UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice
The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 25.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–24, attempting to first address the items in which short argument is anticipated.

April 17, 2018, at 3:00 p.m.

1.	**18-21768-E-13** **SDH-1**	**KATRINA CULVERSON** **Scott Hughes**	**MOTION TO EXTEND AUTOMATIC STAY** **4-2-18 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 2, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Extend the Automatic Stay is granted.

Katrina Culverson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 16-26838) was dismissed on March 26, 2018, after Debtor became delinquent on plan payments. *See* Order, Bankr. E.D. Cal. No. 16-26838, Dckt. 69, March 26, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because her vehicle broke down and needed repairs. Debtor chose to pay to have her vehicle repaired instead of making plan payments. Currently, Debtor's vehicle is now fixed, and she recently began working at Families for Children, where she earns $1,400.00 every two weeks. Additionally, she states that her husband's landscaping business should be improving because it is springtime.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 6, 2018. Dckt. 16. The Chapter 13 Trustee notes that Debtor's prior bankruptcy case was dismissed for delinquency and that Debtor incurred vehicle repair expenses during that time. The Chapter 13 Trustee believes that Debtor has experienced a change in circumstances due to Debtor's additional employment. Additionally, under Debtor's proposed Plan, she will be making monthly plan payments of $3,270.00 to pay unsecured creditors a dividend of one hundred percent.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

2. **14-25474-E-13** **LEE SCIOCCHETTI** **MOTION TO SELL**
LBG-4 **Lucas Garcia** **3-27-18 [80]**

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, creditors, and Office of the United States Trustee on March 27, 2018. 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, ----------.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Lee Sciocchetti, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell an easement (right of way) in the real property commonly known as 7986 Highway 20, Smartsville, California ("Property"). Movant has a 40% joint tenancy interest in the Property.

The proposed purchaser of the Property is California Department of Transportation, and the terms of the sale are:

A. Purchase price of $56,300.00; and

B. Net 40% proceeds to Movant and Kelli Beard of $22,520.00.

CHAPTER 13 TRUSTEE'S RESPONSE TO PRIOR MOTION

David Cusick ("the Chapter 13 Trustee") filed a Response to Debtor's first Motion to Sell on March 12, 2018. Dckt. 78. The Chapter 13 Trustee does not oppose the proposed sale, and he notes that Debtor is current with plan payments.

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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because net Movant $11,046.97 for his joint tenancy 40% interest in the Property. Movant has argued that he claimed an exemption of $56,000.00 in the Property already and that he can claim up to $75,000.00. Movant appears to indicate that he will amend Schedule C so that all of the proceeds he receives remain exempt.

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 Lee Sciocchetti ("Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Lee Sciocchetti, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to California Department of Transportation or nominee ("Buyer"), an easement (right of way) in the Property commonly known as 7986 Highway 20, Smartsville, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $56,300.00, on the terms and conditions set forth in the Sale Agreement, Exhibit A, Dckt. 76, 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 in order to effectuate the sale.
>
> C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. 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.

3. 18-20607-E-13 DPC-1 **MELISSA FAUS** **Richard Jare** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-21-18 [35]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 21, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Melissa Faus ("Debtor") failed to attend the Meeting of Creditors.

The Chapter 13 Trustee's objection is well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on March 15, 2018. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). Debtor's counsel appeared and advised that Debtor does not intend to prosecute the case.

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

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

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

4. **17-27368-E-13** **ROCHELLE WARD** **MOTION TO CONFIRM PLAN**
NSV-1 **Nima Vokshori** **2-20-18 [30]**

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

Local Rule 9014-1(f)(1) Motion—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 February 20, 2018. By the court's calculation, 56 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Rochelle Ward ("Debtor") seeks confirmation of the Amended Plan because it will cure pre-petition arrears due to Debtor's mortgage lender while maintaining ongoing mortgage payments, pay Debtor's auto loan in full, pay off Debtor's attorney's fees, and fully fund priority obligations and unsecured claims. Dckt. 32 at 2. The Amended Plan proposes to complete within sixty months, beginning with one monthly Plan Payment of $2,289.00, and followed by fifty-nine monthly Plan Payments of $3,600.00. Dckt. 34. 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 March 28, 2018. Dckt. 40. The Chapter 13 Trustee asserts that Debtor is $5,400.00 delinquent in plan payments, which represents multiple months of the $3,600.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 Rochelle Ward ("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.

5. 18-20023-E-13 DPC-1 | **SHANNON/ETHAN RASMUSSEN Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-14-18 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on March 14, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Shannon Rasmussen and Ethan Rasmussen ("Debtor") are delinquent on plan payments;

B. Debtor failed to provide tax returns;

C. Debtor failed to provide pay advices;

D. The Plan proposes interest on Class 1 arrears that does not appear appropriate;

E. No monthly dividend is proposed for Class 1 mortgage arrears;

F. Debtor improperly listed a claim in Class 4 that will mature during the Plan;

G. The Plan fails the liquidation analysis;

H. Debtor cannot afford the plan payments; and

I. The Plan is not Debtor's best effort.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is $1,800.00 delinquent in plan payments, which represents one month of the $1,800.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

Debtor's Plan may not comply with 11 U.S.C. § 1325(a)(1). The Chapter 13 Trustee asserts that the Plan proposes a 6.5% interest on arrears to Sierra Central Class 1; however, that claim is not entitled to interest on interest under 11 U.S.C. § 1322(e), according to the note for the claim. *See* Proof of Claim No. 5.

Debtor lists Class 1 mortgage arrears at $8,000.00, but Debtor has failed to provide a monthly dividend to pay the arrears in sixty months.

The Chapter 13 Trustee also asserts that the a Class 4 claim for a vehicle will mature before completion of the Chapter 13 Plan, and therefore the claim should be listed in Class 2(B) of the Plan.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor's non-exempt assets total $68,899.00 and that Debtor is proposing a 1% dividend to unsecured creditors totaling $239.00.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to pay $1,800.00 per month but has scheduled income of only $1,197.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a one percent dividend to unsecured claims, which totals $239.00, though Debtor's projected monthly disposable income under 11 U.S.C. § 1325(b)(2) totals $1,353.00. Debtor is able to pay $81,180.00 to unsecured claims. Thus, the court may not approve 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

6. **18-20023-E-13 DPC-2** | **SHANNON/ETHAN RASMUSSEN** **Pro Se** | **OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS** **3-14-18 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on March 14, 2018. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") objects to Shannon Rasmussen and Ethan Rasmussen's ("Debtor") claimed exemptions under California law because Debtor did not specify a code provision for the homestead exemption, because Debtor claimed more under § 704.010 for two vehicles than allowed, and because Debtor attempts to claim federal exemptions for stock and a 401K.

Schedule C merely states that the law for an exemption in Debtor's real property is "HOMESTEAD EXEMPTION." That is not an appropriate reference to the applicable California Code of Civil Procedure section.

California Code of Civil Procedure § 704.010 sets a maximum exemption of $3,050.00. A review of Debtor's Schedule C shows that the exemptions for two vehicles totals $6,249.00, which is $3,199.00 more than allowed.

Finally, Debtor cites to 11 U.S.C. § 522 for two exemptions, one in "STOCKS" and the other "401K." California Code of Civil Procedure § 703.130 does not authorize the use of the federal exemptions for bankruptcy cases filed in this state.

The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

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

The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemptions for 9898 ASHURST under "HOMESTEAD EXEMPTION," for CHEVY SILVERAD and CHEVY TAHOE under California Code of Civil Procedure § 704.010, and for STOCKS and 401K under 11 U.S.C. § 522 are disallowed in their entirety.

