UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 30, 2019 at 3:00 p.m.

1.	**19-20009-E-13 RJM-1**	**DUANE/VERONICA STANSFIELD Rick Morin**	**OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 3-15-19 [18]**

Tentative Ruling: The Motion Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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 15, 2019. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Objection To Notice of Postpetition Mortgage Fees, Expenses, and Charges 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 Postpetition Mortgage Fees, Expenses, and Charges is sustained.

The debtors, Duane Lee Stansfield and Veronica Denise Stansfield ("Debtor"), filed this Objection seeking a determination of fees, expenses, or charges asserted by creditor Safe Credit Union ("Creditor") holding a claim secured by property commonly known as 4432 Altadena Way in Sacramento, California ("Property").

Creditor filed Proof of Claim, No. 4 on February 21, 2019. On March 6, 2019, Creditor filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges asserting $1,011.55 in fees and costs.

Withdrawal of Notice of Postpetition Mortgage Fees, Expenses, and Charges

On April 16, 2019, Creditor filed a Withdrawal of Notice of Postpetition Mortgage Fees, Expenses, and Charges.

DISCUSSION

This Objection is actually a motion for determination of fees, expenses, or charges pursuant to Federal Rule of Bankruptcy Procedure 3002.1(e).That rule provides as follows:

> On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any **claimed** fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

FED. R. BANKR. P. 3002.1(e)(emphasis added).

Here, Creditor withdrew its Notice of Postpetition Mortgage Fees, Expenses, and Charges on April 16, 2019. Such withdrawal appears to be at a minimum a statement of "no contest" to the Objection.

Creditor not contesting the Objection, the Objection is sustained and Attorney Fees, Proof of Claim Fees, Mailing Charges, 410A preparation fee, and Notice of Postpetition Mortgage Fees, Expenses and Charges are disallowed in their entirety.

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

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

The Objection To Notice of Postpetition Mortgage Fees, Expenses, and

Charges filed by Elina Machado ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection To Notice of Postpetition Mortgage Fees, Expenses, and Charges is sustained, and all such Attorney Fees, Proof of Claim Fees, Mailing Charges, 410A preparation fee, and Notice of Postpetition Mortgage Fees, Expenses and Charges fee, and each of them, stated in the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed on March 6, 2019, (and any portions thereof) are each disallowed in their entirety.

2. 18-23379-E-13 GW-5

WILLIAM BATTILANA, II
Gerald White

MOTION TO APPROVE REINVESTMENT OF DEBTOR'S HOMESTEAD
4-12-19 [152]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 12, 2019. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion To Approve Reinvestment of Debtor's Homestead is granted.

The debtor, William Rudolph Battilana, II ("Debtor"), filed this Motion on April 12, 2019 seeking authorization to reinvest exempt proceeds of the sale of his residence in a new residence, a mobile identified as a 2019 Grand Design 377 MBS 5th Wheel (the "Mobile Home").

Debtor states that he received $100,000.00 in exempt proceeds from the sale of his former residence ("Exempt Funds"), which funds are being held by Debtor's counsel. Debtor describes the Mobile Home as having a full kitchen and bathroom and being a suitable dwelling in which the Debtor and his child can reside.

Debtor states further the cost of the Mobile Home is $99,885.00 with an additional set-up fee of $115.00, and therefore requests the entirety of the Exempt Funds.

Debtor filed along with the Motion his Declaration providing testimony supporting the facts asserted in the Motion. Dckt. 154. The Debtor also filed as Exhibit A, a copy of the purchase order for the Mobile Home, and as Exhibit B the specifications for the Mobile Home. Dckt. 155.

DISCUSSION

While this present Motion is for authorization to reinvest exempt funds, there is no Bankruptcy Code section directly applicable to such authorization. What the Motion actually solicits is abandonment of the Estate's contingent interest in the exempt funds (which if Debtor did not reinvest would not be exempt).

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. §§ 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

Here, the Debtor is in the possession of funds from the sale of his former residence which were exempt pursuant to California Code of Civil Procedure §704.710. Debtor seeks to reinvest the funds so they continue to be covered under the homestead exemption.

As the $100,000.00 in funds is exempt, there is no value or benefit in the Estate left in those funds. Therefore, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Approve Reinvestment of Debtor's Homestead filed by the debtor, William Rudolph Battilana, II ("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 Approve Reinvestment of Debtor's Homestead is granted, and Debtor is authorized to use $100,00.00 in sale proceeds claimed exempt pursuant to California Code of Civil Procedure §704.710 ("Exempt Funds") to purchase property identified as a 2019 Grand Design 377 MBS 5th Wheel.

IT IS FURTHER ORDERED that to the extent the Estate has a contingent interest in Debtor's Exempt Funds, that interest is abandoned to Debtor by this order, with no further act of the Chapter 13 Trustee required.

3.	**11-48125-E-13** **LP-10**	**MARIE/RANDY ALOJADO** **Lewis Phon**	**MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.** **4-16-19 [177]**

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, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding, vacating, removing, annulling, and cancelling the lien of FIA Card Services, N.A. aka FIA Card Services, as successor to Bank of America, N.A. and MBNA America Bank, N.A. ("Creditor") against property of Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") commonly known as 25775 Grafton Street, Esparto, California ("Property").

The lien subject to this Motion is identified as the fourth lien recorded against the Property. Motion ¶ 7, Dckt. 177. Debtor subsequently filed another identical Motion. Dckt. 189.

The court interprets the later duplicative filing to be a withdrawal of the present Motion.

Therefore, the Motion is denied without prejudice.

An 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 filed by Marie Antoinette Alojado and Randy Arce Alojado ("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.

4. **11-48125-E-13 LP-10** | **MARIE/RANDY ALOJADO** **Lewis Phon** | **MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.** **4-16-19 [189]**

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, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding, vacating, removing, annulling, and cancelling the lien of FIA Card Services, N.A. aka FIA Card Services, as successor to Bank of America, N.A. and MBNA America Bank, N.A. ("Creditor") against property of Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") commonly known as 25775 Grafton Street, Esparto, California ("Property").

