and (II), which are thus independent of one another. Section 1325(a)(5)(B)(iii)(I) applies to real property, particularly as it is conceivable, for example, that a Chapter 13 debtor might have a mortgage on real property but not a lien or other encumbrance on personal property, while both subsections (I) and (II) apply to claims secured by personalty.

Id. at 465; see also In re Butler, 403 B.R. 5, 13 (Bankr. W.D. Ark. 2009) (explaining that subsection I requires equal monthly payments to secured creditors, and "[f]urther, if the creditor's claim is secured by personal property," there is an adequate protection

[8] The debt, which was due in its entirety, included an unstated amount of arrears. The court in Lemieux did not address this distinction and instead focused on how the secured claim, as a whole, could be treated in the chapter 13 plan.

requirement in subsection II); In re Nguyen, Slip Copy, 2012 WL 1110022, *2 (Bankr. D. Or. 2012) (subsection I applies to real property and personal property, subsection II imposes an additional requirement for personal property, and any other reading writes out the "if" in the statute); In re Sanchez, 384 B.R. 574, 577 (Bankr. D. Or. 2008) (explaining the applicability of subsection II to a creditor with a security interest in personal property, and noting that the court was not faced with the issue of deciding whether subsection I applies to creditors secured by real property).

The Court has not found a single case holding that subsection I does not apply to loans secured by real property. Quite to the contrary, the vast majority of cases reviewed by the Court involved loans secured by real property in which the equal payments provision was enforced. While the Debtor has argued that the equal payments provision applies only to personal property loans and arrearages, the Debtor has cited no law to support this outcome. The Court is persuaded by the analysis in Lemieux and concludes that the equal payments provision applies to loans secured by either real or personal property.

Similar to Lemieux, in the unreported case of In re Gray, No. 07-07380-ESL, 2008 WL 5068849 (Bankr. D. Puerto Rico 2008), the loan on the debtors' principal residence also matured during the pendency of the bankruptcy case.[9] The plan provided for monthly payments of $763.00 to the creditor, then a final balloon payment in the 60th month of the plan, to be paid through a refinance. Id.

[9] As in Lemieux, the debt in Gray included an unstated amount of arrears, but the court did not consider the composition of the debt in its analysis and instead looked at the secured nature of the claim in applying § 1325(a)(5)(B)(iii)(I).

at *1-2. Because the final payment on the loan became due before the final plan payment, the court ruled that § 1322(c)(2) allowed for modification of the loan in accordance with § 1325(a)(5). Id. at *2, *4. However, the inclusion of a balloon payment violated § 1325(a)(5)(B)(iii)(I). Id. at *4-5. Instead, the debtor was required to pay principal and interest -- concurrently, and in equal payments -- throughout the term of the plan. Id.

Several other courts have rejected balloon payments at the end of a chapter 13 plan. See In re Fortin, 482 B.R. 35, 41 (Bankr. D. Mass. 2012) (debtor cannot pay pre-petition arrearage in monthly installments followed by a balloon payment at the end of the plan without the secured creditor's consent); In re Bollinger, Slip Copy, 2011 WL 3882275, *1-4 (Bankr. D. Or. 2011) (the equal payments requirement was enacted by Congress in response to creditor concerns, and a balloon payment payable partway through the plan term was not allowed with respect to a loan on investment real property) (citing Acosta); In re Redden, Slip Copy, 2011 Westlaw 2292312, *3-4 (Bankr. S.D. Tex. 2011) (balloon mortgage which matured pre-petition had to be paid in equal monthly payments, and plan proposing a balloon payment was not confirmable);[10] In re Wagner, 342 B.R. 766, 772 (Bankr. E.D. Tenn. 2006) (maintenance and arrearage payments followed by a balloon payment on a home loan);[11] In re Correale-Darling, No. 07-14395-WCH,

[10] In Redden, there was no discussion of the composition of the secured debt or its impact on § 1325(a)(5), although the debtor had contended that approximately $11,000.00 of the $158,000.00 claim represented an arrearage.

[11] The facts of Wagner are somewhat peculiar. After obtaining a chapter 7 discharge, the debtor sought relief under chapter 13. (continued...)

2008 WL 4057141, *3 (Bankr. D. Mass. 2008) (monthly payments toward secured portion of debt secured by real property, followed by a balloon payment);[12] In re Newberry, No. 07-10170, 2007 WL 2029312, *2-3 (Bankr. D. Vermont 2007) (mortgage which matured pre-petition could not be paid in monthly installments followed by a balloon payment).[13] Because of this, the court in Fortin acknowledged that a "cram-down mortgage modification [is] beyond the reach of most chapter 13 debtors." Fortin, 482 B.R. at 41.

Another interesting case is In re Schultz, 363 B.R. 902 (Bankr. E.D. Wis. 2007). In Schultz, it was the chapter 13 trustee who opposed the proposed plan, not the creditor. The debtor's plan provided for a series of equal monthly payments to be made through the trustee, followed by a final payment at the end of the plan to be paid through a refinance. Id. at 903. The trustee argued that a balloon payment did not satisfy the equal monthly payment

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[11](...continued)
The secured claim was in the total amount of approximately $72,000.00, which included an $8,000.00 arrearage. Because of the chapter 7 discharge, the debtor's personal liability had been extinguished. The court therefore stated that if there were an arrearage claim, it would be for the entire amount of the secured claim. In any event, the Wagner court concluded that § 1325(a)(5)(B)(iii)(I) required equal monthly payments until the entire lien claim was satisfied, focusing on the secured nature of the claim and not its components. Wagner, 342 B.R. at 772.

