

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

January 29, 2019 at 2:00 p.m.

**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 32.**

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1.	<a href="#">19-20002</a> -C-13 <a href="#">DSB-1</a>	CHAREL/ALMA WINSTON David Barrett	AMENDED MOTION TO EXTEND AUTOMATIC STAY O.S.T. 1-11-19 <a href="#">[18]</a>
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**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2019. The court set the hearing for January 29, 2019. Dckt. 34.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

**The Motion to Extend the Automatic Stay is ~~XXXXX~~.**

Charel Winston and Alma Winston ("Debtors") seek 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 Debtors' second bankruptcy petition pending in the past year. Debtors' prior bankruptcy case (No. 18-27722) was dismissed on December 26, 2018, after Debtors did not file all required documents. *See* Order, Bankr. E.D. Cal. No.18-27722, Dckt. 29. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtors thirty days after filing of the petition.

Here, Debtors' Counsel states that the instant case was filed in good faith and explains that the

previous case was dismissed because Debtors' Counsel does not regularly practice bankruptcy law and did not file a Master Address List. Dckt. 20, Counsel's Declaration. Debtors' Counsel states that Debtors filed the present case in good faith. The court notes that no declaration for either of the Debtors was submitted with this Motion.

### **TRUSTEE'S OPPOSITION:**

The Trustee flags for the court that Debtors' proposed plan proposes to pay \$1,100.00 in administrative expenses, proposes no less than 0% to general unsecured creditors, and does not propose payment for any other creditor including scheduled secured creditor Peter Nguyen & The Ha Vu Le. Dckts. 1; 3. The Trustee also states that he does not believe that Debtors furnished sufficient evidence to rebut the presumption of 11 U.S.C. § 362(c)(4)(D).

### **SECURED CREDITOR PETER NGUYEN AND THE HA VU LE'S OPPOSITION:**

Secured Creditors, Peter Nguyen and The Ha Vu Le Oppose Debtors Motion to Extend the Automatic Stay. Secured Creditor claims that Debtors' prior bankruptcy proceeding was dismissed after Debtors filed a skeletal petition and did not ultimately file all required documents. Secured Creditor disputes Debtors assertion that they have an ownership interest in the property listed as their residence on the petition. Secured Creditor claims that Debtors were merely tenants and Secured Creditor claims are using the bankruptcy proceedings to delay eviction. Dckt. 27.

The court notes that no declaration or exhibits were filed in support of Secured Creditor's Opposition.

### **OPPOSITION OF INTERESTED PARTY PACIFIC GAS AND ELECTRIC COMPANY:**

Pacific Gas and Electric Company ("PG&E") filed an Opposition as an interested party. PG&E claims that despite Debtor's representing that PG&E is an unsecured creditor in the amount of \$21,717.72, Debtors are not PG&E customers and there is not basis to be included in Debtor's plan. PG&E asserts that Debtors reside in a home where Olga Noguez is the customer of record and Debtors may not seek to discharge the debt of another individual. Dckt. 45.

The court notes that no declaration, exhibits, or proof of service were filed in support of PG&E's Opposition.

### **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.

#### Review of Plan and Schedules

The proposed Plan provides for monthly plan payments by Debtor of \$1,100 a month for sixty months. Plan ¶¶ 2.01, 2.03, Dckt. 3.

For Creditors, no claims are listed in Class 1 (secured), Class 2 (secured), Class 3 (secured, collateral abandoned), Class 4 (secured paid directly), Class 5 (priority), and Class 6 (unsecured special treatment). *Id.* ¶¶ 3.07, 3.08, 3.09, 3.10, 3.12, 3.13. For Class 7 general unsecured claims, the Plan provides for a 0% dividend on \$63,091.47 in unsecured claims. *Id.*, ¶ 3.14.

On its face, over the sixty months of the Plan, there will be \$66,000 paid into the plan, with only the Chapter 13 Trustee’s fees of \$5,280 (estimated at 8%), leaving \$61,0720 for payment of unsecured claims. The court is uncertain how the plan, in good faith, projects a 0% dividend on the \$63,091 in general unsecured claims.

On Schedule A Debtors state under penalty of perjury that Debtors own real property commonly known as 4767 Lonesome Dove Drive. Dckt. 1 at 12. Debtors further states that Debtors’ interest in the property is “Fee Simple/Right of possession.” *Id.* On Schedule C Debtor claims an \$100,000 homestead exemption in the Lonesome Dove Property pursuant to California Code of Civil Procedure § 704.730. *Id.* at 22. (The court notes that this section of the California Code of Civil Procedure does not provide for a homestead exemption, but merely the amount of a homestead exemption if one is qualified pursuant to another statute.)

On Schedule D Debtors state under penalty of perjury that Movant has a judgement lien against the Lonesome Dove Property to secure a judgment in the amount of (\$37,747.38), and that such judgment lien is disputed. *Id.* at 24.

Schedule D also lists the Securities and Exchange Commission having a secured claim in the amount of (\$150,000), with the collateral listed as “Bank Accounts Frozen.” *Id.* at 25.

On Schedule I debtor Charell Winston states having income of \$17,000 a month in gross wages as a Trustee with the Dene Bank and Trust. Debtor Charell Winston states that there is no withholding for federal or state income taxes, Social Security taxes, unemployment, or other amounts commonly withheld from wages. *Id.* at 38-39. The income for debtor Alma Winston is stated to be \$0.00.

Debtors have not completed Schedule J to shown their net income. They do include \$3,333 a month for income taxes. (Based on the gross income of \$17,000, that would be approximately 20% for the \$204,000 in annual income. *Id.* at 41-42.

On Schedule J Debtor includes some “curious” expenses, which include the following:

- A. Home Maintenance.....\$1,500 a month.....\$18,000 a year
- B. Electricity, Gas, Heat.....\$2,000 a month.....\$24,000 a year
- C. Water, Sewer, Garbage.....\$ 600 a month.....\$ 7,200 a year
- D. Phone, Cell, Internet.....\$ 700 a month.....\$ 8,400 a year
- E. Other (which Debtors do not specify.....\$4,000 a month.....\$48,000 a year
- F. Food and Housekeeping  
(2 Debtors and a dependant mother)....\$1,500 a month.....\$18,000 a year

*Id.*

Conspicuously absent are property taxes and property insurance if the Debtors own the Lonesome Dove Property in Fee Simple.

On the Statement of Financial Affairs Debtors state that they have additional income of \$10,380 a year for “Taking care of incapacitated mother). Statement of Financial Affairs Question 5, Dckt. 1 at 46. This income is not included on Schedule I, nor is the income of the mother (such as Social Security) or her assets, though Debtors claim her as part of their household.