However, in reviewing the Motion and supporting pleadings, no sufficient grounds are provided in support of the requested relief. The grounds stated in the Motion are summarized as follows:

1. Debtor filed a Chapter 13 case on December 2, 2011. Motion ¶ 6, Dckt. 189.

2. Creditor had recorded a judgment lien on June 24, 2011 against the Property, which is the fourth lien recorded against the Property. *Id.*, ¶ 7.

3. Debtor filed a Motion to Value Creditor's claim, which valued the secured claim at $0.00. *Id.*, ¶ 8.

4. Debtor completed a Chapter 13 Plan and was granted a discharge on May 22, 2017. *Id.*, ¶ 9.

5. Despite Creditor's claim being unsecured, Creditor has not released its lien. *Id.*, ¶ 10.

6. Because Debtor has completed the Chapter 13 Plan Debtor is entitled to have the lien removed and annulled. *Id.*, ¶ 11.

Debtor's Memorandum of Points and Authorities consists only of a Statement of Facts and Conclusion, which is substantially identical to the Motion. Dckt. 192. The court is not provided with any legal authority for the court to have the judicial power to "remove" and "annul" property rights of Creditor.

While there may be some legal basis for either avoiding a judicial lien or issuing a judgment quieting title with respect to the judgment lien, the Motion does not state such grounds. Rather, it merely states: (1) creditor has judgment lien, (2) creditor's secured claim has been valued at $0.00, and (3) Debtor has completed the Chapter 13 Plan - so "make the judgment lien disappear."

Possibly Debtor seeks to avoid these judicial liens (assuming there is an impaired exemption) pursuant to 11 U.S.C. § 522(f). The Motion does not seek relief pursuant to that Bankruptcy Code section. Possibly, this is in the nature of a quiet title action, which would need to be brought as an adversary proceeding. FED. R. BANKR. P. 7001(2). This is not an adversary proceeding.

The court generally declines the opportunity to perform the associate attorney work of researching and assembling the legal grounds in support of the Motion.

Therefore, the Motion is denied without prejudice.

An 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 filed by Marie Antoinette Alojado and Randy Arce Alojado ("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.

5.	**11-48125-E-13** **LP-11**	**MARIE/RANDY ALOJADO** **Lewis Phon**	**MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.** **4-16-19 [183]**

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, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding, vacating, removing, annulling, and cancelling the lien of FIA Card Services, N.A. aka FIA Card Services, as successor to Bank of America, N.A. and MBNA America Bank, N.A. ("Creditor") against property of Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") commonly known as 25775 Grafton Street, Esparto, California ("Property").

The lien subject to this Motion is identified as the fifth lien recorded against the Property. Motion ¶ 7, Dckt. 183. Debtor subsequently filed another identical Motion. Dckt. 195.

The court interprets the later duplicative filing to be a withdrawal of the present Motion.

Therefore, the Motion is denied without prejudice.

An 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 filed by Marie Antoinette Alojado and Randy Arce Alojado ("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.

6.	**11-48125-E-13 LP-11**	**MARIE/RANDY ALOJADO Lewis Phon**	**MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A. 4-16-19 [195]**

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 Not Notice Provided. No Proof of Service was filed as evidence of service.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding, vacating, removing, annulling, and cancelling the lien of FIA Card Services, N.A. aka FIA Card Services, as successor to Bank of America, N.A. and MBNA America Bank, N.A. ("Creditor") against property of Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") commonly known as 25775 Grafton Street, Esparto, California ("Property").

However, in reviewing the Motion and supporting pleadings, no sufficient grounds are provided in support of the requested relief. The grounds stated in the Motion are summarized as follows:

1. Debtor filed a Chapter 13 case on December 2, 2011. Motion ¶ 6, Dckt. 195.

2. Creditor had recorded a judgment lien on October 20, 2011 against the Property, which is the fifth lien recorded against the Property. *Id.*, ¶ 7.

3. Creditor previously recorded two other judgments against the property. *Id.*, ¶ 8. Debtor filed motions valuing Creditor's senior secured claims at

$0.00; while Debtor did not bring a motion to value the fifth judicial lien, because the fifth lien was junior it would have been valued at $0.00. *Id.*, ¶ 10.

4. Creditor would not be prejudiced by Debtor not bringing a separate motion to value the fifth judicial lien. *Id.*, ¶ 11. Debtor's were not aware of this judicial lien, Creditor was aware and on notice the claim would be valued at $0.00, and the court should use its power to issue "any order" to add the fifth lien to its prior Orders valuing Creditor's other claims. *Id.*, ¶¶ 12-15.

5. Debtor completed a Chapter 13 Plan and was granted a discharge on May 22, 2017. *Id.*, ¶ 16.

6. Despite Creditor's claim being unsecured, Creditor has not released its lien. *Id.*, ¶ 17.

7. Because Debtor has completed the Chapter 13 Plan Debtor is entitled to have the lien removed and annulled. *Id.*, ¶ 18.

Debtor's Memorandum of Points and Authorities consists only of a Statement of Facts and Conclusion, which is substantially identical to the Motion. Dckt. 198. The court is not provided with any legal authority for the court to have the judicial power to "remove" and "annul" property rights of Creditor.

While there may be some legal basis for removing the lien here, Debtor's counsel has left it up to the court to find that basis. Possibly Debtor seeks to avoid these judicial liens (assuming there is an impaired exemption) pursuant to 11 U.S.C. § 522(f). Possibly, this is in the nature of a quiet title action, which would need to be brought as an adversary proceeding. FED. R. BANKR. P. 7001(2). Rather, it merely states: (1) creditor has judgment lien, (2) creditor's secured claim has not been valued, but such should not be necessary since another of creditor's claims secured by a senior lien on the same property was valued at $0, and (3) Debtor has completed the Chapter 13 Plan - so "make the judgment lien disappear."

