

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Christopher M. Klein**

Bankruptcy Judge  
Sacramento, California

**February 12, 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 42.**

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1.	<a href="#"><u>15-26368</u></a> -C-13	ERNEST/SHARON VICTORINE	CONTINUED STATUS CONFERENCE RE:
	<a href="#"><u>DPC</u></a> -4	Robert Fong	MOTION TO MODIFY CONTEMPT
			ORDER
			UNDER FRBP 9024
			1-30-18 [ <a href="#"><u>157</u></a> ]

**DEBTOR DISMISSED:**

**11/07/2017**

**JOINT DEBTOR DISMISSED:**

**11/07/2017**

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**No tentative provided.**

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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 December 20, 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.

<b>The court's decision is to sustain the Objection.</b>
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Secured Creditor, Ford Motor Credit Company, LLC, opposes confirmation of the Plan based on the following:

A. Debtors' Plan does not provide for the appropriate interest rate on Secured Creditor's claim. Secured Creditor asserts that the Plan should provide for a 7.25% interest an upward departure from the national prime rate of interest of 5.25% (as of December 20, 2018) due to the risk of default on the Plan and the nature of the depreciating secured asset, a 2016 Ford F250 ("the Vehicle").

B. Debtors Plan does not accurately list Secured Creditor's claim because: 1) it is not properly identified as a purchase money security interest; 2) the claim should be listed in Class 2(A) because the Vehicle was purchased 719 days before the petition date; and 3) Secured Creditor is incorrectly identified as Lincoln Automotive Financial Service.

At the hearing -----.

Absent evidence that Debtors has provided for the correct interest rate and accurately listed Secured Creditor's claim in the Plan, 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 January 22, 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.

<b>The court's decision is to sustain the Objection.</b>
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtor's Plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4) because Debtor's non-exempt equity totals \$142,335.00 and Debtor is proposing a 0% dividend to the general unsecured creditors.

B. Debtor may not be able to make plan payments without filing Lien Avoidance Motions against creditors Navy Federal Credit Union and Patelco Credit Union. Both creditors presently have judgment liens against Debtor's residence and those claims are not provided for under the Plan. No avoidance actions were filed at the time the Trustee filed the Objection.

C. Debtor's Plan appears to rely on a Motion to Value Schools Financial Credit Union's secured claim, however, no motion was filed at time of the Trustee's Objection.

D. The Trustee is concerned the Debtor may not be able to make the payment increases provided for in the Plan starting in month 25. The Trustee states that Debtor has not provided any information how Debtor can afford those payments.

E. Debtor did not disclose a debt owed to a family friend in the amount of \$3,000.00, as identified by Debtor at the January 17, 2019 Meeting of Creditors.

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

Absent evidence that Debtors have sufficient disposable income to make required Plan payments, has provided for all non-exempt equity in the Plan, and has filed the appropriate Motions to Value and Avoidance Actions, 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)(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 \$11,666.29 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' Counsel additional time to provide the Trustee with additional information concerning the use of the tax refund proceeds.

At the January 29, 2019 hearing, the Trustee stated that issues had still not been resolved and the hearing was further continued.

**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:** 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 17, 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.

<b>The court's decision is to sustain the Objection.</b>
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The Trustee opposes confirmation of the Plan based on the following:

A. The Debtor is delinquent in plan payments in the total amount of \$345.00, with another scheduled payment of \$345.00 due prior to the hearing. Debtor has paid \$0.00 into the plan.

B. The Plan exceeds (60) months. Per the Trustee's calculations the Plan requires (73) months to complete.

C. The Trustee questions whether the Plan is feasible based on Debtor's stated net business income.

D. The Statement of Financial Affairs does not appear accurate. For example, the Trustee states that Debtor reported no income for the prior two years despite the Debtor's 2016 and 2017 tax returns



reflecting earned income. The Trustee states the Debtor's stated business income is not consistent between Debtor's schedules and his Form 122C-1.

E. Attorneys fees are inconsistently listed. The Plan provides for \$4,000.00 of attorneys fees while the Disclosure of Compensation of Attorney reflects attorney fees totaling \$6,000.00.

#### **JANUARY 15, 2019 HEARING:**

At the January 15, 2019 hearing, the Trustee reported that the Debtor was current in plan payments. The Debtor stated the remaining oppositions by the Trustee could be cured with amended documents. The court set the hearing for final hearing on February 12, 2019.

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

On January 24, 2019, Debtor's Counsel responded to the Trustee's Objections:

A. Debtor is current in Plan payments.

B. Debtor proposes a \$35.00 a month increase to the Plan payments to resolve the feasibility issues, proposing a \$400.00 monthly Plan payment.

C. Debtor claims that gross income is properly estimated at \$3,000.00.

D. Debtor states that the Statement of Financial Affairs will be amended.

E. Debtor's counsel has agreed to not charge this case as a business case and will reduce fees from \$6,000.00 to \$4,000.00.

#### **TRUSTEE'S RESPONSE:**

The Trustee reaffirms his Objection and states that Debtor's counsel addresses but does not resolve the Trustee's Objections. The Trustee states as follows:

A. Debtor did not make the January 25, 2019 Plan payment, one day after the Debtor's filed a response stating Debtor was current in Plan payments.

B. The Trustee notes that increasing the Plan payments to \$400.00 a month will allow the Plan to complete in 60 months, however, the increase required is \$55.00 not \$35.00, as stated by Debtor's Counsel.

C. The Trustee questions Debtor's counsel's claim that \$3,000.00 is a "good predication" of Debtor's income, because it conflicts with filed Schedules I and J.

D. As of the date of filing of the Trustee's Response, Debtor has not filed an amended Statement of Financial Affairs.

E. The states that Debtor's Counsels's reduction of fees does not address the Trustee's objection regarding the inconsistency between the Plan and the Disclosure.

#### **DISCUSSION:**

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

Absent evidence that Debtors are current in plan payments, have sufficient disposable income to make required Plan payments, and addressed the stated informational inconsistencies, 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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**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).

<b>The court's decision is to deny the Motion to Modify the Plan.</b>
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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 January 29, 2019 hearing, the Trustee questioned whether Debtor was permitted to file a claim for post-petition taxes under 11 U.S.C. § 1305.

Congress provides in 11 U.S.C. § 1305(a) for filing post-petition claims:

§ 1305. Filing and allowance of postpetition claims

(a) A proof of claim may be filed by any entity that holds a claim against the debtor—

(1) for taxes that become payable to a governmental unit while the case is pending;  
or

(2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan.

Thus, post-petition taxes and consumer debts as specified may be included in a Chapter 13 Plan, even though they arise post-petition. Pursuant to 11 U.S.C. § 502(a) a creditor or indentured trustee may file a proof of claim. If such creditor does not timely file a proof of that creditor's claim, then 11 U.S.C. § 502(c) authorizes the debtor or trustee to file proof of claim. There is discussion among the trial courts (with no appellate court decisions) about whether this, or some other provision, could be the basis for the Chapter 13 debtor filing a proof of claim for a post-petition tax obligation.

Though the Trustee raises the issue, he does not provide the court with an analysis of why a post-petition obligation for which a proof of claim may be filed would be insulated from the provisions of 11 U.S.C. § 501(c). Unfortunately, the Debtor does not provide the court with any supplemental legal authorities and analysis on this point.

## **DISCUSSION**

Beginning with the present Motion to Confirm the First Modified Plan, Debtor does not state with particularity the grounds upon which the proposed modification is based, but merely says:

“3. Since the confirmation of the Plan, the financial circumstances of the Debtor and/or the legal circumstances of the Plan have changed (See the Declaration in Support of Motion for Order Confirming the Debtor's First Modified Chapter 13 Plan Dated October 9<sup>th</sup>, 2018, filed concurrently with this Motion.”

At best, the grounds can be viewed as not worth the time of Debtor and Counsel to state them in the Motion, and instead expect the court to assemble, state, and then advocate the grounds for Debtor in lieu of a proper motion. At worst, no such proper grounds exist and Debtor is working to try and have the court sufficiently confused so as to improperly grant relief.

In his Declaration, Debtor begins with repeating the general statement above as stated in the Motion. Declaration ¶ 3, Dckt. 23. He then testifies that these non-specific financial or legal circumstances include “I misunderstood that I was responsible for ongoing property taxes from the date of filing.” *Id.* ¶ 4. Debtor offers nothing more in his testimony.

The current confirmed plan in this case requires a monthly plan payment of only \$236.00. Plan,

Dckt. 5; Confirmation Order, Dckt. 15. That Plan requires the payment of \$62 a month on Debtor's pre-petition property taxes and \$91.50 on the pre-petition Homeowners Association ("HOA") fees. Plan, Class 2; Dckt. 5. There are no Class 1 secured claims to be paid through the Plan, and no other classes of claims to be paid in the plan, including no Class 4 secured claims being paid directly by Debtor.

On Schedule I Debtor lists having income of \$974 (Social Security Benefits) and a \$635.00 monthly contribution from his son. Dckt. 1 at 25-26. On Schedule J Debtor lists two dependents - a 37 year old son and a 38 year old son. *Id.* at 27. Though claimed as members of Debtor's household and his "dependents," no income (whether wages, Social Security, or other benefits) is disclosed for the two adult sons.

In looking at Debtor's Schedule J, it is clear that he lists only expenses for himself. *Id.* at 27-29. Debtor states that he has only (\$1,346.50) a month in expenses. *Id.* at 29. Even with these extraordinary low month expenses and the substantial contribution from a son, Debtor states he has only \$236.00 a month to fund a plan. *Id.* at 29.

One reason Debtor's expenses are so low that he has no monthly mortgage payment. Debtor also states under penalty of perjury that his expenses include: (\$25) a month for repairs and maintenance (which seems unreasonably low), \$0.00 for medical and dental expenses (again, it does not appear reasonable that Debtor has no out of pocket medical or dental expenses), (\$75) a month for gas, maintenance and vehicle registration (Debtor listing three vehicles on Schedule A/B), \$0.00 for entertainment, and \$0.00 for vehicle insurance. *Id.* at 27-29.

However, there is one expense that Debtor lists on Schedule J which is filed under penalty of perjury and after Debtor's review:

4. The rental or home ownership expenses for your residence.

...

4a. **Real estate taxes** 4a. \$ 184.00

4b. Property, homeowner's, or renter's insurance 4b. \$ 0.00

...

4c. Homeowner's association or condominium dues 4d. \$ 27.50

*Id.* at 27 (emphasis added).

As shown in Schedule J, Debtor was aware (having reviewed and then signed Schedule J under penalty of perjury) of his budget providing for and his being required to pay his post-petition taxes. It appears that Debtor "knew" he was suppose to make the monthly HOA payment, that amount not having increased for post-petition defaults.

Based on the Schedules in this case, the court does not find credible Debtor's current statements under penalty of perjury that he "misunderstood" that he was responsible for paying the post-petition property taxes (which were provided for in his Schedule J as his ongoing expense). The court also does not find credible Debtor's son's testimony under penalty of perjury that he too "misunderstood" that the payment of post-petition taxes had to be made by the Debtor.

Though purporting to be "unforeseen," the real property taxes were not just "foreseeable," but known and stated by the Debtor, under penalty of perjury, as an expense he would and was required to pay as part of his plan.

In reality, it appears that the reason the taxes were not paid is because the Debtor cannot afford to maintain the house, pay the taxes, and maintain a survivable living situation. Debtor's son, Thomas Hill, has come in stating that he will increase his monthly contribution from \$635 a month to \$1,235.00 a month to fund the plan. This does nothing to help the Debtor maintain a survivable standard of living, but merely fills in, plus 18% interest, the tax monies previously diverted for other expenses.

It may be that the Debtor's two sons are really the ones deriving the benefit of the residence and it would not be unreasonable for them to pay the property taxes. Financially, it would be much better, even if the sons had to borrow the money, then financing it at 18% through a bankruptcy plan.