In response to Question 6, Debtor’s state that they paid Peter Hguyen and The Ha Ve Le \$125,000 on November 15, 2018 for “house.” Statement of Financial Affairs Question 6, *Id.* at 47.

Motion for Relief From Stay and Adversary Proceeding

The Motion for relief From the Automatic Stay filed by Peter Nguyen and The Ha Vu Le sheds a little light on the underlying issues of this case. Peter Nguyen and The Ha Vu Le assert that they purchased the Lonesome Dove Property at a foreclosure sale on January 9, 2017. Motion, Dckt. 31. It alleges that after the foreclosure sale, the movants entered into a one year lease with Debtors, that the lease expired, a stipulation was entered into an unlawful detainer proceeding, and that Debtors breached the stipulation. Further, that the movants entered into a contract to sell the Lonesome Dove Property to Debtors, but that the sales contract included a “forfeiture and damages” provision.

On January 2, 2019, Debtors filed an Adversary Proceeding against Peter Nguyen, The Ha Vu Le, and Bank of New York Mellon, asserting ten causes of action, which include setting aside the foreclosure sale and to quiet title. Adv. Proc. 19-2002. In it Debtors asserting having obtained a lease-option for the Lonesome Dove Property and having a stipulation with the movant.

Denial of Motion

Debtors have not 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 by virtue of their pleadings. Debtors' did not submit a declaration testifying to the necessary facts. While Debtors' Counsel can testify to the facts he has personal knowledge, instances where he states he did not properly prosecute Debtors' prior case, Debtors' Counsel does not appear to have the necessary personal knowledge to attest to Debtors' good faith filing in the present case.

At the hearing ----.

The Motion is ~~xxxx~~, 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 Charel Winston and Alma Winston ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is denied, and the automatic stay is not extended.~~

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2. 19-20002-C-13 CHAREL/ALMA WINSTON  
NW-1 David Barrett

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
O.S.T.  
1-21-19 [31]

THE HA VU LE, PETER NGUYEN  
VS.

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**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 21, 2019. The court set the hearing for January 29, 2019 on January 28, 2019.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----  
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**The Motion for Relief from the Automatic Stay is granted.**

Peter Nguyen and The Ha Vu Le ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4767 Lonesome Dove Drive, Shingle Springs, California ("Property"). The moving party has provided the Declaration of Peter Nguyen and The Ha Vu Le to introduce evidence as a basis for Movant's contention that Charel Winston and Alma Wintson's ("Debtors") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on October 19, 2016. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant states that the hearing on Claim of Right to Possession was set for December 14, 2018 but was continued due to the bankruptcy proceeding.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dckt. 35, Exhibit A. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Peter Nguyen and The Ha Vu Le , and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4767 Lonesome Dove Drive, Shingle Springs, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

**[Federal Rule of Bankruptcy Procedure 4001(a)(3)]**  
**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Peter Nguyen and The Ha Vu Le (“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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Peter Nguyen and The Ha Vu Le and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4767 Lonesome Dove Drive, Shingle Springs, California.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

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**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.

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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 30, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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 Second Amended Plan is denied.**

Newalow Weekes and Linda Wilson Weeks ("Debtors") seek confirmation of the Second Amended Plan and claim that the Second Amended Plan addresses the issues identified in the prior proposed plan. Dckt. 66 (Debtors' Declaration). Specifically, the Second Amended Plan addresses: (1) the payment of the IRS' Claim No. 3-2 by way of an offset of their 2017 federal income tax refund; (2) the Debtors changes in income; and (3) the proper treatment of secured creditor Loancare, LLC's claim.

The Second Amended Plan proposes plan payments of \$1,658.00 for months 7 through 10 and \$1,050.00 for months 11 through 60. Dckt. 69 (Second Amended Plan). Additionally, the Debtors propose a 9.82% dividend to the general unsecured creditors. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 16, 2018. Dckt. 79. The proposed plan pays into the plan tax refunds beginning in 2018 that exceed \$2,000.00; however, the Trustee contends that there are funds derived from the Debtors' 2017 tax refunds that should be paid into the Plan.

Debtors' third amended Schedule A/B lists a federal refund of \$9,361.70 and a state refund of \$4,084.00. Dckt. 70. The Trustee notes that based on a letter from the IRS, the Debtors' received a

\$7,583.29 refund from the IRS after the application of the \$6,492.71 offset for prior tax year liabilities. Dckt. 68, Exhibit B. Accordingly, the Trustee claims that the Debtors received a combined amount of \$11,6667.29 from their 2017 federal and state tax refunds and claims that the non-exempt funds should be paid directly into the plan.

**DISCUSSION:**

At the December 11, 2018 hearing, the court continued the hearing to allow the Debtors' additional time to provide the Trustee with additional information concerning the use of the tax refund proceeds.

*At the hearing ----.*

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) because Debtors have not provided for sufficient non-exempt funds to be paid into the Plan 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 Newalow Weekes and Linda Wilson Weeks ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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**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).**

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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, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2019. 14 days' notice is required. That requirement was met.

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

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**The Motion to Value Collateral and Secured Claim of Capital One Finance("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$4,000.00.**

The Motion filed by Dwayne E. Money ("Debtor") to value the secured claim of Capital One Auto Finance("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Nissan Maxima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$4,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

In support of the valuation, Debtor's declaration states that the vehicle was involved in a collision and sustained damage to the rear of the Vehicle. Dckt. 12. In support of that statement, Debtor also submitted photographs of the Vehicle which reflect a cracked rear fender. Dckt. 13.

The lien on the Vehicle's title secures a purchase-money loan incurred in January 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,000.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$4,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure

3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Dwayne E. Money (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Capital One Auto Finance (“Creditor”) secured by an asset described as 2014 Nissan Maxima (“Vehicle”) is determined to be a secured claim in the amount of \$4,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$4,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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**No Tentative Ruling:** The Motion to Modify the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2018. Thirty-five days' notice is required. That requirement was met.

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

**The court's decision is to xxxx the Motion to Modify the Plan.**

The Trustee opposed confirmation on the basis that:

A. The Trustee is uncertain whether the Debtor is proposing the Trustee pay post-petition taxes without a proof of claim. Here, Debtor's Modified Plan proposes to increase the monthly payment to Tehama County Tax Collector in Class 2A to account for ongoing property taxes.

B. Debtor has not filed Supplemental Schedules I and J to support the income and expenses and proposed plan payment increase.

At the November 20, 2018 hearing, Counsel for Debtor stated that Debtor's sons are increasing their contributions to the Plan by an additional \$600.00 a month to \$1,200.00 a month. The court continued the hearing to afford Debtor additional time to address the current financial information.