The court generally declines the opportunity to perform the associate attorney work of researching and assembling the legal grounds in support of the Motion.

Therefore, the Motion is denied without prejudice.

An 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 filed by Marie Antoinette Alojado

and Randy Arce Alojado ("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.

7.	**11-48125-E-13** **LP-9**	**MARIE/RANDY ALOJADO** **Lewis Phon**	**MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.** **4-16-19 [171]**

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, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding, vacating, removing, annulling, and cancelling the lien of FIA Card Services, N.A. aka FIA Card Services, as successor to Bank of America, N.A. and MBNA America Bank, N.A. ("Creditor") against property of Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") commonly known as 25775 Grafton Street, Esparto, California ("Property").

However, in reviewing the Motion and supporting pleadings, no sufficient grounds are provided in support of the requested relief. The grounds stated in the Motion are summarized as follows:

1. Debtor filed a Chapter 13 case on December 2, 2011. Motion ¶ 6, Dckt. 171.

2. Creditor had recorded a judgment lien on December 2, 2010 against the Property, which is the third lien recorded against the Property. *Id.*, ¶ 7.

3. Debtor filed a Motion to Value Creditor's claim, which valued the secured claim at $0.00. *Id.*, ¶ 8.

4. Debtor completed a Chapter 13 Plan and was granted a discharge on May 22, 2017. *Id.*, ¶ 9.

5. Despite Creditor's claim being unsecured, Creditor has not released its lien. *Id.*, ¶ 10.

6. Because Debtor has completed the Chapter 13 Plan Debtor is entitled to have the lien removed and annulled. *Id.*, ¶ 11.

Debtor's Memorandum of Points and Authorities consists only of a Statement of Facts, which is substantially identical to the Motion. Dckt. 173. The court is not provided with any legal authority for the court to have the judicial power to "remove" and "annul" property rights of Creditor.

While there may be some legal basis for removing the lien here, Debtor's counsel has left it up to the court to find that basis. Possibly Debtor seeks to avoid these judicial liens (assuming there is an impaired exemption) pursuant to 11 U.S.C. § 522(f). Possibly, this is in the nature of a quiet title action, which would need to be brought as an adversary proceeding. FED. R. BANKR. P. 7001(2). Rather, it merely states: (1) creditor has judgment lien, (2) creditor's secured claim has not been valued, but such should not be necessary since another of creditor's claims secured by a senior lien on the same property was valued at $0, and (3) Debtor has completed the Chapter 13 Plan - so "make the judgment lien disappear."

The court generally declines the opportunity to perform the associate attorney work of researching and assembling the legal grounds in support of the Motion.

Therefore, the Motion is denied without prejudice.

An 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 filed by Marie Antoinette Alojado

and Randy Arce Alojado ("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.

8. **19-21025-E-13** **TASSANNA MILES** **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK**
DPC-1 **Jeffrey Meisner** **4-3-19 [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 April 3, 2019. 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.

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

A. The debtor, Tassanna Miles ("Debtor"), is delinquent $1,800.00 in plan payments.

B. Debtor has not provided tax returns for the most recent prepetition filing year.

C. Debtor has not provided pay advices for the 60 days preceding filing.

D. Debtor's plan treats the claim of Flagship Credit Accept as a Class 4, but admitted at the Meeting of Creditors that claim will mature during the plan term.

E. Debtor did not list hr occupation, employer address, or employment length on her Schedule I.

F. Debtor lists an expense of $225.00 for both "Vehicle" and "Other" insurance on Schedule J. At the Meeting of Creditors, Debtor admitted this was an accidental duplication.

DISCUSSION

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 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Additionally, Trustee raises several grounds which suggest the plan is not feasible or Debtor's best efforts. Debtor has provided for the claim of Flagship Credit Accept as a Class 4, where that claim matures during the plan term and should be treated as a Class 2. Declaration ¶ 6, Dckt. 18. Debtor listed expenses on Schedule J that she does not have. *Id.*, ¶ 7. Finally, Debtor does not provide

details about her employment which the court needs to determine Debtor's financial circumstances. Schedule I, Dckt. 1.

The plan does not appear to be feasible or Debtor's best efforts. 11 U.S.C. §§ 1325(a)(6), (b)(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 the Chapter 13 Trustee, David Cusick ("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.

9. **19-20534-E-13** **ROBIN JORGENSEN** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Steele Lanphier** **3-4-19 [15]**

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 4, 2019. By the court's calculation, 22 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.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the plan term exceeds 60 months.

MARCH 26, 2019 HEARING

At the March 26, 2019 hearing the court continued the hearing on the Objection to April 30, 2019. Dckt. 21.

DISCUSSION

According to Trustee, the proposed plan will complete in 74 months due to Robin Jill Jorgensen's ("Debtor") proposing to pay 100 percent to general unsecured claims, totaling $88,889.00.

Declaration, Dckt. 17; Schedule E/F, Dckt. 1. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Plan may not comply with 11 U.S.C. §§ 1322 and 1325(a). However, this depends on the claims filed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("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.

10. **18-24438-E-13** **JAMES CASEY** **MOTION TO RECONSIDER DISMISSAL OF CASE**
PSB-2 **Paul Bains** **3-27-19 [49]**

DEBTOR DISMISSED: 03/22/2019

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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is xxxxxxxxx.

James William Casey ("Debtor") filed the instant case on July 16, 2018. Dckt. 1. A plan was confirmed on October 2, 2018, and an order confirming the plan was entered on October 11, 2018. Dckt. 29 & 31.

On February 11, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to delinquency in plan payments. Dckt. 41. On March 20, 2019, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 45. The ruling was final because Debtor did not file any opposition.

On March 27, 2019, Debtor filed this instant Motion to Vacate. Dckt. 49.