It may be that there is more occurring in the family dynamics than a debtor who chose to divert the money to pay other necessary expenses. Fortunately, the Debtor has his attorney, who has a fiduciary duty to his client and his client's well being. The court is confident that counsel can and will fulfill such fiduciary obligations and make sure that the best interests of his client are advanced and that he and his assets are not put in peril by others.

Though the issue concerning 11 U.S.C. § 1305(a)(1) is interesting, it has not been briefed and been eclipsed by the Debtor demonstrating that the plan is not feasible and that the Debtor is not prosecuting this case in good faith. Debtor's and his son's current testimony that they were unaware that Debtor would have to pay the real property taxes on the real property that he owns ring hollow.

The motion is denied.

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

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

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

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

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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 17, 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.

<b>The court's decision is to sustain the Objection.</b>
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtors have not provided the Trustee with a copy of the 2017 tax return. The Trustee notes that the Meeting of Creditors has been continued to April 11, 2019 to permit the Debtors to file tax returns.

B. The notes that Claim 2 filed by Ocwen, identified in Class 4 of the Plan, will be paid off in approximately 51 months. The Trustee raises this issue to ensure that the Plan payments account for the full payment of this debt during the life of the Plan. Specifically increasing the Plan payments by \$524.00 for the final months of the Plan.

C. The proposed Plan payments may not be feasible due to additional expenses not listed by Debtors. Specifically, Debtors do not identify any income tax withholding on their Schedule I or Business Income and Expenses statement. Debtors also list vehicles on the Schedules A/B but do not list any insurance premiums on their Schedule J.

D. The Debtors did not provide their Social Security Numbers at the January 10, 2019 Meeting for Creditors.

At the hearing -----.

Absent evidence that Debtors have filed all required tax returns, provided their Social Security Numbers to the Trustee, have provided for all disposable income to be paid for the life of the Plan, and demonstrated that the Plan payments are feasible, 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.

**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 22, 2018. 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, -----

**The Motion to Value Collateral and Secured Claim of Westlake Financial Services ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$8,825.00.**

The Motion filed by Mona Lisa Lawson ("Debtor") to value the secured claim of Westlake Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Volkswagen Jetta SE ("Vehicle"). Debtor states that the Vehicle has approximately 80,000 miles and was notified by the manufacturer that there are emission issues. Dckt. 17. Debtor seeks to value the Vehicle at a replacement value of \$8,825.00 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).

#### **CHAPTER 13 TRUSTEE'S RESPONSE:**

The Trustee responds that he does not oppose the Motion and flags for the court that Debtor provides for the creditor on Schedule D and in Class 2B of the proposed Plan. The creditor has not filed a proof of claim as of the date of the filing of the Trustee's response, with the claim bar date as March 26, 2019. Dckt. 19.

## **DISCUSSION:**

The lien on the Vehicle's title secures a purchase-money loan incurred on October 2, 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 \$15,291.00. 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 \$8,825.00, 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 Mona Lisa Lawson ("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 Westlake Financial Services ("Creditor") secured by an asset described as 2014 Volkswagen Jetta SE ("Vehicle") is determined to be a secured claim in the amount of \$8,825.00, 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 \$8,825.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

\*\*\*\*

**Thru #10**

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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 23, 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.

<b>The court's decision is to sustain the Objection.</b>
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The Trustee opposes confirmation of the Plan based on the following:

A. The Trustee is not certain the Debtor has the ability to make all required Plan payments because:

1. Debtor's Amended Schedule I reflects a reduction of income;
2. The plan proposes the sale of real property. Debtor amended the schedule value after the case was converted from a proceeding under Chapter 7 to increase the value to from \$400,000.00 to \$575,000.00;
3. The Trustee is not clear if the Debtor is leasing a 2014 GMC Terrain.

4. The Debtor did not sign the Chapter 13 Plan, it appears to have been signed by counsel.

B. Debtor's Plan may not be proposed in good faith as it appears to be crafted to allow the Debtor to dissipate non-exempt equity in certain bank accounts before the sale of the real property contemplated in the plan.

C. Debtor's additional provision are not clear regarding when Plan payments start and does not contain sufficient details regarding the sale of the real property in the Plan.

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

Absent evidence that Debtors have sufficient disposable income to make required Plan payments, has provided for all non-exempt equity in the Plan, and has clarified the additional provisions, 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 January 24, 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.

<b>The court's decision is to sustain the Objection.</b>
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U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT ("Secured Creditor") opposes confirmation of the Plan based on the following:

A. Debtor's Plan proposes consistent treatment of Secured Creditor's claim. It both proposes to have the Trustee pay Secured Creditor's post-petition monthly payments and arrearage dividend in Section 3.07 and to only pay the post-petition monthly payments and arrearage dividend after the sale of the secured property in Section 7.03. It is unclear to Secured Creditor what Debtor is proposing, but to the extent Debtor is not proposing any payments until after the sale of the property Secured Creditor Objects to that provision and requests adequate protection payments.

B. Debtor's Plan does not contain a provision if the Debtor does not sell the property.

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

Absent evidence that Debtors have proposed adequate protection payments to the Secured Creditor, and has clarified the additional provisions, 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 Secured Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation 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 16, 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.

<b>The court's decision is to sustain the Objection.</b>
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtors are delinquent \$350.00 in Plan payments with another payment scheduled prior to the hearing. Debtors have paid \$0.00 into the Plan.

B. Debtors may not be able to make all required Plan payments. The Trustee is not certain whether the Debtors have provided for sufficient self-employment withholding. Debtors have not provided as an attachment to their Schedule I reflecting gross income and receipts of their business. Additionally, Debtors' Schedule J lists \$200.00 of self-employment withholding.

**DEBTORS' RESPONSE:**

Debtors' counsel responds that Debtors were confused about when to make their first plan payment and are now current. Debtors have also filed an amended Schedule I with the corrected attachment

that Debtors hope will address the Trustee's concerns. Dckt. 20.

At the hearing -----.

Absent evidence that Debtors are current and have demonstrated they can make all required Plan payments, 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 November 7, 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's Plan may fail the Chapter 7 liquidation analysis. Debtor may have an interest in real property commonly known as 6721 Carnation, Sacramento, California that was not disclosed on Debtor's Schedule A. Additionally, Debtor did not disclose rental income from that property on his Schedules. The Trustee claims that Debtor's 2016 and 2017 tax returns report approximately \$3,000.00 of annual rental income generated from this property. The Trustee also notes that the Debtor stated at the 341 Meeting of Creditors that interest in the property was transferred to J&J, LLC in 2016 and the rental income reported on his tax returns was an error made by his tax preparer; however, the Trustee does not have sufficient information to determine the veracity of Debtor's claims.

B. Debtor's Plan may not be his best effort under 11 U.S.C. § 1325(b). Debtor proposes to pay \$2,600.00 for 6 months and \$74,000.00 from the future sale of Debtor's real property located at 8608 Cassieri Circle, Sacramento, California within 120 days of filing the petition. Dckt. 3. Debtor's Plan

proposes to pay a dividend of 0% to the general unsecured creditors, however, the Trustee asserts that Debtor is able to full pay the scheduled unsecured claims. The unsecured claims that total \$3,954.43.

C. Debtor's Plan relies on the sale of real property; however, Debtor has not filed a motion to employ a broker or real estate agent and has not filed a motion to sell.

D. Debtor has not provided the Trustee with the required Business Documents including: 6 months of profit and loss statements; 6 months of bank statements; and proof of license and insurance or written statement that no such documentation exists.

E. Debtor has not provided his middle name on the Voluntary Petition.

F. Debtor admitted at the 341 Meeting of Creditors that he received a medical bill from Kaiser estimated to be \$13,000.00 that was not identified in Debtor's schedules.

At the December 4, 2018 hearing the court continued the hearing to December 18, 2018 to provide Debtor additional time to respond the Trustee's Objections.

#### DEBTOR'S RESPONSE:

The Debtor responded that Amended Schedules C & E/F were filed on November 15, 2018. Debtor agrees to increase the dividend to the general unsecured creditors to no less than 100%. Debtor requests that this change be made in the Order Confirming the Plan.

#### DISCUSSION:

The December 18, 2018 hearing was continued to allow additional time for the Debtor to organize the sale of the real property located a 8608 Cassieri Circle, Sacramento, CA.

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

Absent evidence that the Debtor has been able to organize a sale, 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 January 16, 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 sustain the Objection.**

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

A. Debtor's Plan relies on a Motion to Value the Collateral of creditor PRA Receivables with respect to a 2008 Ford Expedition and Motions to Avoid the Liens of creditors Employment Development Department and Ocwen Servicing. As of the date of the Trustee's Objection none of the motions were pending.

B. Debtor's Schedule I appears incomplete with respect to Debtor's employment with FKC Rescue. Also, Debtor's Statement of Financial Affairs appears incomplete because no income is listed in question No. 4, no payments to the Class 4 creditors are listed in question No. 6, and absence of charitable contribution in question No. 14 is inconsistent with Debtor's Schedule J.

Absent evidence that the Debtor has addressed the inconsistencies in the Schedules and filed the required Motion to Value and Motions to Avoid Liens, 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)(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 11, 2018. 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 denied.**

Christopher Bergeron (“Debtor”) seeks confirmation of the Modified Plan because Debtor has had changes in his ability to earn income as a truck driver due to expenses related to truck maintenance. Dckt. 20 (Declaration). Debtor states that he will surrender the truck and use a truck provided by a friend that is more reliable. The Modified Plan still provides for a 100% dividend to allowed unsecured claims. Dckt. 22 (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 December 27, 2018. Dckt. 27.

A. The modified Plan proposes to reclassify creditor Calfund, LLC from Class 2 to Class 3. The Plan does not authorize the disbursements already made by the Trustee in the amount of \$5,882.48. This the claim that relates to the surrendered truck.

B. The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not

confirmed.

The court continued the January 15, 2019 hearing to allow the Debtor to transcribe the Plan terms into the correct form, including the amendment to address the Trustee's opposition regarding the Calfund, LLC claim. Upon the final Corrected Modified Plan, the Trustee shall review, and if it accurately transcribes the plan terms, including any amendments as stated at the hearing, an order granting the Motion and order confirming the plan shall be lodged with the court.

As of the court's February 8, 2019 review of the Docket, no such plan had been filed.

**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 Christopher Bergeron ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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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 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).

**Motion to Confirm the Plan is XXXXX.**

Francisco Solorio ("Debtor") seeks confirmation of the Plan filed on November 20, 2018. Dckt. 26 (Declaration). The Plan proposes payments for \$1,225.00 for 60 months with dividend of approximately 8% to general unsecured creditors. Dckt. 28 ( Plan).

#### **CREDITOR'S LATE-FILED OPPOSITION**

U.S. Bank Nation Association ("Creditor") holding a secured claim filed an Opposition on January 9, 2018. Dckt. 38. Creditor asserts that Debtor's Plan does not provide for all pre-petition arrears.

#### **JANUARY 15, 2019 HEARING:**

The court continued the hearing to permit the creditor to file and serve Opposition Pleadings on or before January 25, 2019.

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

On January 24, 2019, the Trustee filed an opposition requesting that the court consider its late filed Opposition. Dckt. 44. The Trustee notes that the circumstances are unusual in that the Debtor noticed and served this motion prior to the meeting of creditors being held.

The Trustee Opposes confirmation based on the following:

A. The Plan does not appear to provide for all of Debtor's disposable income.

W-2s.  
B. The Trustee is not certain Debtor's Schedule I is accurate as it is inconsistent with Debtor's

C. The Trustee is also not certain if other household income is being used toward community expenses such as utilities and food. Specifically since two of the identified dependants are Debtors adult sons.

D. The Trustee questions whether the states expenses on Debtor's Schedule J are accurate.

At the hearing ----.

The Amended Plan ~~xxxx~~ with 11 U.S.C. §§ 1322, 1323, and 1325(a) 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 Amended Chapter 13 Plan filed by Francisco Solorio ("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 Debtor's Attorney on January 16, 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.