At the December 11, 2018 hearing, the court against continued the hearing to allow Debtor to provide additional information to the Trustee.

On January 22, 2019, Thomas Hill, Debtor's son, submitted a declaration stating that he is able to contribute \$600.00 a month to his father's plan, as well as an additional \$600.00 per month for the last 20

months of the plan. Dckt. 33.

**At the hearing -----.**

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

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

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

**IT IS ORDERED** that Motion to Confirm the Modified Plan is **XXXX** and the proposed Chapter 13 Plan is **XXXX**.

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**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).**

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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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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, -----

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**The Motion to Sell Property is granted.**

The Bankruptcy Code permits Lorraine Legg, the Debtor, ("Movant") to sell property of estate under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1791 Landmark Drive, Vallejo, California ("Property").

The proposed purchaser of the Property are Kevin and Carol Anderson, and the terms of the sale are:

- A. Purchase Price: \$600,000.00; as is without the refrigerator
- B. Seller to credit buyers: \$9,000.00 toward closing costs.

**CONDITIONAL NON-OPPOSITION OF SECURED CREDITOR NATIONSTAR MORTGAGE:**

Secured Creditor Nationstar Mortgage, LLC filed a conditional non-opposition stating that so long as the following conditions met: (1) Secured Creditor's Deed of Trust shall attach to the sale proceeds; (2) Secured Creditor's Deed of Trust shall be paid in full through escrow; (3) Secured Creditor's lien remains in place in the event no sale occurs; (4) Secured Creditor will not be surcharged for the cost of

the sale; and (5) Secured Creditor's Proof of Claim No. 9-1 does not represent the full payoff balance as interest and additional advances may have come due prior to the date of proposed sale. Dckt. 61.

## DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

Movant has estimated that a 5% percent broker's commission from the sale of the Property will equal approximately \$30,000.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 5% percent commission.

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 Sell Property filed by Lorraine Legg, the 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 Lorraine Legg, the Debtor, ("Movant") is authorized to sell pursuant to 11 U.S.C. § 363(b) to Kevin and Carol Anderson, or nominee ("Buyer"), the Property commonly known as 1791 Landmark Drive, Vallejo, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$600,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 54, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Debtor is authorized to pay a real estate broker's

commission in an amount equal to 5% percent of the actual purchase price upon consummation of the sale.

- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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Thru #8

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 12, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor appears to have assets listed with insufficient information to determine if the Plan is sufficient to satisfy the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Trustee identifies the following as assets that appear to have insufficient information: Hallo Management; potential interests in a trust; unspecified retirement accounts; and a US Bank account ending in 0682.

B. The Trustee questions whether the Plan is the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor may not be proposing to pay into the Plan all available disposable income and may not be providing for value of all non-exempt assets.

C. The Debtor did not file a Business Budget detailing Debtor's business' income and expenses.

The Trustee also questions the accuracy of Debtor's Schedule I and notes that it does not provide the source of the Debtor's income nor does it reflect the withholdings from the Debtor's spouse's income. The Trustee also flags for the court that the Debtor's business employs the spouse.

D. Debtor's Plan may unfairly discriminate unsecured creditors because the plan provides for monthly payments of Debtor's spouse's student loans of \$350.00 a month, while the general unsecured will only receive a 2% dividend.

E. Debtor's Plan relies on a Motion to Value. The court notes that no Motion to Value is presently pending.

F. Debtor has not provided the Trustee with a tax transcript or copy of the Debtor's 2017 Federal Income Tax Return.

**At the hearing -----.**

Absent evidence that Debtor's Plan provides for all of Debtor's income and nonexempt assets, that Debtor has provided the Trustee with all necessary records; and that Debtor prevails on the Motion to Value, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 12, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the objection. Objection.**

Creditor Bank of America, N.A. ("Secured Creditor") opposes confirmation of the Plan based on the following:

A. Debtor's Plan does not provide for payment of all pre-petition arrearages within 60 months. Secured Creditor claims that it must receive a minimum payment of \$68.97 a month.

**At the hearing -----.**

Absent evidence that Debtor's Plan provides to pay all required 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 Bank of America N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 26, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to ~~XXXXX~~ the Objection.**

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor's Plan may fail liquidation under 11 U.S.C. § 1325(a)(4). The Trustee questions whether the Debtor has approximately \$104,614.00 in non-exempt equity in property located at 163 Wellfleet Drive, Folsom, CA. The Debtor's Schedule D lists the property as sold to Debtor's ex-fiancé however, the Trustee's review of the property records did not identify a deed transferring title to the ex-fiancé.

B. Debtor may have not listed all sources of income.

C. Debtor did not disclose lease signed for the current residence.

D. Debtor did not list current employer's address on Schedule I upon request of the Trustee.

**DEBTOR'S RESPONSE:**

Debtor responds to the Trustee's Oppositions as follows:

A. Debtor states that she testified at the Meeting of Creditors that she purchased the 163 Wellfleet Drive property with her now ex-fiancé, Tim Eshelman. Eshelman provided the down payment for the home's purchase. When the relationship ended, Debtor and Eshelman negotiated a sales price, as disclosed on Schedule A/B (Dckt. 1, pg. 11), Debtor exchanged her interest in the property for \$22,000.00 in cash along with his assumption of approximately \$13,000.00 in shared credit card debt. Dckt. 25, Decl Debtor. Debtor no longer claims to have control or access to the property and signed a Quitclaim deed recorded with Sacramento County Recorder on July 17, 2018. Exh. 1, Decl. Debtor.

B. Debtor disputes the Trustee's claim that Debtor did not list all sources of income. Debtor claims that the transfer of the real property identified above for cash and assumption of debt is merely a change of character of assets rather than income.

C. Debtor concedes that she did not disclose her lease on Schedule G. On October 5, 2018, Debtor filed an amended Schedule G to reflect the lease. Dckt. 21, Exhibit 4.

D. Debtor concedes that she did not provide her employer's address on Schedule I. On October 5, 2018, Debtor filed an amended Schedule I to reflect the address. Dckt. 21, Exhibit 5.

#### **DEBTOR'S SUPPLEMENTAL DECLARATION:**

On November 16, 2018, the Debtor filed Supplemental Declaration. Dckt. 32. The Debtor states that:

A. The subject property was purchased in February of 2015 with her ex-fiancé. Debtor states that the ex-fiancé paid the down payment of \$45,000.00 and that Debtor did not pay any part of the down payment or closing costs.

B. Debtor states in June of 2017 the home was refinanced paying of Debtor's car loan debt of \$15,000.00 and \$10,000.00 of debt associated with Debtor's ex-fiancé.