7. 18-20734-E-13 DPC-1 | **SHAUNA ROBERTS** **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-20-18 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 20, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan is not Shauna Roberts's ("Debtor") best effort;

B. Debtor has failed to provided the required business statements; and

C. Debtor lists a checking and savings account on Schedule B, but Debtor's attorney states Debtor does not have such an account.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a fifty percent dividend to unsecured claims, which total $170,133.00. Debtor's reported disposable income is $2,721.04 although Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $10,306.00.

There are additional discrepancies on Debtor's Official Form 122C, which include:

A. Line #16 Taxes. Debtor deducts $5,373.00 for taxes, though Schedule I shows taxes in the amount of $2,363.00—a $3,010.00 difference.

B. Line #26 Care of household or family members. Debtor deducts $600.00 for this expense but fails to provide proof.

C. Line #43 Deduction for special circumstances. Debtor deducts $3,875.10 for business expenses but fails to provided a detailed statement of these expenses. Debtor also deducts $100.00 for additional trustee fees on this line, though the deduction was already taken in the amount of $255.20 in Line #36.

Debtor fails to provide for all of her tax refunds to be paid into the Plan for the benefit of creditors, thus indicating the Plan is not Debtor's best effort.

Additionally, Debtor's Plans lists three automobile payments on Schedule I, which are being paid directly by Debtor. However, these debts are not listed on Schedule D, or in the Plan, leaving a question as to whether these debts will mature prior to Plan completion, thus necessitating an increase in plan payments.

Debtor lists an educational expense of $1,450.00. At the First Meeting of Creditors, Debtor admitted that this expense is for her son's college education and that he is currently in his junior year. After the son graduates, approximately one year from now, the plan payments will need to be increased.

Debtor lists an expense of $3,000.00 per month for "special needs daughter-horse expenses-therapeutic." However, the Chapter 13 Trustee has not been furnished with requested information and proof that this expense exists and is necessary to maintain and support Debtor and Debtor's dependents.

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor has not provided the required attachment.

The Chapter 13 Trustee also makes note that Debtor listed a Safe Credit Union checking and savings account on Schedule B, with a value of $5,500.00. However, an e-mail received from Debtor's Attorney states that Debtor "does NOT have a Safe Credit Union account."

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

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

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

8. **18-21538-E-13 RJ-2** | **RICHARD GARLINGHOUSE** **Richard Jare** | **MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION** **4-3-18 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 3, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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 Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $13,000.00.

The Motion filed by Richard Garlinghouse ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Dodge Ram ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $13,000.00 as of the petition filing date.

Debtor has not included a valuation report in support of his estimation of value. Instead, he testifies that the Vehicle "needs new tires, & needs new windshield, [and] needs at least one electronic sensor priced at $500." Dckt. 25 at 1:23.5–24.5. He also testifies that the odometer shows approximately 108,000 miles. *Id.* at 1:21.5. 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). Creditor has not presented any evidence to contradict Debtor's assertion of value.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 10, 2018. Dckt. 29. The Chapter 13 Trustee notes that Debtor has not filed schedules in this case and that Creditor attached a Vehicle Inquiry Report with its Proof of Claim showing that the Vehicle is commercial, as opposed to Debtor's assertion that it is for personal use.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on September 13, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $25,487.63. *See* Proof of Claim No. 1-1. 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 $13,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Richard Garlinghouse ("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 Golden 1 Credit Union ("Creditor") secured by an asset described as a 2014 Dodge Ram ("Vehicle") is determined to be a secured claim in the amount of $13,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $13,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

9. **18-21345-E-13** **PAVEL YERMOLOV** **MOTION TO VALUE COLLATERAL OF**
MRL-1 **Mikalah Liviakis** **SANTANDER CONSUMER USA, INC.**
3-9-18 [8]

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

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on March 9, 2018. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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 Santander Consumer USA, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $35,000.00.

The Motion filed by Pavel Yermolov ("Debtor") to value the secured claim of Santander Consumer USA, Inc., ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Dodge Ram ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $35,000.00 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).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") has filed a response and asserts that creditor is included in Class 2(B) of the proposed plan with a reported amount of $46,279.00 and a value of $35,000.00. Dckt. 19. The creditor has not yet filed a claim in this matter.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on August 1, 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 $46,279.00. 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 $35,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Pavel Yermolov ("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 Santander Consumer USA, Inc. ("Creditor") secured by an asset described as 2015 Dodge Ram ("Vehicle") is determined to be a secured claim in the amount of $35,000.00 and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $35,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

10. 12-39954-E-13 PLC-4 | **JOHN/MICHELLE PINEDA** **Peter Cianchetta** | **MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC** **3-29-18 [115]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 29, 2018. By the court's calculation, 19 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Midland Funding LLC("Creditor") against property of John Pineda and Michelle Pineda ("Debtor") commonly known as 924 Gerling Court Galt, California ("Property").

INSUFFICIENT NOTICE OF MOTION

Debtor provided nineteen days' notice of this Motion. Local Bankruptcy Rule 9014-1(f)(1) requires a minimum of twenty-eight days. Debtor has provided seven fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien filed by John Pineda and Michelle Pineda ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES SUFFICIENT NOTICE

A judgment was entered against Debtor in favor of Creditor in the amount of $4,683.02. An abstract of judgment was recorded with Sacramento County on January 25, 2011, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $249,990.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $377,760.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") responds that Debtor asserts that Creditor holds a judicial lien against the Property, but Debtor does not disclose Creditor on Schedule D. Furthermore, Debtor states in Item 8 of the Motion that Wells Fargo Home Mortgage holds a superior lien totaling $382,443.02, but Wells Fargo Home Mortgage filed a secured claim for $387,234.39.

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).

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 John Pineda and Michelle Pineda ("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 Midland Funding LLC, California Superior Court for Sacramento County Case No. 34-2010-00078896, recorded on January 25, 2011, Book 20110125 and Page 0474, with the Sacramento County Recorder, against the real property commonly known as 924 Gerling Court Galt, 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.

11.	**12-39954-E-13** **PLC-5**	**JOHN/MICHELLE PINEDA** **Peter Cianchetta**	**MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** **3-29-18 [120]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 29, 2018. By the court's calculation, 19 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA) N.A. ("Creditor") against property of John Pineda and Michelle Pineda ("Debtor") commonly known as 924 Gerling Court, Galt, California ("Property").

INSUFFICIENT NOTICE OF MOTION

Debtor provided nineteen days' notice of this Motion. Local Bankruptcy Rule 9014-1(f)(1) requires a minimum of twenty-eight days. Debtor has provided seven fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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

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

The Motion to Avoid Judicial Lien filed by John Pineda and Michelle Pineda ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES SUFFICIENT NOTICE

A judgment was entered against Debtor in favor of Creditor in the amount of $5,995.68. An abstract of judgment was recorded with Sacramento County on December 7, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $249,990.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $377,760.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

On April 6, 2018, David Cusick ("the Chapter 13 Trustee") filed a Response. Dckt. 128. The Chapter 13 Trustee notes that, although Debtor asserts that Creditor holds a judicial lien against the Property, Schedule D does not disclose Creditor.

Additionally, the Chapter 13 Trustee notes that in Debtor's Motion, Debtor states that Wells Fargo Home Mortgage holds a superior lien totaling $382,443.02. However, Wells Fargo Home Mortgage filed a secured claim for $387,234.39.

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).

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 John Pineda and Michelle Pineda ("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. 34201000068477, recorded on December 7, 2010, Book 20101207 and Page 1954, with the Sacramento County Recorder, against the real property commonly known as 924 Gerling Court, Galt, 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.