<b>The court's decision is to sustain the Objection.</b>
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtor's Plan lists a 2015 Toyota Corolla LE in Class 4. The creditor is listed as Velma Oakes with monthly installment payments of \$325.00 a month. The Debtor admitted at the Meeting of Creditors held on January 17, 2019 that the lien is not perfected and creditors are her parents. As such, the Plan may not provide for the unsecured creditors what they would receive in a Chapter 7 if a Chapter 7 Trustee avoided the security of Debtor's parents. The Trustee notes that Debtor states the value of the vehicle is \$13,392.00. <sup>FN. 1.</sup>

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FN. 1. If the assertion is true that the claim listed on Schedule D for Debtor's parents is not secured and not perfected, Debtor has some serious issues in this case, and possibly any future bankruptcy case she files. The Schedules are filed under penalty of perjury. On Schedule D Debtor states under penalty of perjury that Cliff and Velma Oakes have an enforceable lien on the 2015 Toyota Corolla to secure a \$13,392.00

obligation. Schedule D, Dckt. 1 at 19. Given the same last name, it is likely that Counsel for Debtor would have, or should have, requested a copy of the loan and security documents before preparing Schedule D, having her client sign it under penalty of perjury, and then file it (with all of the certifications arising under Fed. R. Bankr. P. 9011).

Debtor and Debtor's Counsel then filed the proposed Chapter 13 Plan in this case. Dckt. 2. In it, the purported secured claim of Cliff and Velma Oakes is provided for in Class 4 of the Plan. Plan ¶ 3.10, Dckt. 2 at 4. If there was no security interest or the security interest was not perfected, then Debtor is attempting to improperly divert monies to her relatives and waste, in this Plan prepared by Counsel) monies of the estate.

Curiously, Cliff and Velma Oakes have not filed a proof of claim in this case. The deadline for filing such claims is February 8, 2019. As of the court's review of the Claims Register as of 4:00 p.m. on February 8, 2019, no proof of claim had been filed. Presumably, if a valid claim existed, Debtor and her Counsel would have made sure that a proof of claim was filed early, with all of the necessary loan documentation. The absence of a proof of claim speaks volumes.

While Debtor may view the bankruptcy process as a "crapshoot" where one takes their shot at sneaking something by the court, filing documents under penalty of perjury and subject to the certifications arising under Federal Rule of Bankruptcy Procedure 9011 which are false, untruthful, or inaccurate has its consequences. Not only may the bankruptcy case be dismissed, but it may be dismissed with prejudice. If dismissed with prejudice, Debtor could never discharge any of the debts arising prior to this case.

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At the hearing -----.

Absent evidence that Debtor's Plan provides that general unsecured creditors would receive at least as much as what they would receive in a Chapter 7, 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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DAVID MERCURIO VS.

Thru #18

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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 2, 2018. 28 days' notice is required. That requirement was met

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

**The Motion for Relief from the Automatic Stay is denied.**

David Mercurio ("Movant") seeks relief from the automatic stay with respect to Frank Davis's ("Debtor") real property commonly known as 3908 Washington Avenue, Sacramento, California ("Property"). Movant has provided the Declarations of David Mercurio to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The David Mercurio Declaration states that this is Debtor second bankruptcy proceeding since July 2015. In the first bankruptcy proceeding (Case No. 15-25641) the Plan was confirmed with the condition that Debtor would sell or obtain a refinancing agreement within 18 months. Debtor did not do so and the case was converted to a Chapter 7 on February 28, 2018. On July 6, 2017, the court granted a motion to reconvert to a Chapter 13 case. The Amended Plan in the prior case was not confirmed and on February 28, 2018, the prior case was dismissed upon request of the Debtor.

Debtor filed the current bankruptcy proceeding on August 17, 2018, on the same date as the scheduled foreclosure sale. Pending in Debtors current case is a Motion to Confirm Plan, which Movant opposes based on feasibility concerns and a failure to address delinquent real property taxes.

## **CHAPTER 13 TRUSTEE'S RESPONSE:**

The Chapter 13 Trustee responds to the Motion by noting that Movant is included in Debtor's proposed Plan as a Class 2A creditor. The proposed Plan provides for monthly payments of \$1,270.00 to Movant with a 7% interest rate until the property is sold on or before March 25, 2019, where the creditor will be paid in full from the proceeds of the sale.

The Movant has filed an opposition to the confirmation of the proposed Plan, set for hearing on December 4, 2018. The Trustee filed a non-opposition to the Debtor's Motion to Confirm and notes that Debtor is current under the proposed Plan payments.

## **DEBTOR'S OPPOSITION:**

Debtor's counsel responds by stating that Debtor's Motion to Confirm is set for hearing on December 4, 2018 and provides for full payment of Movant's claim. The court has approved Debtor's employment of a Real Estate professional to sell the home and the Debtor has signed an MLS Agreement and has the Property listed for immediate sale. The sale will provide for Movant's claim and all real property taxes. The Property is insured through October 11, 2019 by Averwood Insurance Services, Inc. Debtor is current on proposed Chapter 13 Plan payments. Additionally, the Debtor states that the value of the home is \$215,000.00 and the Movant's secured claim is approximately \$80,051.61. Dckt. 84.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$80,051.61, as stated in the David Mercurio Declaration and Schedule D. The value of the Property is determined to be \$215,000.00, as stated in Schedules A and D.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

At the December 4, 2018 hearing, the court continued the hearing to allow Debtor to proceed with the confirmed plan. The court notes that Debtor's Plan was confirmed on December 21, 2018. Dckt. 95.

Additionally, Debtor has a pending motion to sell the Property set for January 29, 2019 at 2:00 p.m. Dckt. 96.

The January 29, 2019 hearing was continued in light of the hearing on the Motion to Sell being continued to address the just raised assertion by Debtor's brother of having an unrecorded interest in the Property, the court continued the hearing so that it may be conducted in conjunction with the hearing on the Motion to Sell.

At the hearing-----.

The court shall issue an order denying to Motion to terminate the automatic stay.

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 David Mercurio ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from the automatic stay provisions of 11 U.S.C. § 362(a) is denied.

No other or additional relief is granted.

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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.

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 13, 2019. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice). That requirement was met

**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

This Chapter 13 case was filed on August 17, 2018. Debtor's prior Chapter 13 case, filed in July 2015, was dismissed on February 28, 2018. CH 13 Case No. 15-25641. Debtor's confirmed First Amended Plan in this case requires sale of the property by March 1, 2019, with \$87,000+/- of the proceeds used to pay the Class 2 secured claim of Mercurio. The balance of the claims shall be paid from other funds paid into the Plan. Plan, Dckt. 54.

Debtor states under penalty of perjury on Schedule A/B that he is the sold owner of the Property. Dckt. 19 at 3. On Schedule C Debtor claims a \$175,000 homestead exemption in the Property under applicable California law. *Id.* at 8.

Also, it is not clear from Movant's motion and exhibits what commission, if any, is contemplated as part of the sale.

### Claim of Interest by Debtor's Brother

On January 28, 2019, the Declaration of Joseph Davis was filed in “opposition” to the present Motion. Dckt. 103. Joseph Davis is represented by Robert Merritt, Esq. No “Opposition” has been filed to go with the Declaration providing testimony.

In the Declaration, Joseph Davis stated that he is the brother of the Debtor. Joseph Davis asserts that he has a one-half interest in the Property pursuant to an unrecorded grant deed. Declaration ¶¶ 2, 7; Dckt. 103. In the Declaration Joseph Davis states that the current obligation owed to Mercurio was used to remodel the Property and enhance its value. *Id.*, ¶ 10.

Filed with the Declaration is Exhibit E which is identified as the unrecorded deed by which one-half in the interest in the Property was transferred back to Joseph Davis. Exhibit E, Dckt. 104 at 11. In his Declaration, Joseph Davis testifies to having originally acquiring the property, putting title in the Debtor's name (no value given), and the paying of various obligations secured by the Property. The unrecorded Grant Deed (Exhibit E) is undated and not notarized.

### **Supplemental Declarations by Debtor's Brother**

On February 5, 2019, Joseph Davis filed another Declaration stating his opposition to the sale. Dckt. 114. The Declaration reiterates much of what was contained in the Declaration filed on January 28, 2019. Additionally, Joseph Davis states that he wished to purchase the property and intends to obtain a loan of \$136,000.00 to pay the existing debts. It is not clear from Joseph Davis' statements whether that is proposed price to purchase the property or if he is intending to obtain other financing in order to participate in any bidding on the property. Again, the declaration was not accompanied by an “Opposition.”

Additionally, on February 5, 2019, Paul Davis, another brother of the Debtor filed a Declaration. Dckt. 115. Paul Davis states that he has personal knowledge regarding the Joseph Davis' purchase of the property in 1987. Paul Davis also testifies that Debtor has not lived in the property since 1995, a fact that contradicts Debtor's petition.

### **Second Supplemental Declarations by Debtor's Brother**

An Opposition to the Motion to Sell was filed on February 7, 2019, by Joseph Davis. Dckt. 117. In it Joseph Davis states that he has an unrecorded 50% interest in the Property. See Opposition, p. 4:6-7; Dckt. 117; admitting that “The Grant Deed was not recorded nor was it notarized.” Joseph Davis cites to state law for the correct proposition that transfer of an interest in real property does not have to be recorded as to be effective – as between the grantor and the grantee.

Joseph Davis then states that the provisions of 11 U.S.C. § 544 cannot be applicable because those powers only apply to a trustee in a bankruptcy case not a (mere) Chapter 13 debtor. This argument misstates the law and the ability of a Chapter 13 debtor to exercise the powers of a bankruptcy trustee - including the powers arising under 11 U.S.C. § 544 to recover property for the benefit of the bankruptcy estate and creditors - 11 U.S.C. § 551 preserving the avoided transfers for the benefit of the estate, and to the creditors, and not an interest in which the Debtor can assert an interest.

In *Houston v. Eiler (In re Cohen)*, 305 B.R. 886, 895-900 (B.A.P. 9th Cir. 2004), the Bankruptcy

Appellate Panel conducts an exhaustive review of the Bankruptcy Code, decisions of other courts, and interpretation of the Bankruptcy Code as enacted by Congress to conclude that in a Chapter 13 case, it is the Chapter 13 debtor who has the right, and obligation, to exercise the various powers of a trustee to administer property of the bankruptcy estate (including the avoiding powers). As provided in 11 U.S.C. § 1306, the property of the bankruptcy cases in a Chapter 13 case includes all property specified in 11 U.S.C. § 541 and specified post-petition property. For property of the bankruptcy estate, 11 U.S.C. § 541 provides that it includes any interest recoverable and preserved from the estate pursuant to the avoiding powers. 11 U.S.C. § 541(a)(3),(4). The Chapter 13 debtor is given the authority to use property of the estate, which includes the recovered property and the rights to recover the property. 11 U.S.C. § 1303.

Interestingly, if Paul Davis was correct and the power was to be exercised by the Chapter 13 Trustee, the court could expressly authorize the Chapter 13 Debtor to exercise that power, or if the Debtor refused, convert the case to one under Chapter 7.

Paul Davis filed a Supplemental Declaration in which he states that he opposes the sale of the Property. He states that he has met with a lender and that he can obtain a loan to purchase the property. Further that he is in the process of obtaining the financing to pay the obligations secured thereby. Dckt. 118. He further testifies that the Debtor moved out of the house in 1995 and lives with the Debtor's son.

Paul Davis repeats his testimony that the unnotarized deed by which he claims to have an interest is not recorded.

Viola Davis, the Debtor's sister, joins in opposing the Motion to Sell with her declaration. Dckt. 119. She states that she is living in the property to be sold and that the Debtor does not live in the Property. She offers no documents showing a recorded interest in the property for herself or her brother Paul Davis, who she says is living in the Property.