C. Debtor states that she and the ex-fiancé ended their relationship and Debtor wanted to sell her interest to the ex-fiancé. The sale of Debtor's interest is stated to have occurred on May 17, 2018. Debtor states they determined the value of the home to be \$575,000.00.

D. Debtor states that she determined she had \$35,000.00 of equity in the property after accounting for the mortgage and the ex-fiance's interest in the property (the down payment, improvements, and benefit from the refinance). Debtor further states that she accepted \$22,000.00 in cash for her stated \$35,000.00 of equity and the assumption by the ex-fiancé of \$13,000.00 of their joint credit card debt.

E. Debtor states that the transfer occurred more than 90 days prior to the filing of the bankruptcy petition and that the actual transfer of funds were executed through several installments. This was because the cashier's check provided to Debtor bounced and the ex-fiancé made installment payments on May 23, 2018 and May 25, 2018 (within the 90 day period prior to the filing of the petition on August 20, 2018 which started on May 22, 2018). Additionally, the ex-fiancé did not pay off Debtor's credit card debt until June 2018.

F. Debtor states that as of June 2018, she has not resided in the home.

## **TRUSTEE'S STATUS REPORT:**

The Trustee filed a status report on December 4, 2018. Dckt. 35. The Trustee states that the Objections based on Debtor's incomplete Statement of Affairs, failure to disclose lease, and incomplete Schedule J have all been resolved through additional filings made by the Debtor.

The Trustee still opposes confirmation based on the following:

A. Debtor's transfer of her stated interest in the subject property may be an avoidable transfer given that payments were made within the 90 days prior to the filing of the petition.

B. The payment of certain credit card debt within the 90 days prior to the filing of the petition are preferential payments subject to avoidance actions by the Trustee. The Trustee notes six different payments totaling \$17,779.26 made within this 90 day period.

## **DEBTOR'S RESPONSE TO TRUSTEE'S STATUS REPORT:**

Counsel for the Debtor responded to the Trustee's Status Report on December 6, 2018. Dckt. 38. Counsel for the Debtor states that because the proposed Plan provides for a dividend to the Unsecured Creditors in an amount "no less than a 2% dividend" the possibility of future avoidance actions to recover preferential payments should not prevent confirmation.

## **DEBTOR'S SUPPLEMENTAL RESPONSE:**

On January 24, 2019, Debtor filed a supplemental response stating that Debtor continues to communicate with the Trustee and plans to submit her State and Federal Tax Refunds to the Trustee for the duration of the Plan period.

## **DISCUSSION:**

Debtor has satisfied several of the Trustee's concerns regarding the omission of information in Debtor's schedules with her amended Schedules G and I filed on October 5, 2018. Debtor also submitted a quit claim deed in support of her contention that title of the property was transferred prior to the filing of the petition. Remaining are the Trustee's contentions that the transfer of the property and payments to certain creditors were completed within the 90 period prior to filing the petition, subjecting the transactions to avoidance actions.

Debtor's Supplemental Declaration attempts to provide more clarity about the transfer of the property. Debtor claims that on May 17, 2018, she "exchanged" her interest in the property in exchange for \$22,000.00 of cash and \$13,000.00 of debt assumption. Dckt. 32. However, Debtor does not provide a contract memorializing this agreement, nor does the evidence support Debtor's contention for two main reasons.

First, the Quitclaim Deed transferring Debtor's interest in the property was not only recorded on July 27, 2018 but it was also *executed* on July 27, 2018. Dckt. 26, Exhibit 1. Accordingly, while Debtor may have had an "agreement" to exchange her interest in the property for cash and assumption of debt on May 17, 2018, Debtor did not actually execute the transfer until July 2018. As such, the transfer of Debtors property interest occurred within the 90 day period before the filing of the

petition.

Second, Debtor claims that the assumption of debt similarly occurred on May 17, 2018, despite the actual payments being made in June. However, Debtor's statement contradicts with the Statement of Financial Affairs in which Debtor claims that she made the payments albeit "via balance transfer to ex-fiancé." Accordingly, the court agrees with the Trustee that the identified transfers in the 90 day period appear to be subject to avoidance actions because they constitute preferential payments.

At the December 11, 2018 hearing, the Debtor's Counsel and the Trustee requested additional time to work on addressing the issues and determining the practical extent of the Trustee's objections. The Trustee stated that he believes that Debtor could provide the necessary information.

At the hearing ----.

~~\_\_\_\_\_ The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not listed all required assets. The objection is sustained and the Plan is not confirmed.~~

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

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

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

~~\_\_\_\_\_ **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.~~

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Thru #13

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**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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:**

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The Order to Show Cause was served by the Clerk of the Court on the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on November 17, 2018.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on November 13, 2018).

**The court's decision is to sustain the Order to Show Cause.**

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

On December 4, 2018, the hearing was continued to permit additional time for the Debtor to cure the delinquency. Debtor's attorney stated at the hearing that he was unable to contact the Debtor because he believed she was in the hospital.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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**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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:**

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The Order to Show Cause was served by the Clerk of the Court on the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on October 18, 2018.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on October 11, 2018).

**The court's decision is to sustain the Order to Show Cause.**

The court's docket reflects that the default in payment which is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

On November 18, 2018, the hearing was continued to permit additional time for the Debtor to cure the delinquency. Debtor's attorney stated at the hearing that he was unable to contact the Debtor because he believed she was in the hospital. On December 4, 2018, the hearing was continued again.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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**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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:**

-----

The Order to Show Cause was served by the Clerk of the Court on the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on January 17, 2019.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$154.00 due on January 9, 2019).

**The court's decision is to sustain the Order to Show Cause.**

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$154.00.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 30, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor is delinquent in plan payment in the amount of \$977.87. Another payment of \$977.87 will become due prior to the hearing. Debtor has paid \$0.00 into the plan.

B. Debtor may not have filed all required tax returns. The IRS filed Claim No. 1-1 indicating that Debtor has not filed a tax return for tax year 2015.

At the December 4, 2018 hearing, Debtor's counsel presented information concerning the recent hospitalization of the Debtor, how the Plan will proceed, and steps counsel and Debtor will take in the prosecution of this case. The court continued the hearing until January 29, 2019 to allow additional time to address the Trustee's concerns.

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because the Debtor has not made all required Plan payments and has not filed all required tax returns. The objection is sustained and the Plan is not confirmed.

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

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

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

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

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**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.