12. 18-20456-E-13 DPC-1 | **MARIA ANDRICHUK, Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-21-18 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on March 21, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Maria Andrichuk ("Debtor") did not file or propose the Plan in good faith because she has a history of bankruptcy cases;

B. Debtor filed her Chapter 13 Plan on the wrong plan form;

C. Forms filed by Debtor are incomplete; and

D. Debtor has failed to provide the Chapter 13 Trustee with her tax return for the most recent pre-petition tax year, or with a written statement that no such documentation exists.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee reports that this is the sixth case filed by Debtor or her non-filing spouse since January 12, 2012, and the fourth petition filed by Debtor herself. The prior bankruptcy cases include:

A. Case No. 12-20590, filed by Debtor on January 12, 2012, and dismissed April 18, 2012;

B. Case No. 14-23405, filed by Debtor on April 2, 2014, and dismissed on September 26, 2014;

C. Case No. 15-28843, filed by Debtor on November 13, 2015, and dismissed on February 18, 2016;

D. Case No. 16-23373, filed by Debtor's spouse on May 24, 2016, and dismissed on August 24, 2016;

E. Case No. 16-27755, filed by Debtor's spouse on November 22, 2016, and dismissed on January 25, 2017.

With each successive filing, it appears Debtor's and Debtor's spouse's Schedules and Plans have become more incomplete and that they are intentionally delaying attempts to foreclose on real property. That practice demonstrates bad faith. 11 U.S.C. § 1325(a)(7).

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.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has provided incomplete information in her Petition documents, including:

A. Debtor left § 2.15 of the Plan blank, failing to list a dividend to the unsecured creditors;

B. Debtor lists Specialized Loan Servicing and the County of Sacramento on Schedule F, though it appears both creditors should be listed on Schedule

D. Additionally, Debtor fails to provide for any treatment of either creditor under her proposed Plan;

C. Debtor's testimony from the Meeting of Creditors indicates that Debtor failed to list an unencumbered 2006 Ford Focus on Schedule A/B; and

D. Debtor's Statement of Financial Affairs is incomplete. Specifically, Debtor failed to list income for 2017. Debtor does not list her Social Security Income, and the income listed in line #4 is not for the babysitting business Debtor admitted to having at the First Meeting of Creditors, and is marked as "wages."

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has not provided the Chapter 13 Trustee with either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

13. **18-20456-E-13** **MARIA ANDRICHUK** **OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN SERVICING, LLC**
EMM-1 **Pro Se** **3-22-18 [28]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on March 23, 2018. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Specialized Loan Servicing LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Maria Andrichuk's ("Debtor") plan does not provide for Creditor's claim, and

B. Debtor cannot afford feasible plan payments.

Creditor's objections are well-taken. Creditor asserts a claim of $110,866.41 in this case. Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Additionally, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that using the numbers from original Schedules I & J shows that Debtor's disposable income of $939.00 would not be sufficient to pay the $3,079.62 plan payment that Creditor estimates. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor amended Schedules D and I on April 9, 2018. Dckt. 37, 38. Debtor shows an income increase from $2,299.00 to $3,169.00 by disclosing her non-filing spouse's Social Security. Dckt. 38. On Schedule D, Debtor includes Creditor, but she lists the claim as being $225,000.00, not the $272, 053.98 from Proof of Claim No. 2-1 filed on March 14, 2018.

Debtor also filed an Amended Plan on April 9, 2018, which increases plan payments from $100.00 to $120.00 and calls for Creditor to be paid monthly contract installments of $350.00. Dckt. 39. The Plan increases to sixty months, but it still does not provide a dividend percentage to general unsecured claims. The Plan asserts "n/a" for all other classes of claims. Though filed, the Plan has not been served on any party, and it has not been set for a confirmation hearing.

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 Specialized Loan Servicing LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

14. 17-22489-E-13 EUGENE NIERI — MOTION TO MODIFY PLAN
MRL-6 Mikalah Liviakis — 2-8-18 [91]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2018. By the court's calculation, 67 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Eugene Nieri ("Debtor") seeks confirmation of the Modified Plan. The Modified Plan provides for monthly payments of $3,250.00 per month for four months and $1,855.50 per month for fifty-six months. Dckt. 93. 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 March 28, 2018. Dckt. 101. The Chapter 13 Trustee asserts that Debtor is $5,133.00 delinquent in plan payments, which represents multiple months of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor reports monthly net income of $1,855.50, net of a mortgage payment of $2,944.50. Debtor has not submitted any recent pay advices or profit and loss statements for the debtors businesses.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 seventy-six months due to lack of necessary income under the Plan using the most recent Schedule I and J documents. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Finally, the Chapter 13 Trustee asserts that the Motion and Debtor's declaration state that Wells Fargo is owed a monthly payment of $2,944.50 under Class 1 of the Plan, but the proposed Plan includes the bank in Class 4 and not Class 1 as stated.

RULING

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 Eugene Nieri ("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.

15. 18-21367-E-13 SUSAN SULTANA
ALF-1 Ashley Amerio

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
3-20-18 [11]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on March 20, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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 the Secured Claim is granted, the court determining that the secured claim of the Internal Revenue Service in this case has a value of $2,603.27, with the balance of the claim unsecured.

The Motion filed by Susan Sultana ("Debtor") to value the secured claim of the Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of:

A. Household goods valued at $820.00;

B. Two televisions, two DVD players, one tablet, and one computer valued at $230.00;

C. Miscellaneous artwork valued at $30.00;

D. Clothing valued at $200.00;

E. Miscellaneous costume jewelry valued at $100.00;

F. Two dogs valued at $200.00;

G. Cash on hand valued at $20.00;

H. A Chevron Bank Checking Account ending -4609 valued at $16.17;

I. A Chevron Bank Savings Account ending -4609 valued at $25.23;

J. A Chevron Bank Checking Account ending -6118 valued at $632.80;

K. A Chevron Bank Savings Account ending -6118 valued at $25.11;

L. A Patelco Bank Checking Account ending -5823 valued at $2.96;

M. A Patelco Bank Savings Account ending -5823 valued at $1.00;

N. Social Security benefits with an unknown value; and

O. A deposit with Debtor's landlord valued at $300.00;

("Property"). Debtor seeks to value the Property at a replacement value of $2,603.27 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

David Cusick ("the Chapter 13 Trustee") filed a Response on March 28, 2018, in which he stated that he has no basis to oppose the Motion because Creditor has not yet filed a claim in this matter. Dckt. 23.

RULING

Creditor filed Proof of Claim No. 2-1 on April 2, 2018. Creditor asserts a total claim of $60,450.33, $2,603.27 of which is secured. Creditor's assertion of the secured portion of its claim matches Debtor's assertion in the Motion. Not only has Creditor asserted a claim that is lower than Debtor's estimate, but Creditor has also agreed that the secured portion of its claim is under-collateralized and that the secured portion is only $2,603.27.

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 Susan Sultana ("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 Debtor's assets described as:

A. Household goods valued at $820.00;

B. Two televisions, two DVD players, one tablet, and one computer valued at $230.00;

C. Miscellaneous artwork valued at $30.00;

D. Clothing valued at $200.00;

E. Miscellaneous costume jewelry valued at $100.00;

F. Two dogs valued at $200.00;

G. Cash on hand valued at $20.00;

H. A Chevron Bank Checking Account ending -4609 valued at $16.17;

I. A Chevron Bank Savings Account ending -4609 valued at $25.23;

J. A Chevron Bank Checking Account ending -6118 valued at $632.80;

K. A Chevron Bank Savings Account ending -6118 valued at $25.11;

L. A Patelco Bank Checking Account ending -5823 valued at $2.96;

M. A Patelco Bank Savings Account ending -5823 valued at $1.00;

N. Social Security benefits with an unknown value; and

O. A deposit with Debtor's landlord valued at $300.00

("Property") are determined to have a value of $2,603.27.