The January 29, 2019 hearing was continued to allow the Parties to address the asserted unrecorded ownership interest, the effect of such interest in light of 11 U.S.C. § 544, and how the Parties best protect their respective interests.

## **DECISION**

Paul Davis has objected to the sale, seeks to block the sale though admitting that he is asserting an avoidable interest in the Property. The court cannot, and will not, allow Paul Davis to block the sale and attempt to assert an admitted avoidable interest and cause the bankruptcy estate to lose that property (11 U.S.C. § 541) in which the estate has an interest that benefits creditors.

Thus, it appears that the court faces the following options: (1) grant the Creditor's motion for relief from the automatic stay due to the inability to the Debtor, having been blocked by Paul Davis, to sell the property and pay creditors; (2) convert the case to one under Chapter 7 to allow the Trustee to avoid the unperfected transfer (if such a transfer actually exists) and conduct a sale of the Property as part of a liquidation; (3) approve the sale and order that all asserted interests attach to the net sales proceeds to be determined at a later date, or (4) approve a sale on stipulated terms based on the rational analysis of the respective legal interests of the Parties and bankruptcy estate in the Property.

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

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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**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 17, 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.

<b>The court's decision is to sustain the Objection.</b>
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtors did not appear at the First Meeting of Creditors held on January 10, 2019. The meeting has been continued to February 21, 2019.

B. The Trustee states that Debtors' attorney advised that Debtors would dismiss this case and reopen their previous case (Case No. 18-22731) because their Motion to Extend Automatic Stay was denied.

C. Debtors are delinquent \$3,400.00 in Plan Payments and have paid \$0.00 into the Plan.

D. Debtors Plan does not provide for all non-exempt equity in their 2008 Chevrolet Corvette.

E. Debtors Plan relies on a Motion to Value but no such motion has been filed.

F. Debtors have not provided the Trustee with information regarding the filing of their most recent tax returns.

G. Debtors have not provided the Trustee with the required 60 days of employer pay advices.

At the hearing -----.

Absent evidence that Debtors intend to prosecute this case and provide for all non-exempt equity in the Plan, 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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Thru #23

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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 10, 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~~.**

Betty Walker ("Debtor") seeks confirmation of the Amended Plan in order to address the Trustee's concern that the proposed sale of real property was not well defined and to provide for adequate protection payments in the interim. Dckt. 65 (Declaration). The Amended Plan provides for the sale of the property to close no later than June 2019 and for monthly plan payment of \$5,4750.00. Dckt. 67 (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 18, 2018. Dckt. 78.

A. The Trustee claims the Plan payments are insufficient to pay the stated payments and the Trustee's administrative fees. Trustee asserts that Plan payments must be \$5,710.00.

B. The Trustee notes that the Solano County Tax Lien, which the Debtor proposes to pay in a lump sum from the sale of the real property, is approximately \$20,000.00 per Proof of Claim No. 14 what than listed by Debtor in Class 2 for the creditor.

C. The Trustee is unable to determine whether the Debtor can make the required Plan payments because they appear to rely on contributions from family members who have not submitted declarations in support.

**CREDITOR WELLS FARGO BANK, N.A.:**

Wells Fargo Bank, N.A. filed its Opposition stating that it is not opposed to Debtor selling the property so long as Debtor continues to make post-petition payments. Additionally, Creditor opposes the Plan because it does not contain an alternative treatment if the property is not sold.

**DEBTOR'S RESPONSE:**

To Trustee:

The Debtor counsel concedes that proposed Plan did not properly account for the Trustee's administrative fee and has proposed language to be included in an Order confirming the Plan that Debtor hopes will address the Trustee's concerns. Debtor's counsel is aware of the increased amount of the Solano County Tax and the Plan does provide for payment through the sale of real property. The Debtor's son provides a declaration in support of the family contributions.

To Wells Fargo:

Debtor's counsel notes that Wells Fargo has a pending Motion for Relief from Stay also set for hearing on January 15, 2019. Debtor's Plan provides for payments on Wells Fargo's Class 1 claim starting in January 2019 in the amount of \$441.65. The Plan also provides for pre-petition arrears on the claim in the amount of \$5,145.27, as well as the payments that have come due post-petition in the amount of \$3,092.00, to be paid with the proceeds of the sale of real property.

At the January 15, 2019 hearing, the court continued the hearing to allow the parties to finalize their stipulations to allow for the confirmation of Plan.

**At the hearing —.**

The Amended Plan **xxxx** with 11 U.S.C. §§ 1322, 1323, and 1325(a) 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 Amended Chapter 13 Plan filed by Betty Walker ("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 **xxxx**.

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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.

**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 28, 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.

<b>The hearing on the Objection to Confirmation <span style="color: red;">XXXX</span>.</b>
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The Secured Creditor Umpqua Bank opposes confirmation of the Plan based on the following:

A. Debtor's Plan may not be feasible based on Debtor's stated negative income.

B. Debtor's Plan proposes to pay Secured Creditor claim through sale of its secured asset but does not provide for interest that Secured Creditor states it is entitled. Additionally, Debtor's Plan does not provide for any payments until January 2019.

C. Secured Creditor argues Debtor's Plan is speculative.

## DEBTOR'S RESPONSE:

Debtor's counsel responds to Secured Creditors Objection as follows:

### A. Trustee's Objection

Debtor disputes that the proposed Plan payments are not feasible. Debtor claims that the fact that "Means Test" reflects negative income does not mean that Debtor is not able to make the required Plan payments because it does not account for Social Security Income received by the Debtor.

A review of Schedules I and J provides a snapshot of the Debtor's actual current, and projected, disposable income. Debtor has gross income totaling \$7,533, which is comprised of: (1) \$1,900 net income from business, \$1,243 Social security, and \$4,390 in retirement. Schedule I, Dckt. 1 at 28-29.

For Expenses, Debtor lists (\$2,058) on Schedule J. *Id.* at 30-31. This leaves what Debtor says is \$5,475 in monthly net income. *Id.* at 31.

For the Plan before the court, Debtor pays the \$5,450.00 into the Plan, and then in Month 7 and continuing to the end of the plan 54 months later, Debtor's payments increase to \$7,421. Plan, Additional Provisions, Dckt. 67 at 8.

### Court's review of Schedules

On its face, it thus appears that Debtor is short \$2,000 a month to fund the plan (even including the Social Security income). On the Schedule I form filed as an Exhibit A, Debtor adds that she is to receive an additional \$1,950 a month from unidentified family and friends to fund the Plan until the sale of the Tuolumne Street property closes. No evidence is presented as to the source of such monies and the ability to provide this \$2,000 a month income kicker.

There is a larger problem with Debtor's economics. Debtor has \$7,533 a month in income, which totals \$90,396. However, there is no withholding on Schedule I and no provision on Schedule J (filed and that form submitted as Exhibit B (Dckt. 66) in support of the Motion) that Debtor pays any Federal Income Tax, State Income Tax, or any other amounts relating to the \$90,000+ in annual income. Debtor has not provided the court with any basis for concluding that Debtor is exempt from state and federal tax laws.

### B. Secured Creditor's Objection

The Debtor acknowledges that Secured Creditor's claim matured after the filing of the petition and the principal and interest due are determined. Debtor objects to additional interest sought by Secured Creditor. Debtor states that the Amended Plan provides for adequate protection payments of \$1,084.61 (the previous monthly mortgage payments) commencing in January 2019 and Debtor is also presently attempting to sell underlying asset.

At the January 15, 2019 hearing the Parties requested a continuance to allow them to finalize their Stipulations to allow for confirmation of the Plan.

At the hearing -----.

The Amended Plan **xxxx** with 11 U.S.C. §§ 1322, 1323, and 1325(a) 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 Objection to Confirmation of the Amended Chapter 13 Plan filed by Umpqua Bank(“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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**WELLS FARGO BANK, N.A. VS.**

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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 United States Trustee on November 7, 2018. 28 days' notice is required. That requirement was met.

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

<p><b>The hearing on the Motion for Relief from the Automatic Stay is <b>xxxx</b>.</b></p>
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Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Betty Walker's ("Debtor") real property commonly known as 2660 Marshfield Road, Vallejo, California ("Property"). Movant has provided the Declaration of Joselle Bracy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Joselle Bracy Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,208.25 in post-petition payments past due. The Declaration also provides evidence that there are ten pre-petition payments in default, with a pre-petition arrearage of \$5,145.27.

#### **CHAPTER 13 RESPONSE:**

The Chapter 13 Trustee responds that does not yet have a confirmed Plan. The Debtor is paid ahead \$3,514.92 under the terms of the proposed plan filed on November 10, 2018. Dckt. 67. The Debtor has paid a total of \$25,414.92 into the plan. The Trustee has not made distribution to the Movant because under the terms of the original plan Movant's debt was omitted. The Debtor has a pending amended plan.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on November 27, 2018. Dckt. 73. Debtor asserts that the pending amended Plan set for confirmation hearing on January 15, 2018 provides for Movant's second note and deed of trust on the Property as a Class 1 claim, with ongoing monthly mortgage payments, in the amount of \$441.65, to be paid through the Trustee commencing in January 2019. The amended plan provides for the \$5,145.27 pre-petition mortgage arrears and the post-petition mortgage arrears in the amount of \$3,092.00 to be paid with the proceeds of the sale of debtor's property located at 747 Tuolumne Street, Vallejo, California. Debtor has already obtained court approval to employ realtor Gerri Kalk and the property is listed and being actively marketed. Debtor anticipates that a sale will occur within a year and will facilitate a 100% payment for all allowed claims.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$514,926.84 (including \$425,056.00 secured by Movant's first deed of trust and \$89,870.84 secured by Movant's second deed of trust ), as stated in the Joselle Bracy Declaration and Schedule D. The value of the Property is determined to be \$600,000.00, as stated in Schedules A and D.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

## **RULING:**

Here, the Debtor has proposes a Plan to fully pay Movant and anticipates doing with through the sale of another real property asset that is actively being marketed. The proposed Plan is set for hearing on February 12, 2019, as such the court determines it is prudent to defer ruling on the Movant's requested relief until the court has considered whether the proposed Plan should be confirmed.

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

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 Wells Fargo Bank ("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 Movant's request for relief from the automatic stay provisions of 11 U.S.C. § 362(a) are **xxxx**.

No other or additional relief is granted.

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**UMPQUA BANK VS.**

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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.

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 20, 2018. 14 days' notice is required. That requirement was met.

The Motion for Relief from 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.

**The hearing on the Motion for Relief from the Automatic Stay is xxxxxx.**

Umpqua Bank ("Movant") seeks relief from the automatic stay with respect to Betty Walker's ("Debtor") real property commonly known as 747 Tuolumne Street, Vallejo, California ("Property"). Movant has provided the Declaration of Debbie Fish to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Debbie Fish Declaration states that there are 5 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$5,423.05 in post-petition payments past due. The Declaration also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$2,738.63. Movant also asserts that the loan matured on October 1, 2018.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$141,766.84 (including \$131,766.84 secured by

Movant's first deed of trust and \$10,000.00 secured by the Solano County Tax Collector), as stated in the Debbie Fish Declaration and Schedule D. The value of the Property is determined to be \$380,000.00, as stated in Schedules A and D. Accordingly, there is equity in excess of \$230,000.00.

### **11 U.S.C. § 362(d)(1): Deny Relief Because of Equity Cushion**

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY

¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

### **Co-Debtor Stay**

Additionally, Movant requests relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant identifies Brenda Calhoun as the original borrower on the loan. The Movant does not expressly state why they have a basis to pursue collection against Brenda Calhoun. In reviewing the Exhibits filed in support of the motion, a document titled "Assumption Agreement" is included that appears indicate that Brenda Calhoun transferred the property to Betty Walker, with the consent of Circle Bank on May 25, 2010. Dckt. 85, page 5. In the Assumption Agreement, one of the terms releases the transferor from any liability.