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2018 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition). That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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)

**The Objection to Proof of Claim Number 4-1 of Santander Consumer USA, Inc. is sustained, and the claim is disallowed in its entirety.**

Naomi Ross, the Debtor, ("Objector") requests that the court disallow the claim of Santander Consumer USA, Inc. ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$2,297.18. Objector asserts that in January 2014 Debtor was in possession of a 2003 Mitsubishi Galant that was financed by Creditor. On or around January 17, 2014 Debtor abandoned the vehicle at Economy Radiator, Tire and Repair in Anderson, California because the cost to repair the vehicle was not worth it to the Debtor. Since then, Debtor believes that the lienholder took possession of the vehicle. In support of that belief, Debtor states that she has not received any notices from the DMV concerning registration for the vehicle.

## 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).

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Santander Consumer USA, Inc. (“Creditor”), filed in this case by Naomi Ross, the Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 4-1 of Santander Consumer USA, Inc. is sustained, and the claim is disallowed in its entirety. The defaults of the non-responding parties and other parties in interest are entered.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 31, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to ~~xxxx~~ the Objection.**

Secured Creditor, David C. Meyers, opposes confirmation of the Plan based on the following:

A. Debtors' Plan does not provide for all of the pre-petition arrears and does not provide for any interest on the arrears.

B. Debtors' Plan is not feasible.

C. Debtors' Plan is not proposed in good faith because it was only filed to delay a foreclosure sale.

**DEBTORS' RESPONSE:**

Debtors' response alleges that Secured Creditor's Proof of Claim No. 1-1 omits key information that does not allow the Debtors to determine what payments have been incurred. However, the court notes that no Objection to Secured Creditor's Claim has been filed. Debtors state that the Plan payments already incorporate interest on Secured Creditor's arrears and Secured Creditor is not entitled to additional interest. Debtor disputes that the proposed Plan is not feasible.

A review of Proof of Claim No. 1 filed by Creditor states a pre-petition arrearage of \$13,964.92.

The Plan, Dckt. 10, does not compute the Class 1 cure payment using the amount stated in Proof of Claim No. 1, but a lower amount of \$9,416.00 (\$184.63 a month payment for sixty months). For a \$13,964.92 arrearage, the monthly cure amount over sixty months would be \$232.75 a month.

With a monthly plan payment of .....\$1,155.00  
and the following payments

Chapter 13 Trustee fees (estimated 8%).....	(\$ 92.40)
Debtor's Counsel Fees (amort. 60 months).....	(\$ 25.00)
Class 1 Current Mtg Payment.....	(\$ 854.00)
Class 1 Cure (per POC).....	<u>(\$ 232.75)</u>
Surplus/(Under Funded).....	(\$49.15)

At the hearing -----.

The Plan **xxxx** with 11 U.S.C. §§ 1322 and 1325(a). The objection is **xxxx** and the Plan is **xxxx**.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is **xxxx** and the proposed Chapter 13 Plan is **xxxx**.

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**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.

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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 December 18, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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~~.**

Leonard Lopez ("Debtor") seeks confirmation of the Modified Plan because his child support obligation has decreased and his employer is paying additional medical expenses on his behalf. Dckt. 49 (Declaration). Accordingly, Debtor proposes to increase Plan payments from \$800.00 to \$1,800.00 per month. 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 January 14, 2019. Dckt. 53. The Trustee opposes confirmation based on the following:

A. The Plan exceeds the maximum time allowed under 11 U.S.C. § 1322(d) because the Trustee calculates the Plan required (67) months to complete. The Trustee notes that this is because the IRS amended its claim on December 6, 2018 (Claim No. 1-1), increasing the priority taxes. Debtor's Plan as modified proposes to pay all Priority Claims in full and as such would require minimum monthly payments of \$2,353.00 pre month.

#### DEBTOR'S RESPONSE:

Debtor's Counsel responds that Debtor was waiting for the IRS sign a stipulation, however, the lapse in government appropriations has delayed this negotiation. Dckt. 56.

At the hearing -----.

The Modified Plan ~~xxxx~~ with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is ~~xxxx~~ 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 Leonard Lopez y Joe Lauderdale ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 31, 2018, 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.~~

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 8, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor did not appear at the First Meeting of Creditors held on January 3, 2019. The Meeting was continued to February 28, 2019 at 1:00 p.m.

B. Debtor is delinquent \$1,540.00 in plan payments and another payment of \$1,540.00 will be due prior to the hearing. Debtor has paid \$0.00 into the Plan.

C. Debtor did not provide the Trust with a tax transcript or copy of the Federal Income Tax return for the most recent pre-petition tax year as required pursuant to 11 U.S.C. § 521(e)(2)(A).

D. Debtor has not provided the Trustee with 60 days of employer payment advices as required pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

E. Debtor's Plan relies on a Motion to Value. The court notes that no Motion to Value is presently pending.

**At the hearing -----.**

Absent evidence that Debtor will attend the Meeting of Creditors, has cured the outstanding delinquency, and provided all required documents to the Trustee, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 11, 2019. The court set the hearing for January 29, 2019. Dckt. 21.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

**The Motion to Extend the Automatic Stay is granted.**

Jose De Leon ("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. 18-27305) was dismissed on December 13, 2018, after Debtor did not file all required documents. *See* Order, Bankr. E.D. Cal. No.18-27722, Dckt. 11. 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's states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was pro se and did not know what needed to be filed. Dckt. 17. Debtor states that he has retained counsel to represent him in this proceeding.

#### **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.

Debtors 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 by virtue of their pleadings.

**At the hearing ----.**

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 Jose De Leon (“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.

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**No Tentative Ruling:** The Motion to Modify the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2018. Thirty-five days' notice is required. That requirement was met.

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

**The court's decision is to ~~xxxx~~ the Motion to Confirm the Plan.**

The Chapter 13 Trustee objects to the confirmation of the Debtor's Plan for the following reasons:

A. Debtor's Plan exceeds (60) months because it requires (68) months to complete. The Trustee claims that Plan payments should be \$14,899.70, instead of the proposed payments of \$11,635.00, and a monthly dividend to the IRS in Class 2 must be \$1,721.05, instead of the proposed payment of \$1,596.34.

#### **DEBTOR'S RESPONSE:**

Debtor's Counsel responded on September 10, 2018 that due to a recent hospitalization and continuing health concerns he has been unable to respond to the Trustee's Opposition and cannot properly attend the hearing. The Trustee filed a statement of non-opposition to the continuance.

At the September 11, 2018 hearing the court continued the hearing to allow the Debtor additional time to respond.

At the November 20, 2019 hearing Debtor's counsel reported that Debtor's worker's compensation claim is in process. The court continued the hearing to allow the claim to be resolved.

At the hearing ----.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is **XXXX**.

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**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.