IT IS FURTHER ORDERED that the Motion to Value the Internal Revenue Service's ("Creditor") secured claim is granted, the secured claim for which the above property is the collateral, has a value of $2,603.27 (Creditor having filed Proof of Claim No. 1-1 asserting that its secured claim is $2,603.27), and the balance of the claim unsecured.

16. 18-21367-E-13 ALF-2 | **SUSAN SULTANA** **Ashley Amerio** | **MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD** **3-20-18 [16]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on March 20, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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 the Secured Claim is granted, the court determining that the secured claim of the Franchise Tax Board has a value of $0.00, with the balance of the claim unsecured.

The Motion filed by Susan Sultana ("Debtor") to value the secured claim of Franchise Tax Board ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of:

A. Household goods valued at $820.00;

B. Two televisions, two DVD players, one tablet, and one computer valued at $230.00;

C. Miscellaneous artwork valued at $30.00;

D. Clothing valued at $200.00;

E. Miscellaneous costume jewelry valued at $100.00;

F. Two dogs valued at $200.00;

G. Cash on hand valued at $20.00;

H. A Chevron Bank Checking Account ending -4609 valued at $16.17;

I. A Chevron Bank Savings Account ending -4609 valued at $25.23;

J. A Chevron Bank Checking Account ending -6118 valued at $632.80;

K. A Chevron Bank Savings Account ending -6118 valued at $25.11;

L. A Patelco Bank Checking Account ending -5823 valued at $2.96;

M. A Patelco Bank Savings Account ending -5823 valued at $1.00;

N. Social Security benefits with an unknown value; and

O. A deposit with Debtor's landlord valued at $300.00;

("Property"). Debtor seeks to value the Property at a replacement value of $2,603.27 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

David Cusick ("the Chapter 13 Trustee") filed a Response on March 28, 2018. Dckt. 25. He states that he has no basis to oppose and points out that Creditor has not filed a claim.

RULING

Creditor filed its claim on March 30, 2018, as an unsecured claim in the amount of $64,606.01. Proof of Claim No. 1-1. Even though Debtor asserts that there is a tax lien against her personal property, Creditor appears to disagree, having filed its claim as fully unsecured.

The alleged lien on the Property for a tax obligation was recorded on October 18, 2010, which is more than one year prior to filing of the petition. To the extent that any portion of Creditor's claim is secured, it would be under-collateralized. There is no secured claim for the court to value because Creditor alleges in Proof of Claim No. 1-1 that it's secured claim is $0.00.

The valuation motion for the Property pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. The motion to value Creditor's secured claim is denied without prejudice.

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 Susan Sultana ("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 Debtor's assets described as
>
> A. Household goods valued at $820.00;
>
> B. Two televisions, two DVD players, one tablet, and one computer valued at $230.00;
>
> C. Miscellaneous artwork valued at $30.00;
>
> D. Clothing valued at $200.00;
>
> E. Miscellaneous costume jewelry valued at $100.00;
>
> F. Two dogs valued at $200.00;
>
> G. Cash on hand valued at $20.00;
>
> H. A Chevron Bank Checking Account ending -4609 valued at $16.17;
>
> I. A Chevron Bank Savings Account ending -4609 valued at $25.23;
>
> J. A Chevron Bank Checking Account ending -6118 valued at $632.80;
>
> K. A Chevron Bank Savings Account ending -6118 valued at $25.11;
>
> L. A Patelco Bank Checking Account ending -5823 valued at $2.96;
>
> M. A Patelco Bank Savings Account ending -5823 valued at $1.00;
>
> N. Social Security benefits with an unknown value; and
>
> O. A deposit with Debtor's landlord valued at $300.00

("Property") are determined to have a value of $2,603.27.

IT IS FURTHER ORDERED that the Motion to Value the Franchise Tax Board's ("Creditor") secured claim is granted, the secured claim for which the above property is the collateral, has a value of $0.00, the court having determined that the claim of the Internal Revenue Service secured by a senior lien exhausts all value in the above collateral.

17. 17-25985-E-13 DANIEL MARTINEZ — MOTION TO SELL
MRL-3 Mikalah Liviakis — 3-22-18 [81]

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, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2018. By the court's calculation, 26 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, ----------.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Daniel Martinez, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 600 5th Avenue, Sacramento, California ("Property").

The proposed purchaser of the Property is Jason Stidham, and the terms of the sale are:

A. Purchase price of $436,000.00, with a $4,500.00 deposit.

B. The remainder of the purchase price shall be due within thirty days of court approval.

C. A real estate agent commission of $13,990.00 shall be paid through escrow from the sale proceeds.

D. Closing costs of $4,488.60 are anticipated to include home warranty, notary fees, title and escrow fees, and a transfer tax.

E. Movant shall receive approximately $8,000.00 in net proceeds once all claims secured by the Property are paid.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 2, 2018. Dckt. 87. The Chapter 13 Trustee does not oppose the sale price or the proposed buyer. Instead, the Chapter 13 Trustee opposes the disposition of the proceeds because Movant is delinquent $7,350.00 under the most recent plan, because Movant may be the real estate agent to receive a commission, and because the Chapter 13 Trustee does not appear to be the disbursing agent for the sale proceeds to creditors holding claims secured by the Property.

WELLS FARGO'S NON-OPPOSITION

Wells Fargo Bank, N.A., ("Wells Fargo") filed a Non-Opposition on April 3, 2018. Dckt. 90. Wells Fargo notes that it is entitled to receive $338,400.00 in principal, and it is not opposed to the Motion as long as its claim is paid fully.

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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it generates sufficient proceeds to pay all claims in this case. Unfortunately for Movant, this case's history complicates this Motion slightly. There is no pending plan before the court, and Movant is delinquent under the most recent plan without proposing to cure that delinquency through the sale proceeds. Additionally, disbursement of the sale proceeds does not appear to happen by the Chapter 13 Trustee.

Movant has estimated that a 3.2% broker's commission from the sale of the Property will equal approximately $13,990.00. $3,090.90 is allocated for Lyon Real Estate, and $10,900.00 is allocated for Mid

Valley Funding and Investments. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 3.2% commission.

At the hearing, Movant proposed to cure the defects caused by not having a pending or confirmed plan by **xxxxxxxxxxxxxxxxxx**.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court but does not assert any reason for the request.

Movant has chosen not to plead adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h). Before the court "overrules" the Supreme Court in requiring a fourteen-day stay, a movant needs to provide the court the basis for such relief, not just add it as "additional whatever relief" to be granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Daniel Martinez ("Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Daniel Martinez, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jason Stidham or nominee ("Buyer"), the Property commonly known as 600 5th Avenue, Sacramento, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $436,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 84, 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 in order 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 3.2% of the actual purchase price upon consummation of the sale. The 3.2% commission shall be paid to Chapter 13 Debtor's agent, Lyon Real Estate, and to Buyer's agent, Mid Valley Funding & Investment.

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.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived, no grounds having been asserted in the Motion.

18. 17-26687-E-13 RYAN/JEAN LECITONA MOTION TO INCUR DEBT
RWH-1 Ronald Holland 3-23-18 [20]

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).

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 March 23, 2018. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

Ryan Lecitona and Jean Lecitona ("Debtor") seeks permission to purchase a 2014 Hyundai Veloster or similar vehicle. Debtor intends to withdraw up to $15,000.00 from a 401(k) account and will make monthly payments back into the account of $250.00 without interest.