### **Request for Attorneys' Fees**

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). If an amount of such fees had been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

While the court could consider the award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 52(b) and Federal Rule of Bankruptcy Procedure 7052, 9014), the otherwise unnecessary cost and expense of Movant having to file a motion for an award of attorneys' fees for the unopposed Motion in which it made reference to wanting attorneys' fees would well exceed any attorneys' fees that the court would award for a motion such as this. Movant's strategic decision not to provide the court with grounds for and evidence of attorneys' fees has rendered it useless to proceed with a post-judgment motion that would cost more in unawarded (as in unnecessary and unreasonable fees) attorneys' fees.

The court notes that in the Declaration of Debbie Fish, in describing the total amount due on the loan lists \$1,220.00 in attorneys fees. It is not clear to the court whether these are the fees Movant is seeking approval of, despite including the amount due, or if the notation represents something else. Dckt. 83, ¶ 12.

### **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.

### **RULING:**

Here, the Debtor states that she is attempting to enter into a stipulation with Movant. The January 15, 2019 hearing was continued to allow for the parties to continue negotiating.

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

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 Umpqua Bank (“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 Movant’s request for relief from the automatic stay provisions of 11 U.S.C. § 362(a) are **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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 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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<b>The Motion to Sell Property is granted.</b>
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The Bankruptcy Code permits Tara Surber and Fred Surber, the Chapter 13 Debtor, ("Movant") to sell property 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 18598 Stallion Drive, Red Bluff, California ("Property").

The proposed purchaser of the Property is Brian McClay and Karin McClay, and the terms of the sale are:

- A. Purchase Price: \$300,000.00, with an estimated "Net at Close" of \$282,719.00 with estimated closing costs of \$17,198.60. Debtors stated that the fair market value of their home on the date of the petition on September 1, 2017 was \$260,00.00. Dckt. 1, Schedule A/B.
- B. Debtors estimate that net after paying the mortgage of \$198,611.71 will be \$84,107.29.



## **CHAPTER 13 TRUSTEE'S RESPONSE:**

The Chapter 13 Trustee responds to Debtors' Motion to Sell by stating that they do not oppose but the motion but request clarification regarding the disposition of proceeds. Debtor's Motion states that they estimate net proceeds of \$84,107.29 and state that their intention is to purchase a mobile home or rent with the proceeds. The Trustee notes that no motion to incur debt has been filed with the court.

The Trustee also notes that if Debtors intent to complete their Plan proposing a 100% dividend to the unsecured creditors, the Trustee estimates the payoff would be approximately \$29,550.00, leaving a surplus to the Debtors of approximately \$54,551.29.

The Trustee also flags for the court that Debtors do not appear eligible for discharge due a prior Chapter 7 proceeding and may not have an incentive to seek permission to spend the funds if the Debtor is allowed to hold the proceeds.

## **CREDITOR LAKEVIEW SERVICING, LLC'S RESPONSE:**

Secured Creditor Lakeview Servicing, LLC, successor in interest to JP Morgan Chase, N.A., responded to the Motion by stating that they do not oppose the Motion so long as the proposed order provides that Lakeview Loan Servicing, LLC will be paid in full subject to a proper payoff quote, or that any sale short of full payoff will be subject to Lakeview Loan Servicing, LLC's approval. Dckt. 42.

## **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**.

Movant has estimated that a 5% percent broker's commission from the sale of the Property will equal approximately \$15,000.00. 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 Tara Surber and Fred Surber, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Tara Surber and Fred Surber, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Brian McClay and Karin McClay or nominee ("Buyer"), the Property commonly known as 18598 Stallion Drive, Red Bluff, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$300,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit D, Dckt. 38, 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. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. Chapter 13 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. The 5% percent commission shall be paid to the broker, Aspire Real Estate, Cory Meyer.
- 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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**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 January 4, 2019. 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).

<b>The Motion to Confirm the Modified Plan is denied.</b>
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Wendi White ("Debtor") seeks confirmation of the Second Modified Plan because Debtor has entered into a stipulation with the IRS to modify the treatment of the IRS claim by paying only a portion of the IRS secured claim through the Plan. Dckt. 161. Additionally, Debtor states that the prior Plan did not account for a judgment lien recorded against her personal residence by Navy Federal Credit Union, which Debtor recently addressed through an avoidance action. Debtor states that the Second Modified Plan also cures two missed payments under the First Modified Plan. The Second Modified Plan proposes monthly payments of \$3,940.00 for the remaining 9 months of the Plan, an increased from the \$3,219.00 payments being made under the First Modified Plan. The proposed Modified Plan provides for a 0% dividend to the general unsecured creditors. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S RESPONSE:**

David Cusick ("the Chapter 13 Trustee") filed a Response on January 25, 2019. Dckt.179. The Trustee notes that Debtor had paid an excess of \$1,000.00 through December 2018 under the proposed Plan and has paid \$3,200.00 of the proposed \$3,940.00 for January 2019. The court notes that based on the Trustee's calculation Debtor has paid \$260.00 over what was required for January 2019.

The Trustee also notes that the terms of the modified plan doe not explain how the post-petition

mortgage delinquency will be cured for the Class 1 creditor Wells Fargo, which had a Motion for Relief scheduled for January 25, 2019. The court notes that Wells Fargo's Motion was denied without prejudice at the hearing. Dckt. 183.

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

Absent evidence that the Modified Plan cures the post-petition mortgage delinquency for the secured creditor Wells Fargo, the Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

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

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

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PETER NGUYEN AND THE HA VUE  
LE VS.

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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)(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 xxxx.**

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).

**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.

**JANUARY 29, 2019 HEARING:**

At the January 29, 2019 hearing the court continued the hearing to allow Oppositions to be filed and served by February 5, 2018, and Replies, if any may be presented orally at the hearing.

**DEBTOR'S OPPOSITION:**

On February 5, 2019, Debtors filed an Opposition. Dckt. 60. Debtors assert that the Movant's deed is void because Debtor claims Movant does not have a judgment for possession against the Debtors. Debtors also not that they have filed an adversary complaint disputing the Movant's ownership of the property. Case No. 19-2002.

Debtors state that subsequent to the unlawful detainer case filed in 2017, the parties reached a settlement in May of 2018 permitting the Debtors a time period to purchase the house or judgment would entered against them. The Debtors did not purchase the house and a judgment was entered against them in June of 2018. However, Debtors state that parties entered into an Amended Stipulation to purchase the property in November 2018. Debtors argue that the Amended Stipulation created a buyer-seller relationship rather than a landlord-tenant relationship granting the Debtors possessory rights in the property.

The Debtors further argue that they have equity in the property of \$125,000.00, the amount the Debtors put toward the purchase price of the property, and claim the payment was not for rent. Or in the alternative the \$125,000.00 should be turned over to the bankruptcy estate.

**INTERIM ORDER EXTENDING STAY**

The court has entered an Interim Order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Dckt. 64. The court did so, conditioned upon the Debtor having delivered \$2,700.00 to the Chapter 13 Trustee so that an adequate protection payment could be made to Movant. The Trustee confirmed that the payment was made and the court issued the Interim Order.

In addressing the issues with the parties, the court noted:

“At the hearing the court addressed with the Parties the significant issues relating hereto, the need for the Debtor to have experienced bankruptcy counsel (notwithstanding Debtor's current counsel being experienced in other areas of the law for

matters which Debtor is pursuing). It was determined that the hearing would be continued to allow the parties and their respective counsel to address how the underlying issues would be determined, the forums used, and the adequate protection (which was discussed to include Debtor making the current mortgage payment, arrearage payment, HOA fees, and other amounts which do or could encumber the property at issue).”

Civil Minutes, Dckt. 57 at 6.

## **DECISION**

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

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  
**XXXXX.**

**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—No Opposition Filed.

**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. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). **The court calculates that 31 days notice was provided.**

The Motion for Allowance of Professional Fees 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.

<p><b>The Motion for Allowance of Professional Fees is grant.</b></p>
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Mikalah Raymond Liviakis, the Attorney("Applicant") for the Debtor,("Client"), makes an Application for Additional Compensation in this case.

Fees are requested for the period December 21, 2018, through February 12, 2019. Applicant requests fees in the amount of \$1,655.50 and costs in the amount of \$0.00.

#### STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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



- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Debtor include drafting and representing the Debtor in motion to employ a realtor, the accompanying motion to sell real property, and drafting the pending fee application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Fee Application: Applicant spent 1.00 hour in this category. Applicant drafted the pending fee application.

Asset Disposition: Applicant spent 3.3 hours in this category. Applicant drafting a motion to sell Debtor's real estate and drafted a motion to employ a realtor.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Mikalah Liviakis	4.3	\$385.00	\$1,655.50
<b>Total Fees for Period of Application</b>			\$1,655.50

### **TRUSTEE RESPONSE:**

The Trustee filed a response stating no opposition to the fees requested.

### **FEES ALLOWED**

### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of \$1,655.00 are approved pursuant to 11 U.S.C. § 331, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$1,655.00
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pursuant to this Application as additional fees in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Mikalah Raymond Liviakis (“Applicant”), Attorney for the Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Mikalah Raymond Liviakis is allowed the following fees and expenses as a professional of the Estate:

Mikalah Raymond Liviakis, Professional employed by the Chapter 13 Debtor Fees in the amount of \$1,655.00 as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.

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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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 27, 2018. 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 denied.**

Lannis Pope and Jamie Pope ("Debtors") seek confirmation of the Modified Plan because Creditor Wells Fargo Home Mortgage obtained Relief from Stay with respect to their personal residence and the Plan provides for the surrender of the property. Dckt. 83 (Declaration). Debtor states that he will surrender the their home and the attached solar panels. The Modified Plan still provides for a 100% dividend to allowed unsecured claims. 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 December 27, 2018. Dckt. 91. The Trustee Opposes confirmation based on the following:

A. Per the Trustee's calculation the proposed plan completes in 140 months.

B. The proposed Plan does not authorize payments made by the Trustee to Wells Fargo Bank NA in the amount of \$81,600.00 for the monthly contract installments and to Travis Credit Union in the amount of \$4,019.40 for principal and interest.

C. The confirmed Plan include creditor Travis Credit Union in Class 2, however, the proposed Plan moves this creditor to Class1 with monthly post petition payments of \$117.85 and \$0.00 in arrears. The creditor filed Proof of Claim No. 8-1, which claims \$9,896.73 as secured and \$0.00 in arrears. The final payment is scheduled for 10/10/2022 which is more than 60 months filing. The Trustee states that he does not oppose this particular change.

Absent evidence that the Plan can complete within 60 months, the Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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 Lannis Pope and Jamie Pope (“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 Motion to Confirm the Modified Plan is denied, 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 Debtor's Attorney on January 16, 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 sustain the Objection.~~**

Secured Creditor, Mechanics Bank, having a secured claim in a 2015 Nissan Sentra by virtue of a purchase money security interest incurred more than 910 days prior to the date of the filing of the petition, opposes confirmation of the Plan because it only provides for a 4.75% interest on the claim. Secured Creditor asserts that Debtor's Plan should provide for an 8.5% interest rate.

**DEBTOR'S RESPONSE:**

Debtor responded to Secured Creditor's Opposition on January 29, 2019. Dckt. Debtors states that the Secured Creditor is requesting a 3.25% upward departure from the prime rate without offering evidence to support why Debtor is at high risk for default. Debtor asserts that the national prime rate on the filing of date of the petition was 5.25%. Debtor, through her Declaration, states that she has been current with her car loan payments, current with Plan payments, and has had steady employment with the same employer for 19 years.

**SECURED CREDITOR'S REPLY:**

Secured Creditor replied by stating that is incorrectly requested that Debtor's Plan provide for 8.5% interest rate and states that it is seeking only 8.25%. Secured Creditor disputes that it did not provide evidence that it is entitled to the 8.25% interest rate. Secured Creditor claims that because Debtor has filed

for bankruptcy protection there is a per se presumption she is at high risk of default. Additionally, since the Debtor valued the subject vehicle at \$9,589.00 this demonstrates that the asset is highly depreciable because Secured Creditor claim it was worth \$21,995.00 in January 2016. Secured Creditor also claims that the Plan extends the repayment period by 2 years, delaying its recovery.