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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, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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~~.**

Wesley Joe Lauderdale ("Debtor") seeks confirmation of the Modified Plan because he had unanticipated expenses caring for his now deceased father and is now anticipating to receive \$20,000.00. Dckt. 79 (Declaration). The Modified Plan Debtor proposes pay the \$20,000.00 into the Plan upon receipt of the funds on or before May 2019 and proposes a 100% dividend to the general unsecured creditors. Dckt. 80 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 26, 2018. Dckt. 90. The Trustee opposes confirmation based on the following:

A. The Plan requires more than 60 months to complete. The Trustee states that Plan payments would need to increase to \$2,230.00 over the remaining 34 months of the Plan.

B. Uncertainty concerning retirement loans taken out by Debtor against his 401(k) plan. While Debtor budgets \$435.39 for loan repayments, Debtors pay stubs reflect that Debtor is repaying \$660.51. This is an issue raised in the first Motion to Modify. Dckts. 66, 67, 68. Additionally, the Trustee raised the issue that Debtor appears to have paid off the original retirement loans on May 28, 2017 according to information received at the 341 Meeting of Creditors. In the prior motion Debtor stated that the loan

repayment completion date was incorrect; however, in this Motion states that he did in fact take out a second 401(k) loan to assist in paying back taxes for his father. Additional details regarding the loan are not provided by the Debtor.

C. Debtors Schedules I and J are marked both amended and supplemental and include decreases in monthly expenses from \$5,612.14 to \$2,984.03 that the Trustee believes are not reasonable to for a family size of 6 people.

#### **DEBTOR'S RESPONSE:**

Debtor responds that he is agreeable to increasing the plan payments to \$2,230.00 to allow for the Plan to complete in the required 60 months. Debtor clarifies that the Schedules I and J are supplemental not amended.

Debtor is silent as to the Trustee's concerns regarding the 401(k) loan and decrease in monthly expenses. Debtor merely offers the statement that the proposed plan provides for a 100% dividend to all creditors, that Debtor is current under the proposed plan payments, and is willing to agree to the increased monthly payments.

#### **DECEMBER 11, 2018 HEARING:**

At the December 11, 2018 hearing, the Trustee concurred with Debtor's request for a continuance to address these issues, including the \$20,000.00 inheritance and how Debtor will insure it will be paid into the Plan.

#### **DEBTOR'S SUPPLEMENTAL RESPONSE:**

On January 15, 2019, Debtor submitted a declaration stating that as of November 25, 2018 he has been remitting payments of \$2,230.00 per month. Debtor also states that \$20,000.00 of the \$22,000.00 that Debtor received from the Estate of Dorsette Lauderdale in the form of Life Insurance, has been paid to the Trustee. Debtor states that \$2,000.00 of the payment from the estate was used to pay medical bills related to Debtor's father.

*At the hearing -----.*

The Modified Plan **xxxx** with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is **xxxx** 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 Wesley Joe Lauderdale ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**~~IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 31, 2018, 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.

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**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).**

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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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2019. 14 days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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, -----  
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**The Motion to Extend the Automatic Stay is granted.**

Allison Davison ("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. 18-25214) was dismissed on November 15, 2018, after Debtor was unable to make the required Plan payments. *See* Order, Bankr. E.D. Cal. No. 18-25214, Dckt. 34. 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 issues regarding the inability to make Plan payments has changed. Debtor claims that she obtained a loan modification from Wells Fargo which will allow for feasible monthly Plan payments.

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 Allison Davison (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, 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.

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**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.

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

**Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2019. The Proof of Service does not include the address for the agent for service for Exeter Finance Corp. as reflected on the California Secretary of State website.**

**The Secretary of State reports that Exeter Finance Corp. Has surrendered its corporate status. <sup>FN.1</sup> The surrender document was filed May 30, 2017. On the surrender document Exeter Finance Corp. lists its address for Legal Service to be 222 W Las Colinas Blvd Suite 1800, Irving, Texas 75039. The Certificate of Service for the present Motion lists the following two addresses upon which the pleadings were served:**

**Exeter Finance LLC  
Attn: Managing Officer  
4515 N Santa Fe Ave. Dept. APS  
Oklahoma City, OK 73118**

**Exeter Finance LLC  
Attn: Managing Officer  
Po Box 166097  
Irving, TX 75016**

**Dckt. 18. These are not the address provided by the Secretary of State.**

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**FN. 1. <https://businesssearch.sos.ca.gov/CBS/Detail>**  
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The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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**~~The Motion to Value Collateral and Secured Claim of Exeter Finance Corp. (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$7,350.00.~~**

The Motion filed by James M. Goff (“Debtor”) to value the secured claim of Exeter Finance Corp. (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2008 BMW 550i (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$7,350.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

**TRUSTEE’S RESPONSE:**

On January 17, 2019, the Trustee filed a response stating that Exeter Finance Corp filed Proof of Claim No. 2-1 reflecting a secured claim on \$7,350.00 and an unsecured claim of \$14,988.11

**DISCUSSION:**

The court notes that the Creditor’s valuation of the Vehicle is consistent with Debtor’s valuation. The lien on the Vehicle’s title secures a purchase-money loan incurred on August 10, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$22,338.11. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$7,350.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

~~The Motion to Value Collateral and Secured Claim filed by James M. Goff (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Exeter Finance Corp. (“Creditor”) secured by an asset described as 2008 BMW 550i (“Vehicle”) is determined to be a secured claim in the amount of \$7,350.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,350.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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**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).**

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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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2019. 14 days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.**

Tina Louise Oldweiler ("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. 18-22520) was dismissed on January 13, 2019, after Debtor was unable to make the required Plan payments. *See* Order, Bankr. E.D. Cal. No. 18-22520, Dckt. 34. 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 issues regarding the inability to make Plan payments have changed. Debtor claims that she has unexpected household and automotive expenses that she does not anticipate in the present case.

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 Elliot-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 Tina Louise Oldweiler (“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.

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Thru #25

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 12, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor is delinquent \$4,519.69 in Plan payments with another payment of \$4,519.69 due prior to the hearing. Debtor has paid \$0.00 into the Plan. The Trustee flags for the court that this is Debtor's second Chapter 13 in that past 12 months. Debtor's prior case (Case No. 18-23377) was dismissed on September 21, 2018 for failure to make ongoing payments.

B. Debtor has not provided two years of completed tax returns, 6 months of profit and loss statements, proof of license and insurance as required by 11 U.S.C. § 521(e)(2)(A).

C. Debtor has not provided statements of business income and expenses and the Trustee is not able to determine Debtor's business income.

D. Debtor did not identify the previous Chapter 13 proceeding on the petition.

E. Debtor has not filed a Credit Counseling Certificate.

**At the hearing -----.**

Absent evidence that Debtor has cured the delinquency and provided the Trustee with required documents, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 12, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

Secured Creditor U.S. Bank National Association opposes confirmation of the Plan based on the following:

A. Debtor's Plan does not provide for all of the pre-petition arrears. (Proof of Claim No. 1 lists a pre-petition arrearage of \$149,720.89.)