Debtor, aged 85, states that he relies on his spouse to assist with making the Chapter 13 plan payment. Due to medical issues, Debtor's spouse was hospitalized in January 2019. Declaration ¶ 12, Dckt. 51. Debtor continued to put plan payment funds into his spouse's bank account thinking she would

disburse the funds to the Chapter 13 Trustee, David Cusick ("Trustee"). *Id.*, ¶ 14. Furthermore, Debtor was saving mail for his spouse's review, and therefore did not see notice of the Trustee's Motion To Dismiss. *Id.,* ¶ 20.

Debtor argues that his failure to make the plan payment was an inadvertent mistake that should constitute excusable neglect, and Debtor would be prejudiced if the Motion is not granted.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

TRUSTEE'S RESPONSE

The Trustee filed a Response on April 1, 2019. Dckt. 53. Trustee notes the amount Debtor would need to pay to become current by the hearing date is $3,800.00.

Trustee further argues Debtor has shown sufficient grounds for the relief sought, as two of the four plan payments made in the case were by Union Bank money orders signed by Debtor's spouse.

SUPPLEMENTAL DECLARATION OF DEBTOR

Debtor filed a Supplemental Declaration on April 25, 2019. Dckt. 55. Debtor states an F&M bank account referenced by Trustee was closed, that Debtor is currently hospitalized, and that Debtor's spouse will bring a cashier's check for the full cure amount at the date of the hearing on the Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

Debtor argues he did not receive notice of the Trustee's Motion To Dismiss. However, Debtor is not unrepresented in this case. Debtor's counsel has not explained how Debtor remained unaware of the dismissal motion while Debtor had money sitting in the bank which would resolve the motion.

Prior Filings

Here, Debtor previously filed a Chapter 13 case on May 22, 2018, which was dismissed June 11, 2018 for failure to timely file documents. Order, Bankr. E.D. Cal. No. 18-23216, Dckt. 10, Jun 11, 2018.

Then, Debtor filed a Chapter 13 case on June 27, 2018, which was dismissed July 16, 2018 for failure to timely file documents. Order, Bankr. E.D. Cal. No. 18-24016, Dckt. 10, July 16, 2018.

Debtor's third, and present, case was filed July 16, 2018. Dckt. 1. Because this was Debtor's third case pending within the preceding year, and the previous two filings having been dismissed, no stay went into effect until the court issued an Order imposing stay on August 1, 2018. Order, Dckt. 20.

Thus, if Debtor filed a fourth case (as opposed to seeking to vacate the dismissal) no stay would go into effect, and Debtor would again have to rebut the presumption of bad faith.

Debtor clearly realizes the tough situation he is in. However, what is not clear is why the case was allowed to be dismissed, only for the present Motion to be filed 5 days after dismissal.

Physical Inability to Make Payments

Here, Debtor was unable physically able to make the monthly plan payments. He was relying on his wife, of a mature age to do so. She became physically unable to make the payments. Debtor further demonstrated an inability to read mail addressed to him, not opening and reading the Motion to Dismiss.

In light of such limited physical and possible mental ability to perform such basic functions, and assuming that Debtor has the requisite mental ability to be legally competent, a question arises why Debtor and Debtor's counsel did not set up a recurring EFT monthly to make the plan payment. Such would not have then relied on a debtor who could not make a payment and relying upon a spouse of similar physical limitations.

At the hearing xxxxxxxxxxxxxx.

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 Vacate filed by James William Casey ("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 **xxxxxxxxxxx**.

11. **19-21344-E-13** **ANNE FORD** **OBJECTION TO CONFIRMATION OF PLAN BY CALIBER HOME LOANS, INC.**
CJO-1 **Chad Johnson** **4-9-19 [13]**

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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 9, 2019. By the court's calculation, 21 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.

Caliber Home Loans, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the debtor, Anne Klein Ford's ("Debtor"), Chapter 13 Plan does not provide for Creditor's claim or arrearages.

DEBTOR'S REPLY

Debtor filed a Reply on April 24, 2019. Dckt. Debtor argues the Chapter 13 Plan need not account for Creditor's claim because only her husband is on the loan. Debtor argues further that her husband is current in monthly mortgage payments.

DISCUSSION

Creditor's objections are well-taken.

Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt. *Cal. Fam. Code* § 910. The liability of community property is not limited to debts incurred for the benefit of the community, but extends to debts incurred by one spouse alone exclusively for his or her own personal benefit. *Lezine v. Sec. Pac. Fin.,* 14 Cal. 4th 56, 64 (1996).

More significantly, Creditor asserts a secured claim based on a deed of trust encumbering property that is property of this bankruptcy estate. Schedules A/B and D, Dckt. 1. Even if a debtor is not personally obligated on the debt, if the debt is secured by property of the bankruptcy estate, then that creditor has a secured claim in the bankruptcy case. *See* 11 U.S.C. § 101(5), (10), (28); 11 U.S.C. § 506(a); and Collier on Bankruptcy, Sixteenth Edition, ¶ 506.03 (in rem right against property of the estate securing a right to payment).

Creditor filed as Exhibit 2, the Deed of Trust which indicates Debtor is included in the defined term "borrower" as the wife of Daniel Ford, as one of the two "trustors" executing the deed of trust to secure the promissory note. Exhibit 2, Dckt. 16. However, the *borrower* who is personally obligated on the promissory note secured by the property of the bankruptcy estate is only the Debtor's non-debtor spouse. [FN. 1.]

FN. 1. The Deed of Trust indicates that the trustor giving the security interest in the deed of trust is "[Daniel and Anne], husband and wife as community property with a right of survivorship." On its face, the "trustor" would not appear to be the individuals Daniel and Anne, but some incorporeal property entity.

Therefore, Debtor is liable on Creditor's claim, which the proposed plan does not provide for. Without providing for Creditor's claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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 Caliber Home Loans, Inc. ("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.

12. **19-21047-E-13 DPC-1** | **MELODY SIMPSON** **W. Steven Shumway** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-3-19 [14]**

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 April 3, 2019. 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.

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

A. Debtor is delinquent $2,000.00 in plan payments.

B. Debtor failed to appear at the Meeting of Creditors March 28, 2019.

Debtor's attorney advised the hearing officer at the Meeting that Debtor's mother passed away, and the Meeting was continued to May 2, 2019.