## **DISCUSSION:**

In considering Creditor's arguments, the court begins with the contention that its collateral is so ephemeral that a 3.5% enhancement to "protect" the payment of the present value of its secured claim is proper. In making this argument, Creditor advises the court that:

1. The Objecting Creditor has a claim secured by a "Purchase Money Security Interest" in a 2015 NISSAN SENTRA. The total amount of the claim is \$17,185.35. A motor vehicle as defined in Sec. 30102 of Title 49. (See, "Certificate of Title" attached to Exhibit List as Exhibit 1).

Objection ¶ 1; Dckt. 20. In Paragraph 3 of the Objection Creditor states that this obligation arises more than 910 days before the commencement of this bankruptcy case. *Id.*

The Objection goes on to assert (with evidence supporting) that the prime rate is currently 5.25%. *Id.* ¶ 2. The Creditor asserts:

3. This Objecting Creditor is entitled to a 8.50% return on the secured portion of its remaining investment in order to reflect the appropriate creditworthiness of the insolvent Bankruptcy Debtor and properly compensate the Creditor for the loan's opportunity costs.

*Id.*, ¶ 3. Thus, because the Debtor has chosen to file bankruptcy and provide for the monthly payment through the Chapter 13 Trustee directly to Creditor, Creditor believes that this presents the court with an "uncreditworthiness" basis for enhancing the interest rate. The Objection does not assert how this "uncreditworthiness" creates a risk of not getting paid while the Debtor is under the protecting umbrella of the Bankruptcy Code and the law requires the payments to be made to Creditor.

While alleging "lost opportunity costs," the Objection does not provide any concrete opportunities lost while Creditor is being paid the value of its collateral.

In the points and authorities, Creditor provides this argument and analysis of how an upward adjustment from the prime rate under the analysis provided by the United States Supreme Court in *Till* vs. *SCS Credit Corp.*, 541 U.S. 465 (2004), is warranted:

As survived by the Supreme Court in *Till*, courts using the formula the approach typically have adjusted the "prime rate" by 1% to 3%. However, it is important to note that the *Till* Court's reference to a 1 to 3% upward adjustment in support of the increased risk of default appears to be only as an authoritative observation and/or an expression of opinion, and it does not seem to limit, if warranted, a greater adjustment of risk added to the rate of interest of a secured claim.

Here, the underlying Note executed by the Debtor(s) provided for payment towards the purchased Vehicle at an interest rate of 9.90%. (See, Note as Exhibit 2).



Consequently, the Debtor(s) has proposed a rate of interest of 4.75% only.

...

Here, the upward adjustment to 8.50% consistent with the suggested 3% is warranted considering the following: (1) the existing potential higher risk of default by the Debtor(s) faced by the Creditor whereby having already defaulted and now being in Bankruptcy protection, (2) the depreciating nature of the subject Vehicle, (3) the life of the Plan which extends beyond the original terms of the Note which exposes this Creditor to additional risk of default, and (4) the existing uncertainty whether the Debtor will be able to successfully complete his/her Plan of reorganization, (This Creditor has applied 1% increase, at a maximum of three, for each factor of risk of default by the Debtor(s) for the purpose of measuring the appropriate rate of interest consistent with the *Till* Court decision).

Points and Authorities, p. 3:1-9, 17-25.

So it appears that Creditor believes, without explanation, that a Chapter 13 debtor protected from levy, attachment, execution, dunning phone call, and collection “threats” by the Bankruptcy Code is a high risk of defaulting in paying 100% of the current value of Creditor’s collateral (saving Creditor the costs and expenses of liquidating the collateral).

Next, Creditor asserts (subject to the certifications arising under Federal Rule of Bankruptcy Procedure 9011) that this five model year old Nissan Sentra is depreciating at such a great rate that the regularly monthly payment as required by the Bankruptcy Code, with interest to provide for the present value, that Creditor is at great peril. (This ground should have been stated in the Objection, not buried in the Points and Authorities. L.B.R. 9014-1(d)(3)(A)).

It is then argued that since the life of the Plan exceeds the term of the original contract (by some unstated period), Creditor’s interest in the collateral (which in economic reality is the auction sale value less costs of sale) is at great peril.

Finally, it is argued that since Creditor is uncertain that Debtor can complete a plan, paying the full current retail value of the vehicle under the plan, plus the present value interest, again creates a great peril for Creditor.

Other than arguing these points, Creditor provides the court with no grounds or evidence in support thereof.

In a Reply, Creditor asserts that its contention that this Debtor has a high risk of defaulting under the Plan is not “arbitrary.” However, Creditor provides no analysis of the Debtor’s current finances, ability to fund the plan, the ability to pay Debtor’s current monthly expenses, and ability to perform the Plan while protected under the Bankruptcy Code. Creditor’s basis for this contention is an argument of, “Since the Debtor had to file bankruptcy, then they are likely to default under any Plan.” Reply ¶ 5a. (as paraphrased by the court), Dckt. 30. <sup>FN. 1.</sup>

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FN. 1. The court acknowledges that in some Districts it may have appeared, most likely historically, that the bankruptcy judges allowed, and consumer attorneys prosecuted, bankruptcy plans without regard to a debtor’s actual financial ability to perform the plan. This was based on a theory of, “well the debtor wants to try it, let them.”

As Creditor and its attorney (who appears regularly in the Eastern District of California (and this specific Department) that is not the practice in the Eastern District of California. The attorneys and Chapter13 Trustee know that they have to review the debtor's finances and document an ability to fund the plan. Expenses need to be reasonable and the debtor cannot ignore obligations such as self-employment or income taxes.

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Without any evidence, Creditor argues that since the vehicle has depreciated over \$12,000 (highlights in original) since it was purchased in 2016, then the court should assume that it will continue to depreciate at such a steep rate. The court notes that no evidence of such continuing steep depreciation will continue, and takes judicial notice of the commonly known fact that new model vehicles depreciate steeply during the first 2 to 3 years after purchase, and then the value stabilizes.

Curiously, no "expert" witness employee of Creditor on depreciation has been willing to step forward and provide evidence to support this argument that Creditor is having its counsel make to the court.

In reviewing the economics of the transaction, Creditor appears to have already built in the risk of a future bankruptcy filing and the reduction of the financed amount to the retail value of the vehicle when it financed this transaction in 2016 by charging the Debtor a 9.90% interest rate. From other loans from that time period presented to the court, this appears to be two to three times what a "good borrower" for an auto loan would be charged. Thus, Creditor is not "surprised" by this bankruptcy case being filed and has protected itself from the harsh reality of the Bankruptcy Code by front loading extra risk interest.

Exhibit 2 is an almost illegible copy of the Purchase Agreement for the vehicle. Dckt. 24. It appears that a portion of what was financed was not the purchase price of the vehicle, but add-ons, such as document preparation fees, state tax, \$2,895 for "Security Plus," and \$895 for "TFS." It appears that Creditor does not take into account the non-purchase money items which it chose to finance.

Exhibit 3 provided by Creditor is evidence of the current prime rate. Dckt. 24. It include a historical chart showing that the prime rate, which is commonly the rate for "good borrowers," was around 3.5% in 2016. Thus, the 9.90% charged by Creditor would be almost three times the prime rate, good borrower, interest rate at the time.

As required under the Bankruptcy Code, the court values Creditor's secured claim at the retail value of the vehicle, not it's actual condition value. Additionally, it is commonly known that lenders like Creditor are not retail seller of vehicles, and when collateral is repossessed it is sold at an auto auction, where the buyers are generally resellers of vehicles. Thus, a reseller does not pay the full retail value at such an auction, but a much lesser price to allow not only for a profit when reselling, but all of the cost and expense of getting a repossessed vehicle in saleable condition. Additionally, there are the costs and expenses of the auction company in selling the vehicle.

While the Creditor has chosen to ignore the financial information provided in the case in making its unsupported arguments that Debtor is likely to fail, the court does not have such luxury in rendering its decisions. On Schedule I Debtor provides her income information under penalty of perjury. Dckt. 1 at 27-28. Debtor has been employed by the same business for 19 years and has gross monthly income of \$4,293.97. After deductions for taxes, insurance, and retirement, Debtor shows take-home income of \$3,053 (which includes \$100 of family support). *Id.*

For expenses for a family unit of one person (the Debtor), monthly expenses of (\$2,450) are

stated, leaving the Debtor with \$595 to fund a plan. *Id.* at 29-30. Debtor provides reasonable amount for utilities, transportation, vehicle insurance, food, housekeeping supplies, medical and dental expenses, and the other normal expenses one needs to see in a reasonable budget. *Id.*

The Chapter 13 Plan requires Debtor to pay her projected disposable income of \$595 into the Plan for 60 months. Plan ¶¶ 2.01, 2.03; Dckt. 2. Other than paying Creditor on its secured claim, the only other required payments under the plan are for Debtor's attorney's fees (\$2,500) and the Chapter 13 Trustee fees (\$47.60) a month. If one assumes that Debtor's counsel will be paid during the first twelve months at \$210 a month, then after paying that amount and the Trustee fees, there is left \$337.40 to fund the monthly payment to Creditor of (\$178.79) a month (at the proposed interest rate of 4.75%, which is below the prime rate). Even raising the interest rate to 5.25%, the monthly plan payment to Creditor would be \$180.96 (computed using the Microsoft Excel Loan Calculator).

Rather than there being a risk of default, Debtor's finances not only demonstrate an ability to pay, but that Debtor has provided an economic cushion of 83% during the first year of the plan to make sure creditor gets paid. Once Debtor's counsel is paid (which for purposes of this discussion is after one year), the money after payment of the Trustee fees available to pay Creditor is \$547.40. This provides Creditor with a 300% cushion of monies to make the estimated payment of \$182.06.

Creditor's contentions about there being a risk of nonpayment are unsupported, and run contrary to the evidence in this case. Creditor's contention about there being a great lost opportunity cost are unsupported, and run contrary to the evidence in this case. It being unfair that Creditor's 9.90% interest rate being reduced to a prime rate plus reasonable adjustment for there being no risk in this case, are unsupported, and run contrary to the evidence.

Creditor is receiving the full retail value for the vehicle, as required by the Bankruptcy Code for its claim. Creditor offers no evidence of the interest rate it would charge for a borrower with a 19 year established employment history, no other creditors to be paid (other than for current living expenses), and the payment to Creditor being required by an order of the court. Creditor does not take into account the high interest rate of 9.90% that it has required Debtor to pay in apparent recognition that Debtor was a risky borrower at the time. Under the protection of the Bankruptcy Code, Debtor's financial situation, demands of other creditors, and ability to pay has drastically changed for the better. Creditor ignores the risk premium it has already received.

### **Proper Interest Rate**

Creditor is correct, under *Till*, the court makes *reasonable* adjustments for risks, after already having provided for the present value using the prime rate. Here the prime rate for this case is 5.25%. While there appears to be little to no risk that Creditor will not be paid over the five years of the Plan, the court will take into account that an adjustment for the "risk" that interest rates may increase is appropriate under the circumstances of this case. A .75% adjustment is more than reasonable, with the Plan interest rate for this secured claim to be 6% per annum. Using the Microsoft Excel Loan Calculator program, the monthly payment over 60 months for the \$9,589.00 secured claim with 6% interest is \$185.38.

### **Representations to the Court**

One of the unsupported arguments presented to the court is that this five model year old vehicle continues to suffer the same rate of depreciation as it has over the last four years - including the rapid, drive off the lot, depreciation of the first three years. Creditor has made this assertion subject to the certifications

arising under Federal Rule of Bankruptcy Procedure 9011.