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

Debtor has not presented a specific purchase agreement to the court, instead seeking general authorization to seek a post-petition debt of up to $15,000.00. Debtor states that the new debt will be affordable and will not affect the Plan because of several changes to Schedule J, including:

A. Home maintenance, repair, and upkeep from $300.00 to $100.00;

B. Telephone from $353.00 to $205.00;

C. Clothing, laundry, and dry cleaning from $150.00 to $135.00;

D. Personal care products and services from $100.00 to $50.00;

E. Other installment or lease payment from $0.00 to $250.00; and

F. Retirement and payroll loans from $197.01 to $0.00.

Dckt. 22; *compare* Dckt. 25, *with* Dckt. 1.

No party has opposed the Motion, but the court does not find the proposal to be facially reasonable. Debtor's plan was confirmed on December 14, 2017, relying upon the schedules filed with this case on October 9, 2017. Dckt. 16. Now, Debtor indicates that as of April 5, 2018, expenses can voluntarily be changed enough to increase Debtor's projected disposable income to allow Debtor to afford car payments. Debtor's declaration does not address how Debtor was able to afford the reductions to expenses, merely that the reductions were made.

At the hearing, Debtor explained that the changes are possible so early in this case because **xxxxxxxxxxx**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Ryan Lecitona and Jean Lecitona ("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 **xxxxxxxxxxxxxx**.

19. **17-25627-E-13** **LINDA HUSS** **MOTION TO SELL**
HLG-1 **Kristy Hernandez** **3-5-18 [93]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 5, 2018. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Linda Huss, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant seeks retroactive approval of the sale of real property commonly known as 3010 Warren Lane, El Dorado Hills, California ("Property").

The proposed purchasers of the Property are Chad Wessling and Camille Wessling, and the terms of the sale are:

A. Purchase price of $499,000.00, with an initial deposit of $5,000.00;

B. All creditors with liens encumbering the Property shall be paid in full before or simultaneously with the transfer of title to the buyers;

C. All costs of sale shall be paid from the sale proceeds;

D. Movant shall not relinquish title to or possession of the Property prior to full payment of the purchase price;

E. Buyer shall pay a 1.00% commission to Movant's agent (Movant listed as the listing agent and RE/MAX Gold listed as the selling agent);

F. Buyer and Movant shall share equally the cost of a home warranty of buyer's choice to include pool and A/C, but not to exceed $600.00 total; and

G. Movant may remain on the Property for up to fourteen days after the close of escrow at no additional cost to Movant.

Movant states that the Final HUD-1 statement has been provided to David Cusick ("the Chapter 13 Trustee").

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on March 26, 2018. Dckt. 112. He states that he is not opposed to the Motion, but he is unsure whether Movant is aware that she needed court permission to sell the Property. He notes that Movant is a realtor and that the sale was discussed at the Meeting of Creditors held on October 12, 2017.

DISCUSSION

At the January 23, 2018 hearing, the Chapter 13 Trustee raised the issue that Debtor may have transferred the Property post-petition in January 2018 without court authorization. Dckt. 72. The court opined that Movant may have entered into escrow to sell the Property and was potentially desperate to have her case dismissed in case escrow was delayed by a title company reviewing public records and noticing this bankruptcy case. *Id.*

After that hearing (which was for Movant to substitute as her own counsel in this case), Movant moved to dismiss this case. Dckt. 77. The court denied that request without prejudice in March 2018. Dckt. 110. On February 28, 2018, Kristy Hernandez was substituted in as the current counsel of record. Dckt. 92.

In Movant's Declaration, she states that she believed the Property was about to be sold at foreclose auction when the case was filed. Dckt. 95 at 2:11.5–14. So, she believed that she needed to sell the Property quickly, which she did. *Id.* at 2:14–16.5. Movant claims that she was unaware that she needed court approval to sell the Property. *Id.* at 2:16.5–19.

Movant's decision to sell the property without court approval and not to wait for court approval to abandon property of the estate indicates to the court that Movant does not believe that the Bankruptcy Code applies to her, that she can do as she pleases and ask the court for forgiveness afterward if necessary. That attitude does not work well with the court, especially when a fiduciary for the bankruptcy estate had dealt with the property of the estate without obtaining proper authorization from the court.

The Motion does not state with particularity (or even generally) grounds for which retroactive relief is proper. Rather, the Motion merely states: the Property was sold; no order was obtained; ratify the sale.

While the court is authorized to grant retroactive relief, it is more than merely that a party requests such relief. As discussed in the context of employing professionals:

> The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services. *See Halperin v. Occidental Fin. Group, Inc. (In re Occidental Fin. Group, Inc.)*, 40 F.3d 1059, 1062 (9th Cir.1994); *In re THC Fin. Corp.*, 837 F.2d at 392. We have held that such retroactive approval should be limited to situations in which "exceptional circumstances" exist. *In re Occidental Fin. Group, Inc.*, 40 F.3d at 1062; *In re THC Fin. Corp.*, 837 F.2d at 392.
>
> To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner. *In re Occidental Fin. Group, Inc.*, 40 F.3d at 1062 (finding retroactive approval inappropriate where these two conditions were not met); *In re THC Fin. Corp.*, 837 F.2d at 392 (affirming denial of retroactive approval where these two conditions were not satisfied) (citations omitted). Whether additional factors should or must be considered is contested in this appeal.

Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970 (9th Cir. 1995).

Generally applying these principles, extrapolating from prior hearings and testimony, the failure to obtain prior approval arose due to error. While unclear how a title company could have closed escrow *if told by Movant's counsel of the pending bankruptcy case*, Movant and her counsel have come to the court. It appears that Debtor believed that she could just get this case dismissed, not appreciating the necessity of a court order.

Retroactive Approval of Sale

Though not expressly seeking retroactive approval, it is clear that this is what Debtor seeks. Debtor and her current counsel are acting to rectify the title problems created by Debtor's prior unilateral decision to act. Approving the sale is in the best interests of Movant (who has a significant exemption) and the buyer. Not approving the sale could create a series of costly, expensive lawsuits in which the title company, lenders, real estate agents, the buyer, counsel for Debtor, the fiduciary exercising the power of attorney, and insurance companies for all point the finger in the other direction. The costs of such litigation could well exceed the sales price. The sales price is consistent with Debtor's stated value of the Property.

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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will provide sufficient funds for Movant to pay all secured and unsecured claims in this case.

Movant has estimated that a one percent broker's commission from the sale of the Property will equal approximately $4,999.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a one 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 Linda Huss ("Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Linda Huss, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Chad Wessling and Camille Wessling or nominee ("Buyer"), the Property commonly known as 3010 Warren Lane, El Dorado Hills, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $499,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit E, Dckt. 96, 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 in order 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 one percent of the actual purchase price upon consummation of the sale. The one percent commission shall be paid to Chapter 13 Debtor's agent, RE/MAX Gold.

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.

IT IS FURTHER ORDERED that the authorization to sell the above Property is retroactively granted, effective as of December 1, 2017, and thereafter.

20. 17-25627-E-13 HLG-2 | **LINDA HUSS** / **Kristy Hernandez** | **MOTION TO CONFIRM PLAN** **3-5-18 [98]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 5, 2018. By the court's calculation, 43 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is ~~granted~~.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Linda Huss ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on March 26, 2018. Dckt. 114.

On April 3, 2018, Eric Schwab filed a Response, indicating that the Plan does not provide for paying attorney's fees that were earned by him as former counsel for Debtor. Dckt. 116.

With the court approving the retroactive sale of property, sufficient funds have been generated in this case to fully fund a plan, including paying all attorney's fees. At the hearing, the parties agreed to amend the Plan to provide for payment of $xxxx.xx to Eric Schwab for attorney's fees earned in this case. 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 Linda Huss ("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 March 5, 2018, as amended to include payment of $xxxx.xx to Eric Schwab for attorney's fees, 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.