DISCUSSION

Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is $2,000.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. 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).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("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. **18-27755-E-13 PLC-1** **MARK/RENEE EVANS** **Peter Cianchetta** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **3-22-19 [50]**

GAZELLE SCHREIBER VS.

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, and Office of the United States Trustee on March 22, 2019. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxx.

Gazelle Schreiber ("Movant") seeks relief from the automatic stay to allow Movant's case against Debtor's LLC, United Global, LLC ("Debtor's LLC") in Sacramento County Superior Court, Case Number 34-2018-00240345 ("State Court Litigation") to be concluded. Movant has provided the Declarations of Movant and Christopher Fry, counsel in the State Court Litigation ("State Court Counsel"), to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Mark Williams Evans and Renee Evans ("Debtor").

Movant's Declaration states Debtor, acting as officers for Debtor's LLC, committed fraud in selling a home to Movant. Dckt. 52. While the home was sold by Debtor's LLC, Debtor was acting as an officer and thereby also committed fraud. *Id.*

State Court Counsel's Declaration states the complaint in the State Court Litigation was amended on January 7, 2019 to add Debtor. Dckt. 53.

The Motion also states that Movant has commenced an adversary proceeding seeking to have the court determine that the obligation owed by Debtor is nondischargeable. Adversary Proceeding No.

18-27755 was filed on March 22, 2019, by Movant seeking determination that Movant's claim is nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2), (4), and (6).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 15, 2019. Dckt. 65. Debtor argues there is no cause for relief because Movant does not have a property interest at issue and the claim is unsecured. Debtor states further the petition was amended to add Movant's claim, and non-dischargeability should be determined in federal court.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 16, 2019 noting that Movant has not filed a Relief From Stay Summary Sheet, EDC 3–468 as required by Local Bankruptcy Rule 4001-1(a)(3).

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016).

To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Debtor argues that federal court is the proper forum to determine nondischargability of the debt. This argument is well-taken, and only this court can determine whether Debtor's conduct results in the debt being nondischargeable under federal bankruptcy law. However, that does not mean that the bankruptcy court has to conduct the trial to determine what was Debtor's conduct. The federal courts apply the principles of Collateral Estoppel under the Doctrine of Res Judicata when the trial to determine the debt is conducted outside the bankruptcy court. *See Cal-Micro, Inc. v. Cantrell*, 329 F.3d 1119, 1123 (9th Cir. 2003); *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001); *Robertson v. Isomedix, Inc. (In re International Nutronics)*, 28 F.3d 965 (9th Cir. 1994); *Clark v. Bear Sterns & Co.*, 966 F.2d 1318,

1320 (9th Cir. 1992).

Movant states that the State Court Complaint was amended only three months ago in January 2019. Movant states that the other defendant in the State Court Action is United Global, LLC, which is owned and was managed by Debtor. United Global, LLC is a debtor in its own bankruptcy case - Chapter 7 case no. 18-27710. The Chapter 7 Trustee has given notice that the United Global, LLC bankruptcy is an "asset case" and creditors are to file proofs of claim. 18-27710; Notice to File Proofs of Claim, Dckt. 7. Thus, it will be necessary to adjudicate Movant's claim in that case unless that debtor and the Chapter 7 trustee do not object to the claim filed in that case.

Debtor, as managing member, having made the interesting strategy decision to have his limited liability company, which cannot obtain a Chapter 7 discharge, file a Chapter 7 case has presented Movant with a unique opportunity.

While Movant could try to wade through years of litigation in the State Court, being bumped for criminal cases and other priority matters, Movant could "rocket" to trial in the bankruptcy court before a federal judge which Congress has created to expeditiously resolve bankruptcy and non-bankruptcy law related matters expeditiously for the parties. With a few tweaks (such as using direct testimony statements which speed up the trial by fleshing out authenticating evidence, laying the foundation for testimony, and establishing the qualifications of experts) in the federal trial process, whether in the district court or bankruptcy court, the trial experience is the same (except that it happens more quickly than in the district court, again due to the bankruptcy judge being dedicated to the parties in the bankruptcy case).

Interestingly, Movant has not provided a copy of the State Court Complaint as an exhibit in support of the Motion. This court is not sure what is currently be prosecuted in the State Court Action.

At the hearing the court addressed with the parties how these matter can be expeditiously prosecuted in the State Court Action. Counsel for Movant reported **xxxxxxxxxxxxxxxxxxx**

~~The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick ("the Chapter 13 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.~~

~~No other or additional relief is granted by the court.~~

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

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

The Motion for Relief from the Automatic Stay filed by Gazelle Schreiber ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Mark Williams Evans and Renee Evans ("Debtor") to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with Movant's case against United Global, LLC and Debtor in Sacramento County Superior Court, Case Number 34-2018-00240345 .

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick ("the Chapter 13 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

14.	**19-21262-E-13 DPC-1**	**CHARLES CASTILLE AND JUANITA LEE-CASTILLE Selwyn Whitehead**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-8-19 [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.

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 April 8, 2019. By the court's calculation, 22 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.

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

A. the debtor, Charles Allen Castille and Juanita Lauraina Lee-Castille's ("Debtor"), Chapter 13 Plan provides for the claim of Mr. Cooper as a Class 1 where Schedule J indicates an ongoing mortgage expense of $3,330.00. Trustee does not oppose treatment as a Class 1, but believes Debtor intended to treat the claim as a Class 4.

B. The Internal Revenue Service filed Proof of Claim No. 1 on March 26, 2019 asserting a secured claim of $142,218.11 and a priority unsecured claim of $ 22,329.80.

DISCUSSION

Trustee's "assistance" and objection are well-taken.

The Plan does not provide for the secured claim of the IRS in the amount of $142,218.11. Proof of Claim, No. 1. Given the larger amount for the priority claim, it is not clear that the Plan is adequately funded to pay the additional $9,000 ($150 a month) of this priority claim. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Further, it is unclear whether Debtor intends to provide for the claim of Mr. Cooper as a Class 1 where there is also a significant mortgage expense listed on Schedule J. This also casts doubt as to the Plan's feasibility.