The court is considering issuing an Order to Show Cause for Creditor to demonstrate to the court the evidence and information it had in making this assertion, and document such further steep depreciation referenced in the Opposition. While the assertion was made without evidence, that does not relieve the Creditor from the 9011 certifications. As with debtor not being able to have a "I just want to try it plan," Creditor cannot engage in litigation tactics of "It's what I need to argue to win, without regard to the truthfulness of what I say."

## DECISION

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

~~\_\_\_\_\_ Absent evidence that the Debtor provides for the appropriate interest rate on Secured Creditor's claim, 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 Mechanics Bank (Creditor) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~\_\_\_\_\_ **IT IS ORDERED** that Objection to confirmation 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 20, 2018. By the court's calculation, 53 days' notice was provided. 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).

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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 9-1 of Inland Finance Company is **xxxx**, and the claim is disallowed **xxxx**.**

John Kilakowske, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Inland Finance Company ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$66,772.36. Objector asserts that his business partner made a \$21,000.00 payment that is not reflected in the claim amount and that the claim was filed with insufficient support, namely no support.

## 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).

Objector claims, without any corroborating testimony or evidence, that at least \$21,000.00 of the claim has already been paid by a non-debtor. The Objector requests that court disallow the claim to the extent the obligation has been paid.

The court notes that Proof of Claim No. 9 was filed without any documentation supporting the basis for the claim.

Based on the evidence before the court, Creditor's claim is disallowed in its **xxxx**. The Objection to the Proof of Claim 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 Claim of Inland Finance Company ("Creditor"), filed in this case by John Kilakowske, the Chapter 13 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 9 of Inland Finance Company 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 Debtors, Debtors’ Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2019. 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 denied.**

Lucian Ventura and Magelin Ventura (“Debtors”) seek confirmation of the Modified Plan because they fell behind on Plan payments due to repairs to an AC/heater and their car. Dckt. 48 (Declaration). Debtors states that they make up for the 1,500.00 deficiency through the Modified Plan. The Modified Plan still provides for a 0% dividend to allowed unsecured claims. 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 January 25, 2019. Dckt. 59. The Trustee Opposes confirmation based on the following:

A. There appears to be a typo in the Section 7.01 stating that the December 2018 payment would be \$200.00 instead of \$2,000.00. The Trustee noted that the Debtors paid \$2,000.00 in December and requests that this be corrected in the Order.

#### **DISCUSSION:**

The Trustee does not question and Debtors do not explain how they are able to make up for the

deficiency.

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

Absent evidence supporting how the Debtors are able to make up for the deficiency, the Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Lannis Pope and Jamie Pope (“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 Motion to Confirm the Modified 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.

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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 January 9, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

Gerald White, the Attorney ("Applicant") for Efrain Mercado Jr. And Melanie Joi Mercado, the Chapter 13 Debtors ("Client"), makes an Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 27, 2017, through August 31, 2018. Applicant requests fees in the amount of \$1,350.00 and no costs.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

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

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include case management and review of claims. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **FEES AND COSTS & EXPENSES REQUESTED**

#### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Case Management: Applicant spent 1.20 hours in this category. Based on the court’s review of Exhibit B at page 7, Applicant predominantly bills for client communication in this category.

Review of Claims: Applicant spent 3.15 hours in this category. Applicant reviewed filed claims and corresponded with Clients.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Gerald White	4.35	\$300.00	\$1,305.00
<b>Total Fees for Period of Application</b>			\$1,350.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

<b>Application</b>	<b>Interim Approved Fees</b>	<b>Interim Fees Paid</b>
First Interim	\$5,385.00	\$2,615.00
<b>Total Interim Fees Approved Pursuant to 11 U.S.C. § 331</b>	\$5,385.00	

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rate of \$300.00 pre hour is reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of \$1,350.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The Chapter 13 Trustee filed a statement of nonopposition. Dckt. 39.

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

Fees	\$1,350.00
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pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331.

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

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

The Motion for Allowance of Fees and Expenses filed by Gerald White (“Applicant”), Attorney for Efrain Mercado Jr. And Melanie Joi Mercado, the Chapter 13 Debtors (“Client”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Gerald White is allowed the following fees and expenses as a professional of the Estate:

Gerald White, Professional employed by the Chapter 13 Debtors

Fees in the amount of \$1,350.00

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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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 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.**

Mario Lopez and Leah Alberto ("Debtors") seek confirmation of the Amended Plan because the prior plan was based on the Trustee's projection of disposable income. This amount was computed on the 6 month average of their prepetition income that included unsustainable overtime going forward. Dckt. 47 (Declaration). The Amended Plan proposes monthly payments of \$525.00 for 3 months, \$800.00 for 3 months, and \$825.00 for 44 months with a 100% dividend to general unsecured claims. Dckt. 48 (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 29, 2019. Dckt. 50. The Trustee opposes confirmation based on the following:

A. Debtors are delinquent \$950.00 in Plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

B. The Plan as proposed completes within 84 months.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 84 months. The

Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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 Mario Lopez and Leah Alberto (“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.

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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 29, 2018. 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).

<p><b>The Motion to Confirm the Modified Plan is denied.</b></p>
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Iyanah Fletcher ("Debtor") seeks confirmation of the Third Modified Plan because Debtor had unanticipated health expenses including Debtor and Debtor's daughter becoming pregnant. Dckt. 98 (Declaration). The Modified Plan still provides for a 0% dividend to allowed unsecured claims. 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 January 28, 2019. Dckt. 103. The Trustee Opposes confirmation based on the following:

A. Debtor has not filed Supplemental Schedules I and J regarding income and expenses despite stating in her Declaration that an "updated budget is also being developed for filing." As such, the Trustee is not able to determine whether Debtor can afford the modified plan payments.

Absent evidence that Debtor can afford the proposed payments, the Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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 Iyanah Fletcher (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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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).

<b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b>
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Daniel Butler ("Debtor") seeks confirmation of the Third Amended Plan to correct the Ensminger Provisions in the previously proposed Plan, to increase monthly payments to creditors in Class 2, and provide for all non-exempt equity in the plan. Dckt. 58 (Declaration). The Amended Plan is a 60 month Plan that provides for a dividend of no less than 47% to the general unsecured creditors. Dckt. 56 (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 29, 2019. Dckt. 63.

A. Debtor's Plan does not provide enough to pay the first seven adequate protection payments, only five.

B. Debtor's Plan does not provide for a January 2019 monthly payment. Failure to schedule a payment may show inability to pay.

At the hearing ----.

The Amended Plan **XXXX** with 11 U.S.C. §§ 1322, 1323, and 1325(a) and **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 Amended Chapter 13 Plan filed by Daniel Butler(“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 **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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2019. 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).

<p><b>The Motion to Confirm the Modified Plan is denied.</b></p>
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Elmer Crespin and Alama Crespin ("Debtors") seek confirmation of the Modified Plan because health issues caused Debtors to miss work and reduced their income. Dckt. 225 (Declaration). Debtor states that he believes he will be able to work enough to make the modified plan payments. The Modified Plan still provides for a 0% dividend to allowed unsecured claims. Dckt. 226 (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 January 28, 2019. Dckt. 223. The Trustee Opposes confirmation based on the following:

A. Debtors may not be able to make required plan payments as they are delinquent \$2,700.00 under the proposed Plan.

B. Debtors' Plan appears to increase post-petition mortgage arrears in Class 1 from 4 to 8 months when only 7 months are due. The Trustee would not oppose correcting this issue in an Order confirming the Plan.

**DEBTOR'S RESPONSE:**

Debtors' Counsel responds that Debtors intend to be current by the hearing and agree to the proposed correction regarding the post-petition mortgage arrears. Dckt. 236.

Absent evidence that the Debtors can cure the delinquency, the Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

**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 Elmer and Alma Crespín ("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 Motion to Confirm the Modified 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.

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

**Insufficient Notice Provided. The court is unable to determine what notice was given as no Proof of Service appears to have been filed in conjunction with Motion.**

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

**The Motion to Value Collateral and Secured Claim of BSI Financial/ Wells Fargo is denied without prejudice.**

The Motion to Value purportedly filed by Daniel Hobbs ("Debtor") pro se was actually filed and signed by Debtor's wife Lisa Miller-Hobbs. As noted by this court at the January 15, 2019 hearing regarding a Motion to Extend the Stay, Lisa Miller-Hobbs is not able to be the "attorney" for her husband. Dckt. 53. Debtor has been afforded time to obtain counsel and appears to have chosen not to do so. Accordingly, this motion will be dismissed without prejudice as it was not brought by the appropriate party in interest.

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 Daniel Hobbs ("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 denied without prejudice.

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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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2019. 28 days' notice is required. That requirement was met.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of Vion Holding, LLC ("Creditor") against property of Jaynie Gordon ("Debtor") commonly known as 5104 Rose Street, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$25,772.14. An abstract of judgment was recorded with Sacramento County on February 22, 2012, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$171,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$401,939.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has not claimed an exemption with respect to this property on Schedule C. Dckt. 1 at 21.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. However, the fixing of the judicial lien does not impair Debtor's exemption of the real property because no such exemption was claimed.

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jaynie Gordon (“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 judgment lien of Vion Holding, LLC , is denied without prejudice.

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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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 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.**

Marcus Cotton ("Debtor") seeks confirmation of the First Amended Plan because the prior plan was filed within days of obtaining counsel and corrections were needed. Dckt. 70 (Declaration). The Amended Plan proposes paying creditor 5AIF Sycamore, LLC through the payment of a non-debtor within 6 months or obtaining alternative financing and proposes a 100% dividend to the general unsecured creditors. Dckt. 72 (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 18, 2019. Dckt. 76. The Trustee bases his opposition on the following reasons:

A. The Trustee flags for the court that the Plan form used by Debtor does not appear to be the proscribed Plan form, but the differences appear non-substantive.

B. The additional provisions in the Plan provide for interest only adequate protection payments to secured creditor 5AIF Sycamore 2, LLC, and a lump sum distribution in month 6 from Debtor or a third-party. The Trustee states that the non-party is not identified. The court notes that Debtor's declaration suggests that his mother would be the non-party making the payments; however, Debtor's statements have not been corroborated by a declaration from his mother.

C. Debtor may not have identified all required assets on Schedule B, including a potential claim against the NFL based on concussion he received, a Mechanics Lien for debt owed to him, outstanding accounts receivable, and potential non-exempt amounts from his NFL pension.

D. Debtor amended his petition to change his personal residence address but has not amended the homestead exemption for the property he no longer claims to reside thereby increasing the non-exempt equity estate assets. Additionally, Debtor did not adjust the proposed dividend to the general unsecured creditors to reflect the increased non-exempt equity. Presently Debtor's Plan does not provide for any interest to general unsecured creditors.

E. Debtor's petition reflects that he owns property that may pose a potential hazardous threat but does not complete the remainder of the section to provide sufficient information about this property to the Trustee.

### **CREDITOR 5AIF SYCAMORE 2, LLC'S OPPOSITION**

Creditor, 5AIF Sycamore 2, LLC filed an Opposition on January 29, 2019. Dckt. 79. Creditor bases its opposition on the following reasons:

A. Debtor may not qualify for Chapter 13 protection because he may exceed the debt limits set forth in 11 U.S.C. 109(e). Creditor notes that Debtor owes Creditor over \$200,000.00, owes child support in excess of \$750,000.00, and lists general unsecured debt over \$46,000.00.

B. Creditor asserts that Debtor made a false representation about his personal residence on the initial petition.

C. Creditor disputes Debtor's characterization of its claim as secured as Debtor's obligation is predicated on a personal guarantee to a loan taken out by Debtor's business.

D. Creditor opposes Debtor's Plan provision to pay its obligation within 6 months as being speculative.

### **Review of Plan - Eligibility For Chapter 13 Relief**

Creditor asserts a secured claim for \$221, 282. Proof of Claim 8-1. JPMorgan Chase Bank, N.A. has filed Proof of Claim No. 1-1 for \$11,529 (vehicle loan). In the Opposition, Creditors asserts that the claim in this case is an unsecured claim based on the unsecured personal guaranty of Debtor's corporation's obligation.