21. **18-20621-E-13** **CAROLYN HEUSTESS** **MOTION TO REQUEST NEW 341 MEETING DATE HEARING**
Pro Se **3-14-18 [22]**

APPEARANCE OF CAROLYN HEUSTESS, THE CHAPTER 13 DEBTOR, REQUIRED AT THE STATUS CONFERENCE

NO TELEPHONIC APPEARANCE PERMITTED FOR DEBTOR OR FOR COUNSEL (IF ANY)

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Certificate of Service states that the Court's Order Setting Hearing was served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2018. By the court's calculation, 16 days' notice was provided. The court set the hearing for April 17, 2018. Dckt. 32.

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

The Motion for a New Meeting of Creditors Date is denied as moot.

On March 14, 2018, Carolyn Heustess ("Debtor") filed a request to have her First Meeting of Creditors continued from March 15, 2018. Dckt. 22. The grounds stated in Debtor's request are that she and her husband are disabled and that Debtor has been (and is) very sick with the flu. *Id.*

This Bankruptcy Case was filed on February 5, 2018. Debtor did not file her Schedules or Statement of Financial Affairs when she filed the Petition. Notice of Incomplete Filing, Dckt. 10. However, Debtor did file her Chapter 13 Plan, which provides for $200.00 a month payments for forty-five months. Dckt. 8. The Plan form Debtor used is no longer allowed, having been updated on December 1, 2017. *See* Federal Rule of Bankruptcy Procedure 3015.1; General Order 17-03. Under the terms of said plan, no provision is made to pay or otherwise provide for:

A. Class 1 (Secured) Claims;
B. Class 2 (Secured) Claims;
C. Class 3 (Surrendered Collateral) Claims;
D. Class 4 (Secured) Claims;
E. Class 5 (Priority Unsecured) Claims;
F. Class 6 (Unsecured Special Treatment) Claims; or
G. Class 7 (general unsecured) Claims.

Id. Other than providing for the $200.00 a month and a forty-five month term, the provisions of the plan are left blank.

Debtor subsequently filed her Schedules on February 21, 2018. Dckt. 17. As stated under penalty of perjury by Debtor on the Schedules:

A. Debtor Has No Creditors With Secured Claims. Schedule D, *Id.* at 14.

B. Debtor Has No Creditors With Priority Unsecured Claims. Schedule E/F, *Id.* at 17.

C. Debtor Has No Creditors With General Unsecured Claims. Schedule E/F, *Id.* at 19–22.

A review of docket in this case shows that Debtor did not appear at the Meeting of Creditors on March 15, 2018. The meeting has been continued to June 21, 2018. Debtor did not request a particular date or amount of time for the meeting to be continued. The meeting having been continued until June, Debtor's request appears to be moot. The Motion is denied. FN.1.

FN.1. The court also notes that this is not Debtor's second, or even third, recent Chapter 13 case. Debtor has filed and had dismissed the following recent cases:

Case Number	**Date Filed**	**Date Dismissed**
17-26764	October 12, 2017	December 20, 2017
16-27235	October 31, 2016	January 22, 2017
16-26379	September 26, 2016	October 14, 2016

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for a New Meeting of Creditors Date having been conducted, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS FURTHER ORDERED** that the Motion is denied as moot, the Meeting of Creditors having been continued by the Chapter 13 Trustee to June 21, 2018.

22. 18-20621-E-13 DPC-1 | **CAROLYN HEUSTESS, Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 3-22-18 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on March 22, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Carolyn Heustess ("Debtor") does not appear to be prosecuting this case in good faith due to prior bankruptcy filings;

B. Debtor failed to appear at the First Meeting of Creditors;

C. Debtor filed her Plan on the wrong Plan Form;

D. Debtor has failed to provide the Chapter 13 Trustee with her most recent pre-petition tax return;

E. Debtor's Chapter 13 documents are incomplete; and

F. Debtor's proposed Plan appears to fail the Liquidation Analysis.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee reports that Debtor failed to disclose two prior bankruptcy cases (Case Nos.16-27235, filed on October 31, 2016 and 17-26764, filed on October 12, 2017) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor reported one case (Case No. 16-16379), but she did not report Case Nos. 16-27235 or 17-26764.

The Chapter 13 Trustee reports that this appears to be the fourth case filed by Debtor since September 26, 2016. The prior bankruptcy cases include:

A. Case No. 16-26379 was filed by Debtor on September 26, 2016, and dismissed on October 14, 2016, for failure to timely file documents;

B. Case No. 16-27235 was filed by Debtor on October 31, 2016, and dismissed on January 22, 2017, upon motion by the Trustee; and

C. Case No. 17-26764 was filed on October 12, 2017, and dismissed on December 20, 2017 for failure to pay filing fees.

Debtor's previously filed cases show a history of filing documents untimely, submitting incomplete documents to the court, and failing to pay fees.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The Continued Meeting of Creditors will be held on April 17, 2018 at 3:00 p.m. Dckt. 32.

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.

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has provided incomplete information in her Petition documents, including:

A. Schedule J appears to list Debtor's net income as $8.00;

B. Debtor left § 2.15 of the Plan blank, failing to list a dividend to the unsecured creditors;

C. Debtor failed to choose and check the appropriate box indicating whether or not additional provisions were attached to the Plan;

D. Debtor lists "Inheritance" as real property under Schedule A but has provided no further information to the Chapter 13 Trustee pertaining to the "Inheritance."

E. Debtor may not have properly completed Schedules D, E, and F because Schedules D and F indicate that Debtor has no creditors that hold secured or priority claims, and Schedule F does not list any creditors;

F. In the Statement of Financial Affairs, Debtor only provides information on lines 5 and 10, thus the Statement of Financial Affairs is incomplete; and

G. Debtor failed to disclose Case No. 17-26764 and 16-27235 on her Voluntary Petition.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor's Plan fails the Liquidation Analysis because Debtor's non-exempt equity totals $226,075.00 and Debtor failed to propose a dividend to Debtor's unsecured creditors.

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

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

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

23. **18-20621-E-13** **CAROLYN HEUSTESS** **STATUS CONFERENCE RE: VOLUNTARY PETITION**
Pro Se **2-5-18 [1]**

APPEARANCE OF CAROLYN HEUSTESS, THE CHAPTER 13 DEBTOR, REQUIRED AT THE STATUS CONFERENCE

NO TELEPHONIC APPEARANCE PERMITTED FOR DEBTOR OR FOR COUNSEL (IF ANY)

Debtor's Atty: Pro Se

The Status Conference is xxxxxxxxxxxxxxxxxx.

Notes:
Set by court order filed 3/30/18 [Dckt 32]. Set to determine whether the court should issue an order to show cause why the court should not impose a prefiling review order.

APRIL 17, 2018 STATUS CONFERENCE

This Bankruptcy Case was filed on February 5, 2018. Debtor did not file her Schedules or Statement of Financial Affairs when she filed the Petition. Notice of Incomplete Filing, Dckt. 10. However, Debtor did file her Chapter 13 Plan, which provides for $200.00 a month payments for forty-five months. Dckt. 8. The Plan form Debtor used is no longer allowed, having been updated on December 1, 2017. *See* Federal Rule of Bankruptcy Procedure 3015.1; General Order 17-03. Under the terms of said plan, no provision is made to pay or otherwise provide for:

A. Class 1 (Secured) Claims;
B. Class 2 (Secured) Claims;
C. Class 3 (Surrendered Collateral) Claims;
D. Class 4 (Secured) Claims;
E. Class 5 (Priority Unsecured) Claims;
F. Class 6 (Unsecured Special Treatment) Claims; or
G. Class 7 (general unsecured) Claims.