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

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

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

15. **18-25569-E-13 MJD-3** **GRACE WOODRING** **Matthew DeCaminada** **MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION** **3-13-19 [51]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 13, 2019. By the court's calculation, 48 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 Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $15,010.84.

The Motion filed by Grace Gaspar Woodring ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 53. Debtor is the owner of a 2012 Honda Crosstour EX-L Sport Utility ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,807.00 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).

CREDITOR'S OPPOSITION & PROOF OF CLAIM

Creditor filed an Opposition on April 8, 2019. Dckt. 65. Creditor argues the value of the Vehicle is $15,470.00 at the time of filing, and therefore the Motion should be denied.

Creditor filed with the Opposition the Declaration of Deborah Miller and a Kelley Blue Book report. Dckt. 66, 67. The Kelley Blue Book report was properly authenticated. Declaration ¶ 5, Dckt. 66. The Kelley Blue Book Report and Declaration support a retail value for the Vehicle of $15,470.00. Dckt.

67.

Creditor also filed Proof of Claim, No. 3 on November 5, 2018 ("Claim"). The Claim asserts the same value of the Vehicle, and includes the Kelley Blue Book report as an attachment.

DEBTOR'S REPLY

Debtor filed a Reply on April 11, 2019. Dckt. 71. Debtor states the following:

1. The Opposition states no grounds why a 2012 Honda Crosstour, a seven model year-old vehicle is of such questionable value and reliability that rapid depreciation continues beyond the normal first two to three years of a new car's ownership, but into the fifth, sixth, and seventh year. No witness from Creditor offers testimony about the impaired marketability of Honda vehicles. [FN.1].

Much of the Debtor's Reply is copied from a past tentative ruling issued by this court. Some of the parts are wholly inapplicable. For example, in the case the tentative arose in, it was argued that the debtor there should pay a higher interest rate based on a vehicle's rapid depreciation. The court made note at the hearing that this argument was questionable given the age of the vehicle.

In this Contested Matter, Creditor does not argue Debtor is not paying sufficient interest under the proposed treatment, just that the Debtor's conclusion as to value is wrong.

2. The Debtor's Declaration states "Regarding the value of my 2012 Honda Crosstour EX-L, I am of the opinion that the Vehicle is worth $11,807.00 as of the date I filed my petition."

3. Proof of Claim No. 6-1 in which it is asserted that the claim is a secured claim in the amount of $15,010.84 is based upon that amount being stated in the Proof of Claim. The Proof of Claim is signed by Karen R. Babbel, a Senior Collector of Travis Credit Union. As opposed to the books and records of Travis Credit Union in which the amount of the debt and the various transactions are maintained, there is nothing to indicate a high probative value as to the statement of the value of this seven model year-old 2012 Honda Crosstour.

Unlike the case where Debtor copied this Reply, here Creditor has presented testimony as to its records. Declaration, Dckt. 66.

4. While Debtor could have made more of an effort in her testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to her testimony does not render it irrelevant or not probative. It is akin to Creditor not bothering to

> include a KBB or NADA authenticated valuation with the Proof of Claim, which would enhance the probative value to be overcome.

Also unlike the case where Debtor copied this Reply, here Creditor filed a Kelley Blue Book report with the Proof of Claim, and as a properly authenticated exhibit. Dckt. 67.

DISCUSSION

Proof of Claim

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Debtor's Declaration states "Regarding the value of my 2012 Honda Crosstour EX-L, I am of the opinion that the Vehicle is worth $11,807.00 as of the date I filed my petition." Dec. ¶ 2, Dckt. 53. Debtor's Declaration presents a mere conclusion, not supported by financial information or factual arguments. *In re Austin,* 583 B.R. at p. 483.

Debtor has chosen to have her Motion, on the issue of value, live or die on her summary conclusion that "I am of the opinion that the Vehicle is worth $11,807.00 . . . My opinion stated herein is based upon my personal knowledge of the value of four door sport utility vehicles based on today's market and valuation found online." Dec. ¶ 2, Dckt. 53.

Debtor providing her bare, naked opinion as to the value of a vehicle is the minimal of evidence (possibly slightly greater than the prima facie evidentiary value of a proof of claim) as to such value. Debtor, though not testifying as to the basis for it, appears to state that she has significant knowledge of the value of various "four door sport utility vehicles," not merely having an opinion on the value of her vehicle, and that she has significant personal knowledge of the "market" for such various four door sports utility vehicles. *Id.*

However, nothing in her Declaration provides this finder of fact with evidence to show that she has such expert knowledge.

It is significant that Debtor has chose to not provide any testimony concerning the vehicle. Rather, it appears that she admits that it is in sales floor retail value for purposes of the court considering evidence of the recognized market reports provided by Kelly Blue Book.

In contrast, Creditor has not merely relied on its Proof of Claim, but provided testimony of an employee in custody of the Creditor's records, and filed a properly authenticated copy of a Kelly Blue Book valuation. The Kelly Blue Book retail value for the Vehicle is $15,470. Exhibit A, Dckt. 67. Though given this evidence filed with the Opposition, Debtor chose not to provide any counter testimony, but instead a Response discussing points not at issue in this Contested Matter.

After considering the evidence presented, the court determines that the applicable retail value of the Vehicle at the time of filing is $15,470.00.

Conclusion

The lien on the Vehicle's title secures a purchase-money loan incurred on December 2, 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 $15,010.84. Proof of Claim, No. 6. Therefore, Creditor's claim secured by a lien on the asset's title is fully-collateralized. Creditor's secured claim is determined to be in the amount of $15,010.84, the full amount of the claim which is less than 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 Grace Gaspar Woodring ("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 Travis Credit Union ("Creditor") secured by an asset described as 2012 Honda Crosstour EX-L Sport Utility ("Vehicle") is determined to be a secured claim in the amount of $15,010.84, 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 $15,470.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

16. **18-25569-E-13 MJD-4** | **GRACE WOODRING** **Matthew DeCaminada** | **MOTION TO CONFIRM PLAN** **3-26-19 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); 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.