Proof Claim No. 8-1 states that the obligation is secured by a deed of trust. The property subject to the deed of trust is not identified. The Note attached to Proof of Claim No. 8-1 lists the following at the top of the Note:

Property Address: 2730 Bell Street, Sacramento, CA, 95821

The borrower on the Note is Muscle Builders, Inc. The Deed of Trust attached to Proof of Claim No. 1 is signed by Muscle Builders, Inc. A property description attached to the Deed of Trust does not include a street address.

The court could not identify a personal guaranty attached to Proof of Claim 8-1 in support of the assertion that Debtor is so personally obligated.

**At the hearing, Counsel for Creditor explained the apparent absence of a personal guaranty signed by the Debtor being included with Proof of Claim No. 8-1, xxxxxxxxxx.**

As noted by Creditor, Debtor lists unsecured claims of \$46,426 on Schedule E/F, however states that is it unknown as to the amount of the unsecured obligation owed to Janice Cotton. Dckt. 32 at 25-28. In addition to being “unknown” in amount, Debtor states that the obligation owed to Janice Cotton is for “Monies Loaned/Advanced.”

On his statement of financial affairs, Debtor references a garnishment for past due child support, for which there was \$0.00 garnished. Statement of Financial Affairs Question 10, *Id.* at 41. This garnishment is stated to have occurred on November 5, 2018.

The Motion to Confirm makes reference to past-due support obligations to be paid, but no specific amount is stated in the Plan.

In his declaration in support of the Motion, Debtor testifies that Sacramento County was garnishing his wages. Declaration ¶ 4, Dckt. 70.

Filed as Exhibit 3 with the request for Judicial Notice is a copy of a California Superior Court judgment in the amount of \$754,174.06. Dckt. 94. Exhibits 4 and 5 with the Request for Judicial Notice are copies of an Abstracts of Supports Judgments recorded in 2010. *Id.* While requesting that the court take judicial notice of these documents recorded with the County Recorder, they are not:

“a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court’s territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. . . .

Fed. R. Evid. 201. These records have not been authenticated as required by Federal Rules of Evidence 901 et seq. However, given that the Debtor acknowledges there being a support obligation and that a judgment is being garnished, it does not appear reasonable that the amount of such obligation reduced to a judgment is “unknown.”

**At the hearing Debtor explained xxxxxxxxxxxxxx.**

The Amended Plan **xxxx** with 11 U.S.C. §§ 1322, 1323, and 1325(a) and **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 Amended Chapter 13 Plan filed by Marcus Cotton (“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.~~

\*\*\*\*

Thru #43

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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).**

-----

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 22, 2019. By the court's calculation, 14 days' notice was provided. That requirement was met.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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, -----  
-----.

<b>The Motion to Avoid Judicial Lien is granted.</b>
--

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Aren Jackson ("Debtor") commonly known as 6221 14<sup>th</sup> Street, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,954.50. An abstract of judgment was recorded with Sacramento County on December 2, 2010, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$460,000.000 as of the petition date. Dckt. 21. However the court notes that the Debtor appears to have reduced the amount by 8% to account for the cost of sale and identifies the "Gross Value" as \$500,000.00 on Schedule D. Dckt. 21. The unavoidable consensual liens that total \$598,728.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 21. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 7903.140(b)(1) in the amount of \$0.00 on Amended Schedule C. Dckt. 21.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**TRUSTEE RESPONSE:**

The Trustee does not oppose the Motion. Dckt. 47.

**ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Aren Jackson ("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 judgment lien of Capital One Bank (USA), N.A. , California Superior Court for Sacramento County Case No. 34-2009-00065204, recorded on December 2, 2010, Book 20101202 and Page 1151, with the Sacramento County Recorder, against the real property commonly known as 6221 14<sup>th</sup> Street, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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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).**

-----

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 29, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien 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, -----

-----.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
---

This Motion requests an order avoiding the judicial lien of Sacramento Credit Union (“Creditor”) against property of Aren Jackson (“Debtor”) commonly known as 6221 14<sup>th</sup> Street, Sacramento, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$66,838.35. An abstract of judgment was recorded with Sacramento County on September 2, 2014, that encumbers the Property.

Pursuant to Debtor’s Amended Schedule A, the subject real property has an approximate value of \$460,000.000 as of the petition date. Dckt. 21. However the court notes that the Debtor appears to have reduced the amount by 8% to account for the cost of sale and identifies the “Gross Value” as \$500,000.00 on Schedule D. Dckt. 21. The unavoidable consensual liens that total \$598,728.00 as of the commencement of this case are stated on Debtor’s Amended Schedule D. Dckt. 21. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 7903.140(b)(1) in the amount of \$0.00 on Amended Schedule C. Dckt. 21.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**TRUSTEE RESPONSE:**

The Trustee does not oppose the Motion. Dckt. 63.

**ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Sacramento Credit Union ("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 judgment lien of Sacramento Credit Union , California Superior Court for Sacramento County Case No. 34-2009-00056769, recorded on September 2, 2014, Book 20140902 and Page 0795, with the Sacramento County Recorder, against the real property commonly known as 6221 14<sup>th</sup> Street, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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## FINAL RULINGS

42. [18-27666-C-13](#)      **AREN JACKSON**  
[SLE-4](#)                      **Steele Lanphier**

**MOTION TO VALUE COLLATERAL OF  
REAL TIME RESOLUTIONS**  
**12-28-18 [27]**

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**Final Ruling:** No appearance at the February 12, 2019 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2018. 28 days' notice is required. That requirement was met.

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

**The Motion to Value Collateral and Secured Claim of Real Time Resolutions ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Aren Jackson ("Debtor") to value the secured claim of Real Time Resolutions ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6221 14<sup>th</sup> Street, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$460,000.00 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). Debtor does not offer the Declaration of a licensed real estate appraiser.

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a**

**secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

## **NO OPPOSITION**

Creditor has not filed an Opposition. The Chapter 13 Trustee states that he does not oppose the Motion, and that the subject Creditor, who holds the second deed of trust on the property, is provided for in Class 2C of the proposed Plan. The Creditor has not filed a proof of claim and the claim bar date is February 19, 2019.

## **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$508,000.00. Creditor's second deed of trust secures a claim with a balance of approximately \$90,938.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). 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 Aren Jackson ("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 Real Time Resolutions ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 6221 14<sup>th</sup> Street, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$460,000.00 and is encumbered by a senior lien securing a claim in the amount of \$508,000.00, which exceeds the value of the Property that is subject to Creditor's lien.

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**Final Ruling:** No appearance at the February 12, 2019 hearing is required.  
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**The Motion to Confirm Plan is dismissed without prejudice.**

The Debtor Aren Jackson having filed a “Notice Withdrawal of Motion” which the court construes as an Ex Parte Motion to Dismiss the pending Motion to Confirm Plan on February 6, 2019, Dckt. 66; no prejudice to the responding party appearing by the dismissal of the Motion; the United States on behalf of the Debtor having the right to request dismissal of the motion 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 Debtors; **the Ex Parte Motion is granted, the Motion is dismissed without prejudice, the court removes this Motion from the calendar.**

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**Final Ruling:** No appearance at the February 12, 2019 hearing is required.

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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 18, 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.

<b>The court's decision is to continue the Objection to March 5, 2019 at 2:00 p.m.</b>
--

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

A. Debtor's Plan relies on a Motion to Value and no Motion was filed at the time the Trustee's Objection was filed. The court notes that subsequently, the Debtor filed a Motion to Value that is set for hearing on March 5, 2019. Dckt. 18.

C. The Trustee also notes that Debtor's first Plan payment of \$600.00 will become due prior to the hearing.

The court shall continue the hearing to allow the Debtor's Motion to Value to be resolved.

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 continued to March 5, 2019 at 2:00 p.m.

\*\*\*\*

DEBTOR DISMISSED: 01/03/2019

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**Final Ruling:** No appearance at the February 12, 2019 hearing is required.  
-----

The case having previously been dismissed, the Motion is dismissed as moot.

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 Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

\*\*\*\*



46. [18-27521](#)-C-13 JAMES BRADLEY  
[KAZ](#)-1 Dale Orthner

**MOTION TO EXTEND TIME TO FILE  
AN OBJECTION TO CONFIRMATION  
OF PLAN  
1-22-19 [[18](#)]**

\*\*\*\*

**Final Ruling:** No appearance at the February 12, 2019 hearing is required.  
-----

Movant Mount West Financial having filed a Notice of Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Extend Time To File An Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

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**Final Ruling:** No appearance at the February 12, 2019 hearing required.

The hearing on the Motion to Modify Plan is continued to June 25, 2019 to comply with the Order issued by Magistrate Judge Kendall J. Newman in CIVS. NO. 18-cv-2170 JAM staying all activity in this case for 120 days. See Dckt. 214, Receipt of Pleadings and Documents from the United States District Court.

**IT IS ORDERED** that the Motion is continued to June 25, 2019 at 2:00 p.m.

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48. [18-27333](#)-C-13  
[MBW](#)-1

LOUANNE TAYLOR  
Dale Orthner

**OBJECTION TO CONFIRMATION OF  
PLAN BY SAFE CREDIT UNION  
1-4-19 [15](#)**

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**Final Ruling:** No appearance at the February 12, 2019 hearing required.

No hearing necessary as the Objection is moot because on February 1, 2019, the case was voluntarily converted to a proceeding under Chapter 7. Dckt. 29.

**IT IS ORDERED** that the Objection is dismissed as moot, the case having been converted to a proceeding under Chapter 7.

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**Final Ruling:** No appearance at the February 12, 2019 hearing is required.  
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**The Objection to Confirmation is dismissed without prejudice.**

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Objection on January 29, 2019, Dckt. 29; 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 Wade Nielsen (“Debtor”); **the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on November 19, 2018, is confirmed.**

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

\*\*\*\*

50. [14-29969-C-13](#)  
[USA-1](#)

PETER/JUANITA ROONEY  
Peter Macaluso

CONTINUED MOTION TO CONVERT  
CASE TO CHAPTER 7 AND/OR  
MOTION  
TO DISMISS CASE  
12-10-18 [\[70\]](#)

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**Final Ruling:** No appearance at the February 12, 2019 hearing is required.  
-----

**The Motion to Convert or Dismiss case is dismissed without prejudice.**

The United States on behalf of the Internal Revenue Service having filed a “Withdrawal of Motion” which the court construes as an Ex Parte Motion to Dismiss the pending Motion to Convert or Dismiss on February 4, 2019, Dckt. 83; no prejudice to the responding party appearing by the dismissal of the Motion; the United States on behalf of the Internal Revenue Service having the right to request dismissal of the motion 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 Debtors; **the Ex Parte Motion is granted, the Motion is dismissed without prejudice, the court removes this Motion from the calendar.**

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**Final Ruling:** No appearance at the February 4, 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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 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.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Fernani Narvasa ("Debtor") has provided 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 Non-Opposition Response indicating non-opposition on January 29, 2019. Dckt. 64. 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 Fernani Narvasa ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 21, 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 appearances required at the February 12, 2019 hearing.  
-----

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 23, 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 continue the Objection to March 5, 2019 at 2:00 p.m.**

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 17, 2019 and meeting was continued to February 7, 2019. The Trustee noted that the Debtor notified the Trustee by telephone on the day of the First Meeting of Creditors that she had a flat tire.

The Trustee also notes that the first Plan payment of \$1,430.00 will be due prior to the hearing.

**DEBTOR'S RESPONSE:**

The Debtor's counsel responded that Debtor and counsel will be at the continued Meeting of Creditors on February 7, 2019.

**DISCUSSION:**

Both the Trustee and the Debtor requested a continuance until March 5, 2019 which the court will allow to permit the parties to complete the First Meeting of Creditors.

At the hearing -----.

Absent evidence that the Debtor has attended the continued Meeting of Creditors and is current with required Plan payments, 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 continued to March 5, 2019 at 2:00 p.m..

\*\*\*\*