B. Debtor does not appear to be able to make all required Plan payments.

**At the hearing -----.**

Absent evidence that Debtor's Plan provides for the Secured Creditor's arrears, 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 U.S. Bank National Association having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on January 8, 2019. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to overrule the Objection.**

The Trustee initially opposed Debtor's Plan because it relied on two different Motions to Value. The Trustee filed a supplemental declaration noting that the two motions were granted on January 15, 2018.

The Trustee notes that the stipulation resolving Ally Bank's Opposition to Motion to Value lists the collateral \$2,575.00 higher than is listed in the Plan. The Trustee received an Order Confirming the Plan that increases the monthly dividend to Ally Bank.

**DEBTORS' RESPONSE:**

Debtors filed a response stating that the Motions to Value were resolved and the Order Confirming the Plan reflects the resolution of the those motions.

At the hearing -----.

The Debtors have cured the Trustees objection and the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan is confirmed. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**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.

**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).**

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

**Insufficient 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 January 13, 2019. By the court’s calculation, 16 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).**

**The Motion to Sell Property is ~~XXXX~~.**

The Bankruptcy Code permits Frank Davis, the Debtor, (“Movant”) to sell property of estate under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 3908 Washington Avenue, Sacramento, California (“Property”).

The proposed purchaser of the Property is Tri-Point Properties, LLC, and the terms of the sale are:

- A. Purchase Price: \$180,000.00; as is without the refrigerator
- B. Sale anticipates net proceeds of \$60,583.58.

**DISCUSSION**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: ~~XXXXXXXXXXXXXXXXXX~~.

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate:~~

~~It is not clear from Movant’s motion and exhibits what commission, if any, is contemplated as part of the sale.~~

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 Sell Property filed by Frank Davis, the 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 Frank Davis, the Debtor, (“Movant”) is authorized to sell pursuant to 11 U.S.C. § 363(b) to Tri-Point Properties, LLC, or nominee (“Buyer”), the Property commonly known as 3908 Washington Avenue, Sacramento, California (“Property”), on the following terms:~~

- ~~A. The Property shall be sold to Buyer for \$180,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dekt. 100, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~C. The Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~D. The Debtor is authorized to pay a real estate broker’s commission in an amount equal to 5% percent of the actual purchase price upon consummation of the sale.~~
- ~~E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

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**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.

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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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 14, 2018. 14 days' notice is required. That requirement was met.

The Motion for Waiver of the Certification Requirements for Entry of Discharge 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 for Waiver of the Certification Requirements Of Entry of Discharge  
is **XXXXX**.**

The Motion for Waiver of the Certification Requirements for Entry of Discharge has been filed by Sean Conrad ("Debtor"). On May 31, 2018, Joint-Debtor, Ann Conrad died. Dckt. 98, Death Certificate. With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. Here, Debtor Sean Conrad states that he is able to continue with the administration of the case and requests that court permit him to do so pursuant to Fed. R. Bankr. P. 1016. Debtor asserts that all required Plan payments have been made and cause exists to allow him to complete his plan and obtain his discharge. Dckt. 97.

**TRUSTEE'S RESPONSE:**

The Trustee notes that the plan completed with the payment received on November 20, 2018. The Trustee states that there is insufficient information provided to inform how the surviving Debtor was able to afford the plan payments for the final 6 months of the plan without the income and SSI contributions totaling \$2,008.00 per month prior to her death. The Trustee responds by claiming that Debtor's Motion does not provide information regarding any life insurance that may have been received due to the death of Debtor Lisa Conrad.

The Trustee notes that the Final Report and Account has not been filed as not all disbursement checks have cleared the Trustee's records. The Trustee also flags for the court that the names of non-debtors appear to be improperly included in documents 95 and 97. The Trustee states that this appears to be inadvertent.

At the hearing -----.

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

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

The Motion for Waiver of the Certification Requirements for Entry of Discharge filed by Sean Conrad ("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 **xxxx**.

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**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.

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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 December 7, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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.**

Jaspal Deol ("Debtor") seeks confirmation of the Second Amended Plan to address the obligations predominately arising from an arbitration agreement. Dckt. 90 (Declaration). The Amended Plan proposes to pay \$7,000.00 in month 1 and \$12,500.00 for 59 months. Dckt. 93 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 19, 2018. Dckt. 99. The Trustee's Opposition is based on the following:

A. Debtor may not be entitled to Chapter 13 relief under 11 U.S.C. § 109(e) because Debtor's unsecured debt totaling \$2,050,989.00 exceeds the stated debt limits.

B. Debtor may not be able to make the proposed plan payments. Debtor's plan states that payments will be made in part through Debtor's retained earnings, however, Debtor has not identified the amount of his retained earnings.

C. The Plan requires the Trustee to hold approximately \$36,000.00 each year, which the Trustee states appears to be a bond while the Debtor pursues litigation. The Trustee is not certain this is permissible.

D. The Trustee is not certain Debtor is able to pay the claims scheduled by Goel Family Ventures I LP. The Creditor claims a “Right of Setoff” and the Trustee is not certain if Debtor can make the payments if Creditor seeks a setoff against Debtor’s property.

E. The Plan states that Debtor’s attorney chose to comply with Local Bankruptcy Rule 2016-1(c); however, the Plan states that the attorney received \$8,775.00 prior to the filing of the case. This is \$2,775.00 more than is allowed under the rule.

On December 15, 2018, the court continued the hearing to allow for an arbitration proceeding between Debtor and Secured Creditors Goel Family Venture I LP, Econergy, Inc and Prahbakar Goel to complete. Dckt. 107.

**STATUS CONFERENCE STATEMENT FILED BY SECURED CREDITORS:**

On January 24, 2019, Secured Creditors Prabhakar Goel, Goel Family Venures I LP, and Econergy Inc. Filed a Status Conference Statement in connection with Debtor’s Motion to Confirm Second Amended Chapter 13 Plan. Secured Creditors state that the arbitration has been confirmed and reduced to judgment by the California Superior Court on January 10, 2019.

Secured Creditor further states that the Plan relies on property that is not property of the bankruptcy estate because by virtue of the arbitration certain assets listed were transferred to Secured Creditors on October 1, 2017. Secured Creditor asserts that determinations reached in the arbitration should not be re-litigated within this bankruptcy proceeding.

Additionally, Secured Creditor also asserts that Debtor is not entitled to Chapter 13 relief because the unsecured debt exceeds the debt limits.