Grace Gaspar Woodring ("Debtor") seeks confirmation of the Amended Plan which would constitute the first confirmed plan in this case. Dckt. 59. The Amended Plan provides for $4,645.00 paid through February 2019, payments of $670.00 for the remainder of the plan term, and a 27.47 dividend to unsecured claims totaling $34,488.56. Dckt. 61. 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 April 1, 2019. Dckt. 63. Trustee argues the Amended Plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b) where the plan proposes less than 100 percent to unsecured claims.

Trustee notes that the original means test form (Dckt. 1) showed monthly income of

$1,158.85 and a $541 deduction, but was amended to list income of $573.59 and a deduction of $711.25. Dckt. 56.

Trustee argues if the Amended Plan is confirmed in its current form, Debtor should be required to file supplemental schedules I and J each year of the plan.

DISCUSSION

At outset, the court notes that Debtor's Motion To Value the secured claim of Travis Credit Union (Dckt. 51) was granted, but which claim was valued at $15,010.84. The Amended Plan relied on valuing the claim at $11,807.00. Therefore, the plan is on its face not feasible. 11 U.S.C. § 1325(a)(6).

Though neither Trustee, the U.S. Trustee, nor any creditor has raised the issue, the court has an independent duty to make certain that the requirements for confirmation have been met. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.*), 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The Trustee also raises concerns as to whether is providing best efforts as required by 11 U.S.C. § 1325(b). In Debtor's original means test form (Dckt. 1), income reflected contributions from Debtor's partner who Debtor lists as a dependent. Debtor subsequently reduced income by eliminating this contribution. Dckt. 56.

In Debtor's Motion and supporting Declaration, Debtor explains Debtor's partner was employed as a mechanic but has since lost employment. Declaration, Dckt. 59.

What is not explained is why Debtor expects her partner to remain unemployed for the life of the plan–or whether Debtor is intending to Modify the plan once Debtor's partner obtains employment.

As the plan has been shown to be not feasible on other grounds, Debtor will have the opportunity to file another Amended Plan and provide more supporting documentation to establish what her income is and what is required to be paid into the plan.

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 Grace Gaspar Woodring ("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.

17. 18-27069-E-13 JAN SCHUMANN MOTION TO CONFIRM PLAN
JAS-3 Pro Se 3-19-19 [60]

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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 18, 2019. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); 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~~.

Jan A. Schumann ("Debtor") seeks confirmation of the Amended Plan. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The basic terms of the Plan are:

A. Monthly Plan Payment.....$10.22

B. Plan Term.....36 Months

C. Class 1 Claims.....None

D. Class 2 Claims.....None

E. Class 3 Claims (Surrender).....None

F. Class 4 Claims (Direct Payment, Not in Default, Mature After Term of Plan)

1. County of Shasta
2. Wells Fargo Bank

G. Class 5 Priority Claims.....$284

H. General Unsecured Claims..... 0.00% Dividend

Dckt. 34.

In looking at Schedule I and the Statement of Current Monthly Income it appears that for Debtor's family unit of four persons is less than the median income for such a family unit in California. This raises the question as to why Debtor is pursuing a $10 a month plan.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A ("Creditor") holding a secured claim filed an Opposition on April 3, 2019. Dckt. 69. Creditor opposes plan confirmation on the grounds the plan does not provide an arrearage payment to cure the $1,165.12 in arrearages.

If there is such an arrearage, then it may be the reason why Debtor is seeking a Plan, that would require a Plan payment to include at lease an additional $33 a month for the arrearage cure and move the monthly mortgage payment into the Plan as a Class 1 claim (plus the corresponding Chapter 13 Trustee fees) to address this issue.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 8, 2019. Dckt. 74. Trustee Opposes confirmation on the following grounds:

1. Debtor's plan proposes a payment of $1.64 to creditor Halcyon Healthcare, where the Trustee would need to manually issue those small checks.

2. Debtor's Motion, Declaration, and Notice do not have numbered lines as required by Local Bankruptcy Rule 9004-(a)(2).

3. Debtor's Motion, Declaration, and Notice do not have double-spaced text as required by Local Bankruptcy Rule 9004-(b)(1).

4. Debtor's Motion, Declaration, and Notice are not filed as separate documents as required by Local Bankruptcy Rule 9004-(c)(1)(3)(4).

DISCUSSION

While Trustee raises several grounds for opposition based on the Local Rules, the court realizes that Debtor is in *Pro Se,* and affords such litigants a little latitude where there is no prejudice to any parties in interest.

Furthermore, while Federal Rule of Bankruptcy Procedure 3010(b) prohibits payments of less $15 to be made by the Trustee (unless authorized by local rule or order of the court), that rule also provides that those lesser funds shall be accumulated and then disbursed once reaching $15, with the remainder distributed as a final payment.

The sole remaining ground for opposition is that Creditor is not receiving payment on its arrearages of $1,165.12. However, here, Creditor has indicated being open to addressing the deficiency in the language of the order confirming the plan.

At the hearing, xxxxxxxxxxxxxx.

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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 Jan A. Schumann ("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 January 24, 2019, 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.~~

18. **18-27372-E-13** **DUANE OTT** **CONTINUED MOTION TO CONFIRM**
MEV-2 **Marc Voisenat** **PLAN**
2-27-19 [36]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 27, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); 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.

Duane Alexander Ott ("Debtor") seeks confirmation of the Amended Plan which would constitute the first confirmed plan. The Amended Plan provides for payments of $2,912 for 60 months, and a 100 percent dividend to unsecured claims totaling $10,304.90. Amended Plan, Dckt. 31. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

Chapter 13 Trustee, David Cusick ("the Chapter 13 Trustee") filed an Opposition on March 19, 2019. Dckt. 41. Trustee opposes confirmation on the basis that Debtor is delinquent $6,016.62 in payments to the Trustee, and therefore the plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(2).