Id. Other than providing for the $200.00 a month and a forty-five month term, the provisions of the plan are left blank.

Debtor subsequently filed her Schedules on February 21, 2018. Dckt. 17. As stated under penalty of perjury by Debtor on the Schedules:

A. Debtor Has No Creditors With Secured Claims. Schedule D, *Id.* at 14.

B. Debtor Has No Creditors With Priority Unsecured Claims. Schedule E/F, *Id.* at 17.

C. Debtor Has No Creditors With General Unsecured Claims. Schedule E/F, *Id.* at 19–22.

Prior Cases Filed By Debtor

The current bankruptcy case is not Debtor's first recent Chapter 13 filing. A review of the court's records discloses the following prior cases:

A. Chapter 13 Case No. 17-26764
   1. Filed.....October 12, 2017
   2. Dismissed.....December 20, 2017
   3. Case Dismissed Due to Debtor's Failure to Pay Filing Fee Installment.

B. Chapter 13 Case No. 16-27235
   1. Filed.....October 31, 2016
   2. Dismissed.....January 22, 2017
   3. Case Dismissed Due to: (1) Debtor's failure to attend First Meeting of Creditors; (2) Debtor's failure to provide income documentation; and (3) Debtor's failure to provide copies of tax returns. 16-27235; Civil Minutes, Dckt. 32.

C. Chapter 13 Case No. 16-26379
   1. Filed.....September 26, 2016
   2. Dismissed.....October 14, 2016

3. Case Dismissed Due to Debtor's Failure to File Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other documents.

James Heustess is identified in the various cases filed by Debtor as her husband. A review of the court's files discloses that James Heustess has filed, and had dismissed, the following recent bankruptcy cases:

A. Chapter 13 Bankruptcy Case No. 17-26026
   1. Filed.....September 11, 2017
   2. Dismissed.....September 29, 2017
   3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, and other required documents.
   4. James Heustess Filed a Chapter 13 Plan in Case No. 17-26026. The Plan proposed payments of $200.00 per month for thirty-five months. 17-26026; Chapter 13 Plan, Dckt. 9. James Heustess's Plan is left blank, with no provision for paying any creditor claims.

B. Chapter 13 Bankruptcy Case No. 17-22215
   1. Filed.....April 3, 2017
   2. Dismissed.....April 21, 2017
   3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, and other required documents.
   4. James Heustess Filed a Chapter 13 Plan in Case No. 17-22215. The Plan proposed payments of $100.00 a month for thirty-six months. 17-22215; Chapter 13 Plan, Dckt. 8. James Heustess' Plan is left blank, with no provision for paying any creditor claims.

C. Chapter 13 Bankruptcy Case No. 16-25122
   1. Filed.....August 4, 2016
   2. Dismissed.....August 22, 2016
   3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other required documents.

D. Chapter 13 Bankruptcy Case No. 15-29595
   1. Filed.....December 14, 2015
   2. Dismissed.....January 14, 2016
   3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other required documents.

Though stating that she has no creditors, the Verification of Master Address List discloses only one person to be served with notice of the Bankruptcy Case. That person is stated to be:

OCWEN LOAN SERVICING
1661Worthington Road Suite 100
Attn: Bankruptcy Department
West Palm Beach, FL 33409

Master Address List, Dckt. 4. Ocwen Loan Servicing commonly serves as a loan servicer for creditors who have claims secured by the borrower's deed of trust or mortgage against the residence. It appears that Debtor, and her husband, may actually have (or had, if a foreclosure has been completed) creditors whose rights and interests are subject to the bankruptcy case(s).

However, it appears that Debtor's, and her husband's, efforts have been an ineffective squandering of their valuable rights and interests, including their extraordinary rights under the Bankruptcy Code. Filing bankruptcy is easy. Actually prosecuting a case requires the debtor (whether in *pro se* or represented by counsel) to actively prosecute the bankruptcy case and assert the debtor's rights. Clearly that has not occurred in Debtor's, and her husband's, repeated cases.

PREFILING REVIEW AUTHORITY OF COURT

The bankruptcy courts are established by an act of Congress and the All Writs Act, 28 U.S.C. § 1651(a), and 11 U.S.C. § 105 provides the bankruptcy courts with the inherent power to enter prefiling orders against vexatious litigants. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007); *Gooding v. Reid, Murdock & Co.*, 177 F. 684 (7th Cir. 1910); *Weissman v. Quail Lodge, Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999); *Harsh Inv. Corp. v. Bialac (In re Bialac)*, 15 B.R. 901 (B.A.P. 9th Cir. 1981), *aff'd*, 694 F.2d 625 (9th Cir. 1982). A court must be able to regulate and provide for the proper filing and prosecuting of proceedings before it. 11 U.S.C. § 105(a) expressly grants the court the power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. Further, the court is authorized to *sua sponte* take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. This power exists, and it does not matter whether it is being exercised pursuant to 11 U.S.C. § 105 or the inherent power of the court. *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997); *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996).

The Ninth Circuit Court of Appeals restated the grounds and methodology for prefiling review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. *Molski*, 500 F.3d 1047; *In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining the free and open access to the courts, it is also necessary to have that access be properly utilized and not abused. The abusive filing of bankruptcy petitions, motions, and adversary proceedings for purposes other than as allowed by law diminishes the quality of and respect for the judicial system and laws of this country.

As addressed by the Ninth Circuit Court of Appeals in *Molski*, the ordering of a prefiling review requirement is not to be entered with undue haste because such orders can tread on a litigant's due process

right of access to the courts. As discussed by the Supreme Court, the right to seek redress from the court is a protected right of civil litigants. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982). The issuing of a prefiling order is to be made only after a cautious review of the pertinent circumstances.

However, the Ninth Circuit Court of Appeals clearly draws the line that a person's right to present claims and assert rights before the federal courts is a not a license to abuse the judicial process and treat the courts merely as a tool to abuse others.

> Nevertheless, "[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long*, 912 F.2d at 1148; *see O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

Molski, 500 F.3d at 1057.

The court is cognizant of the significant impact the filing of a bankruptcy case has not only on this Debtor, but also on creditors and other persons. Even if, due to the repeated filings and the provisions that Congress has placed in 11 U.S.C. § 362(c)(3) and § 362(c)(4), the automatic stay does not go into effect, the presentation of a filed bankruptcy petition and the significant sanctions imposed on someone violating the stay can work to improperly prevent creditors from legitimately enforcing their rights.

It appears that Debtor, and Debtor's husband, have each filed a series of non-productive Chapter 13 cases, which do not appear to have been filed for any *bona fide* purpose. Debtor has been afforded multiple opportunities to advance a Chapter 13 plan to cure defaults on the obligation owing to the creditor and to restructure the debt through a Chapter 13 plan. While obtaining the benefit of the automatic stay, whether actually or improperly represented to exist, Debtor has been unable or refused to properly prosecute a Chapter 13 Plan.

Even if Debtor is "innocently" being led into a bankruptcy scheme, she is demonstrating that she, as well as her husband, has not heretofore been able to prosecute a bankruptcy case, or even to accurately complete the bankruptcy schedules and statement of financial affairs. That has led to Debtor squandering her valuable bankruptcy rights, as well as potentially committing a fraud on the court and creditors. In addition, the making of false statements under penalty of perjury could subject Debtor to both civil and criminal sanctions, penalties, and prosecutions.

At this point, the court is considering whether to start the process of a limited barring of Debtor from filing further bankruptcy cases for a period (generally between four and eight years) without first obtaining a prefiling authorization from the chief judge in the bankruptcy district before commencing another bankruptcy case.