Review of Order Confirming Final Arbitration Award:

The court has reviewed the Order and the Arbitration Award attached thereto in considering the issues in this Contested Matter. The findings and determinations as stated in the Order and Award, as relevant to this Contested Matter, include:

- A. Debtor is awarded \$624,291.41 against Creditor Goel. Order, ¶ 1, Dckt. 109. This represents Debtor’s interest in the shares and real property once transferred to Creditor Goel.
- B. Creditor Goel and Creditor Goel Family Ventures is awarded \$438,425.54 against Debtor. *Id.* ¶ 3. This represents 49% of dividends which Debtor improperly distributed to himself.
- C. Creditor Goel and Creditor Goel Family Ventures is awarded \$985,788.72 in attorney’s fees against Debtor and Econergy, jointly and severally. *Id.* ¶ 4.
- D. Creditor Goel and Creditor Goel Family Ventures are awarded \$232,869.66 in costs against Debtor and Econergy, jointly and severally. *Id.* ¶ 5.
- E. A mandatory injunction has been issued requiring Debtor to transfer the shares of stock in Econergy, Inc. to Creditor Goel. *Id.* ¶ A.

- F. A mandatory injunction has been issued requiring Debtor to transfer Debtor's interest in the real property in Ludhiana and control of the Econergy solar plant to Creditor Goel.

**DISCUSSION:**

At the hearing -----.

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 Jaspal Deol ("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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 11, 2018. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor is delinquent \$345.00, with another payment of \$345.00 due prior to the hearing. Debtor has paid a \$0.00 into the plan.

B. Debtor does not appear to have not filed all required tax returns for the four year period preceding the filing of the Petition. Claims filed by the IRS and the Franchise Tax Board reflect that returns for the tax years 2015 and 2017 have not been filed.

C. Debtors Plan relies on a Motion to Value and is otherwise not feasible. The court notes that the Motion to Value was granted at the October 16, 2018 hearing. (Dckt. 32)

**DISCUSSION:**

The October 16, 2018 hearing was continued to November 6, 2018 to permit Debtor additional time to cure the delinquencies.

On October 23, 2018, the Trustee filed a Supplemental Response stating that the Debtor is not current on Plan Payments and has not submitted evidence to demonstrate all required tax returns have been filed.

The November 6, 201 hearing was continued to December 11, 2018 to allow for additional time for the Debtor to cure the deficiencies.

At the December 11, 2018 hearing the Trustee concurred that a continuance was appropriate to provide the Debtor the change to demonstrate the ability to get current and stay current.

**At the hearing -----.**

**DECISION:**

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not made all required payments or filed all required tax returns. The objection is sustained and the Plan is not confirmed.

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

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

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

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

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**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.

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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 November 20, 2018. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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 ~~XXXXX~~.**

Cody Bedoy (“Debtor”) seeks confirmation of the Amended Plan because Plan Payment amount was inadvertently left blank on the previous proposed Plan. Dckt. 13 (Declaration). The Amended Plan proposes monthly plan payments of \$5,600.00 and a 15% dividend to creditors. Dckt. 12 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION:**

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 9, 2019. Dckt. 21. The Trustee states that Debtor admitted at the First Meeting of Creditors that he had a change of circumstances in that his vehicle, a Lincoln MKZ, caught fire and was destroyed. The Trustee states that Debtor will need to file a Second Amended Plan to move Lincoln Automotive Financial from Class 2 to Class 3. Debtor may also have a potential claim against State Farm for insurance proceeds on the vehicle. Additionally, Debtor’s petition does not identify a previously dismissed Chapter 13 case (Case No. 18-23963).

On January 18, 2019 the Trustee filed a Supplemental Response stating that Debtor has not properly listed the secured creditor with respect Debtor’s mortgage. The Plan proposes payments to Bank of California while Debtor’s Schedule D list Dovenmuehle Mortgage, Inc.

**SECURED CREDITOR FORD MOTOR CREDIT COMPANY, LLC OPPOSITION:**

Secured Creditor Ford Motor Credit Company, LLC opposes confirmation because the Plan does not provide for the present value of Secured Creditor's claim. Secured Creditor states that its claim is secured by Debtor's purchase of a 2015 Lincoln MKZ.

**DISCUSSION:**

**At the hearing-----.**

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 Cody Bedoy ("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.

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# FINAL RULINGS

32. [17-26404-C-13](#)  
[PSB-4](#)

JAYME/HEATHER WOOD  
Pauldeep Bains

MOTION TO MODIFY PLAN  
12-20-18 [\[98\]](#)

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**Final Ruling:** No appearance at the January 29, 201 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Jayme Wood and Heather Wood ("Debtors") have filed evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. David Cusick ("the Chapter 13 Trustee") filed a Response indicating that he does not oppose the proposed modified plan and that Debtors are current under the proposed Plan. Dckt. 112. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Harry Jayme Wood and Heather Wood ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtors' Modified Chapter 13 Plan filed on December 20, 2018, is confirmed. Debtors' 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.

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**Final Ruling:** No appearance at the January 29, 2019 hearing is required.  
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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 Debtors, Debtors’ Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2018. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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. Jason Nesbit and Sarah Nesbit (“Debtors”) have provided evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (“the Chapter 13 Trustee”) or by creditors. 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 . Jason Nesbit and Sarah Nesbit (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on December 3, 2018, 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.

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**Final Ruling:** No appearance at the January 29, 2019 hearing is required.

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**The Objection to Debtor's Claim of Exemptions is dismissed without prejudice.**

David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Objection on January 14, 2019, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Roque Delarosa ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 filed by the Chapter 13 Trustee having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is dismissed without prejudice.

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**Final Ruling:** No appearance at the January 29, 2019 hearing is required.

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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 Debtors, Debtors’ Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 26, 2018. 28 days’ notice is required. That requirement was met.

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 grant.**

The Motion to Approve Loan Modification filed by Gregory Borgerson and Cherie Borgerson (“Debtors”) seek court approval for Debtor to incur post-petition credit. Ocwen Loan Services (“Creditor”), whose claim the Plan provides for in Class 1, has agreed to a trial loan modification that will reduce Debtor’s mortgage payment from the current \$3,090.00 per month to \$1,942.22 per month. The modification will capitalize the pre-petition arrears and provide for a fixed interest rate.

The Motion is supported by the Declaration of Debtors. Dckt. 31. 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.

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 Chapter 13 Trustee filed a response stating that he does not oppose Debtor’s Motion. Dckt. 34.

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 Gregory Borgerson and Cherie Borgerson (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Gregory Borgerson and Cherie Borgerson (“Debtors”) to amend the terms of the loan with Ocwen Loan Services (“Creditor”), which is secured by the real property commonly known as 2105 Pimlico Court, Lincoln, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 32).

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