[12] The secured claim may have consisted, in small part, of an arrearage. See Correale-Darling, 2008 WL 4057141 at *2-3. However, the composition of the secured claim was not something the court considered in applying § 1325(a)(5)(B)(iii)(I); the court, like other courts, appeared to be focused on the secured nature of the claim as a general matter. See id. at *3.

[13] There was no mention of any arrearage in Newberry. Also, the court in Newberry concluded that a debt which matured pre-petition should be treated the same as a debt which matures during and prior to the conclusion of the plan. Newberry, 2007 WL 2029312 at *2.

requirement of § 1325(a)(5)(B)(iii). Id. The court held that the periodic payments must be equal, but because the creditor did not object to the plan, the creditor was deemed to have consented to the unequal payments and the plan could be confirmed. Id. at 906-07.

As discussed below, it is not clear whether the dicta in Schultz is correct. In Schultz, and unlike in the case at bar, the debtor elected to pay the entire claim through the plan even though the loan did not mature until after the last plan payment. Id. at 905. Even then, the Schultz court concluded that (unless a creditor consents or surrenders the property) all of the payments needed to be equal to satisfy the statute. The court stated:

> This court holds that periodic payments must be equal, period. This applies when the default is cured and only current payments and arrearage are being paid pursuant to the plan pursuant to 11 U.S.C. § 1322(b)(5) and when a long-term or matured debt are paid in full under the plan.

Schultz, 363 B.R. at 906.

While framed as a "holding," this language in Schultz is more accurately characterized as dicta. A ruling on the application of the equal payments requirement was unnecessary to the decision, given the creditor's consent to the plan's terms. Equally importantly, there is a critical point which the Schultz court did not address -- i.e., whether the debtor in Schultz could have pre-paid the loan as a matter of contract, in which event there would have been no modification of the secured claim, and probably no requirement for the payments to be equal. The Schultz court may not have considered this possibility because the creditor had obtained a foreclosure judgment before the debtor filed for

bankruptcy. However, there will be other cases in which the debtors have the contractual right to pre-pay the loan through the plan in unequal payments, but the case at bar is not that case.

Another case addresses the circumstance in which a loan matures after the plan period, which, as discussed above, is not the situation here.[14] See In re Davis, 343 B.R. 326 (Bankr. M.D. Fla. 2006). In Davis, the loan was set to mature after completion of the plan, so § 1322(c)(2) -- which incorporates § 1325(a)(5) -- could not apply.[15] Davis, 343 B.R. at 327. Instead, § 1322(b)(5) -- which addresses loans that mature after the plan -- was the applicable provision. Id. The court in Davis did not require equal monthly payments to the secured creditor in the plan because the claim for long-term debt matured after the plan. Id. at 328.[16]

To summarize, the majority view is that when a secured debt becomes due either prior to or during the pendency of a chapter 13 bankruptcy case, the payments to the secured creditor in a chapter

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[14] Other courts have recognized that long-term debt might be treated differently in a plan. See Hamilton, 401 B.R. at 545; Cupolo, 2013 WL 486338 at *2; In re Cooper, No. 6:09-BK-11960-ABB, 2009 WL 4258301 (Bankr. M.D. Fla. 2009).

[15] Another court has stated that § 1322(c)(2) only applies when the loan matures either pre-petition or before completion of the plan, which is consistent with the outcome in Davis. See In re Anderson, 458 B.R. 494, 502-03 (Bankr. E.D. Wis. 2011).

[16] The reasoning of Davis has been rejected by several courts. See, e.g. Schultz, 363 B.R. at 906; Hamilton, 401 B.R. at 545 (describing the import of Davis as "simply wrong"); Cupolo, 2013 WL 486338 at *2 ("Like the majority of courts, this court disagrees with Davis."); see also Lemieux, 347 B.R. at 464 (limiting Davis to cases applying § 1322(b)(5) to long-term debt); Acosta, 2009 WL 2849096 at * 1 (following the authority contrary to Davis). This Court does not need to opine with respect to the correctness or vitality of Davis, because Davis is distinguishable on its facts in that the loan matured after the plan.

13 plan must be equal and balloon payments are not permitted, unless the creditor consents, or unless the property is surrendered. This view is supported by COLLIER ON BANKRUPTCY, which plainly instructs that a balloon payment in a chapter 13 plan following a series of payments is not permitted without a creditor's consent. This Court is persuaded that the majority view is, indeed, the correct view. Therefore, the Debtor's proposed Second Amended Plan violates § 1325(a)(5)(B)(iii), and the Creditor's objection is sustained.

IT IS SO ORDERED.

*** End of Decision ***

Court Service List

David Boone
Law Offices of David A. Boone
1611 The Alameda
San Jose, CA 95126

Willie John Riley
P.O. Box 6836
San Jose, CA 95150

Elaine Seid
McPharlin, Sprinkles, & Thomas LLP
160 W. Santa Clara Street, Suite 400
San Jose, California 95113

** Chapter 13 Trustee to be served by ECF