A prefiling review requirement is of little impact to a debtor seeking legitimate relief from the bankruptcy court. In this case, it will require Debtor (whether represented by counsel or continuing to act in *pro se*) to have the initial bankruptcy pleadings completed and, on their face, appear to be completed consistent with the requirements of the Bankruptcy Code and Chapter under which Debtor seeks to file bankruptcy. It imposes no significant cost or delay, in that the petition, schedules, and other basic pleadings

need to be prepared at the time of filing regardless of whether a prefiling review exists. The ability to file rests solely with Debtor, requiring Debtor to do and comply with only what the Bankruptcy Code requires.

It also has the effect of this Debtor being prepared to successfully prosecute a Chapter 13 case, rather than continuing to flounder and squander rights under the Bankruptcy Code.

At this point in time, the court is conducting a status conference on the issue of whether an Order to Show Cause should be issued. This extra step is to afford Debtor, and presumably her husband, additional time to consult counsel, consider what rights they may still have, and whether there is a good faith bankruptcy case to be filed and prosecuted.

At the Status Conference, **xxxxxxxxxxxxxxxxxxxx**.

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 Status Conference having been conducted, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS FURTHER ORDERED** that the Status Conference is concluded, and ~~the court shall issue an Order to Show Cause as to why the court should not issue a ban on Debtor filing another bankruptcy case without first obtaining the authorization from the chief bankruptcy judge in the district in which she desires to file such bankruptcy case.~~

24. **18-21644-E-13** **ANGELO/LISA OLIVA** **MOTION TO EXTEND AUTOMATIC STAY**
AVN-1 **Anh Nguyen**
4-10-18 [20]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 10, 2018. By the court's calculation, 7 days' notice was provided. The court set the hearing for April 17, 2018. Dckt. 24.

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

The Motion to Extend the Automatic Stay is granted.

Angelo Oliva and Lisa Oliva ("Debtor") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 15-24310) was dismissed on November 7, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 15-24310, Dckt. 176, November 7, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Co-Debtor Angelo Oliva states that the instant case was filed in good faith and explains that the previous case was dismissed after Debtor fell behind on plan payments because collection from business accounts receivable was delayed by Debtor's employer, especially after the Bay Area fires of October 2017 displaced clients and interrupted business services. Dckt. 22. Co-Debtor states that business has stabilized now.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Co-Debtor Angelo Oliva has explained sufficiently that a natural disaster interrupted income from business, but now, work is normal, and Debtor has income to afford plan payments.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Angelo Oliva and Lisa Oliva ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

25. 17-25403-E-13 BD-5 | **BYLLIE DEE** Bert Carter | **MOTION TO CONFIRM PLAN** 3-16-18 [109]

Final Ruling: No appearance at the April 17, 2018 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.

26. 16-25919-E-13 RICHARD ARROYO MOTION TO MODIFY PLAN
SLH-1 Seth Hanson 3-6-18 [24]

Final Ruling: No appearance at the April 17, 2018 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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 6, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Richard Arroyo ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on April 2, 2018. Dckt. 34. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Richard Arroyo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 6, 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.

27. 18-20419-E-13 TOG-1 JOSE DE JESUS/MARIA PEREZ Thomas Gillis MOTION TO CONFIRM PLAN 2-22-18 [17]

Final Ruling: No appearance at the April 17, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2018. By the court's calculation, 54 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Jose Perez and Maria Perez ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on March 23, 2018. Dckt. 32. 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 Jose Perez and Maria Perez ("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 February 22, 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.

28. 18-20419-E-13 TOG-2 | **JOSE DE JESUS/MARIA PEREZ** Thomas Gillis | **MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION** 3-14-18 [27]

Final Ruling: No appearance at the April 17, 2018 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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 14, 2018. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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). 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 Value Collateral and Secured Claim of Safe Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,538.00.

The Motion filed by Jose Perez and Maria Perez ("Debtor") to value the secured claim of Safe Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Ford F-150 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $12,538.00 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).

The lien on the Vehicle's title secures a purchase-money loan incurred on May 28, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,328.00. *See* Proof of Claim No. 1-1. 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 $12,538.00, 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 Jose Perez and Maria Perez ("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 Safe Credit Union ("Creditor") secured by an asset described as a 2013 Ford F-150 ("Vehicle") is determined to be a secured claim in the amount of $12,538.00, 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 $12,538.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

29. 16-27151-E-13 MEE MOUA — MOTION TO INCUR DEBT
PSB-1 Pauldeep Bains — 3-8-18 [27]

Final Ruling: No appearance at the April 17, 2018 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Mee Moua ("Debtor") seeks court approval for Debtor to incur post-petition credit. U.S. Bank N.A. ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $1,238.19 per month to $1,111.45 per month. The modification has a principal balance of $180,369.89 at 4.25% interest over a forty-year term with a maturity date of March 1, 2058.

The Motion is supported by the Declaration of Mee Moua. Dckt. 29. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a response and states that he has no basis to oppose. The Chapter 13 Trustee reasserts the terms of the language above: Creditor is included in Class 4 of the confirmed plan with a monthly payment of $1,238.19. The loan modification will reduce the monthly payments to $1,111.45. The creditor has not filed a claim in the case.

RULING

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Mee Moua ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Mee Moua to amend the terms of the loan with U.S. Bank N.A. ("Creditor"), which is secured by the real property commonly known as 5346 Valley Hi Drive, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit B in support of the Motion (Dckt. 30).

30. 15-29454-E-13 MJD-1 | **MICHAEL/KAYLENE YANDEL** **Matthew DeCaminada** | **OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES** **3-15-18 [92]**

Final Ruling: No appearance at the April 17, 2018 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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on March 15, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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 Objection to Notice of Mortgage Payment Change is dismissed without prejudice.

Michael Yandel and Kaylene Yandel ("Debtor") object to the Notice of Mortgage Payment Change filed by U.S. Bank Trust, N.A. ("Creditor") on March 14, 2018. *See* Dckt. 90. Debtor argues that the Notice is for attorney's fees of $350.00 for a plan review that occurred on January 19, 2018, without an itemization of hourly billing. Debtor believes that there was no reason for the review charge because Debtor proposed a plan on the standard Chapter 13 plan form without any changes or additional provisions. That was confirmed on May 16, 2016, and has not been modified. *See* Dckt. 66.

CREDITOR'S WITHDRAWAL OF NOTICE

Creditor withdrew the Notice on April 6, 2018. Dckt. 96.

RULING

With Creditor withdrawing the Notice, there is nothing left for the Objection and nothing for the court to determine. The Objection is dismissed without prejudice.

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 Notice of Mortgage Payment Change filed by Michael Yandel and Kaylene Yandel ("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 Objection to Notice of Mortgage Payment Change filed by U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust ("Creditor") is dismissed without prejudice, Creditor having withdrawn the Notice of Mortgage Payment Change on April 6, 2018, (Dckt. 96) and not electing to litigate the Objection filed by Debtor.
>
> Creditor having elected not to litigate the Objection, any motion for prevailing party attorney's fees and bill of costs, if any, shall be filed as permitted pursuant to Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

31. **18-20368-E-13 PP-3** | **WILLIAM CARLISLE** **Ronald Holland** | **MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7** **3-20-18 [66]**

Final Ruling: No appearance at the April 17, 2018 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 Dismiss 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.

32. **18-20368-E-13 RWH-2** | **WILLIAM CARLISLE** **Ronald Holland** | **MOTION TO CONFIRM PLAN** **2-22-18 [44]**

Final Ruling: No appearance at the April 17, 2018 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 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.