APRIL 16, 2019 HEARING

At the April 16, 2019 hearing the court continued the hearing on the motion to allow Debtor to become current. Dckt. 48.

DISCUSSION

Debtor is delinquent $6,016.62 in payments to the Trustee that are required to be paid prior to confirmation. Dckt. 42. Therefore the plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(2).

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 Duane Alexander Ott ("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.

19. **19-20075-E-13 SLE-2** | **BENJAMIN/KRISTIE AVILA** **Steele Lanphier** | **CONTINUED MOTION TO CONFIRM PLAN** **2-5-19 [22]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2019. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

Benjamin Edward Avila and Kristie Lea Avila ("Debtor") seek confirmation of the Plan , which is their first proposed plan in this case. The Plan provides for payments of $3,758.50 and a 10 percent dividend to unsecured claims. Plan, Dckt. 26.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 26, 2019. Dckt. 29. Trustee opposes confirmation on the following grounds:

1. Debtor's proposed plan relies on 2 motions to avoid lien of Capital One.

2. Debtor's plan relies on claimed exemptions to which Trustee has filed an

Objection. Debtor's non-exempt equity (if the Objection is successful) is $5,631.85.

3. Based on Debtor's prior tax returns, Debtor will likely see a tax refund. However, no refund is provided through the plan.

4. Debtor proposes to pay Attorney's fees before Class 1, Class 2, or unsecured claims. Debtor proposes only $250.00 monthly for the $2,000.00 in fees, but could proposed higher monthly dividend which would later be used towards the Class 2 claim of Travis Credit Union.

5. Debtor has not provided the class 1 Checklist to Trustee.

CREDITOR'S OPPOSITION

Creditor, Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust ("Creditor") filed an Opposition on March 11, 2019. Dckt. 52. Creditor opposes confirmation because **Debtor's plan only provides $61,984.12 to cure the arrears of Creditor amounting to $63,168.59.** Creditor argues this fails to provide the full value of its secured claim, does not promptly cure arrears, and the plan is not feasible.

MARCH 26, 2019 HEARING

At the March 26, 2019 hearing the court continued the hearing on the Objection to April 30, 2019. Dckt. 56.

DISCUSSION

The Opposing grounds of Trustee and Creditor are well-taken.

Debtor's proposed plan relies on the avoidance of two of creditor Capital One's liens. A review of the docket shows that while the court granted those motions, one of the liens remains in the amount of $2,342.34. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Trustee filed an Objection to claim of exemptions, set to be heard the same day as the hearing on this Motion. Dckt. 32. A review of the docket shows the court sustained that Objection. Therefore, Debtor has significant non-exempt equity and appears to fail the liquidation test. 11 U.S.C. § 1325(a)(4).

Debtor received several thousands of dollars from tax refunds in 2018 and 2017. Declaration, Dckt. 30. However, the proposed plan does not contemplate Debtor committing any refund. Therefore, the Plan violates 11 U.S.C. § 1325(b)(1).

Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms. Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms to Trustee. Debtor has not provided these forms. Without

Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, Debtor is not providing for the full claim of Creditor, holding a secured claim. Failure to so provide demonstrates the plan is not feasible. 11 U.S.C. § 1325(a)(6).

The 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 Chapter 13 Plan filed by Benjamin Edward Avila and Kristie Lea Avila ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

20. **19-20075-E-13 SLE-3** **BENJAMIN/KRISTIE AVILA** **Steele Lanphier** **CONTINUED MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 3-8-19 [36]**

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on March 8, 2019. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capitol One Bank, N.A. ("Creditor") against property of Benjamin Edward Avila and Kristie Lea Avila ("Debtor") commonly known as 12212 Conservative Way, Rancho Cordova, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,031.95. Exhibit C, Dckt. 39. An abstract of judgment was recorded with Sacramento County on May 10, 2018, that encumbers the Property. *Id.*

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 11, 2019.

Dckt. 46. Trustee argues that based on Debtor's values stated in the Motion, that $4,527.96 in equity exists and the Motion should be denied.

MARCH 26, 2019 HEARING

At the March 26, 2019 hearing the court continued the hearing on the Motion to April 30, 2019. Dckt. 54.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $430,471.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $353,047.62 , illustrated by the Proof of Claim, No. 8 filed by creditor Wilmington Savings Fund Society, FSB. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,081.00 on Schedule C. Dckt. 1. [FN. 1]

FN. 1. California Code of Civil Procedure § 704.730 provides for a homestead exemption of $75,000. The court is unsure of how the Debtor is claiming an exemption of $75,081.04.

Schedule A/B Value of the Property.....$430,471.00
Schedule D Stated Senior Consensual Liens.....($350,925.96)
Schedule D Stated Judgment Liens.....($ 4,464.00)

Value in Excess of Liens..... $ 75,081.04

It appears that Debtor and Debtor's counsel have attempted to amend California law to increase the amount of the homestead exemption to the value of the property. If the court were to use these amounts, there would be no impairment of the homestead exemption and none of the liens could be avoided.

Though Proof of Claim No 8-1 filed by the consensual senior lien creditor states that the secured claim is actually $353,047.62, that actual claim amount is ignored by Debtor and Debtor's counsel. The Motion seeks to have the lien avoided based on the erroneous numbers used in the Debtor's schedules. Because the amount of the secured claim is a fact that is in the court's records, the court uses the correct number to render the correct legal result. Though the court could have ignored the facts and based it on Debtor's erroneous allegations, such "punishment" is not an appropriate result.

The court notes that what appears to be a blatant misstatement of California law is an issue that falls under the certifications made under Federal Rule of Bankruptcy Procedure 9011. Such misstatements may be addressed by a separate order to show cause.

The total of the exemption and consensual liens is $428,047.62. Therefore, there is $2,423.38 in non-exempt equity which may not be avoided.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is only partial 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 in excess of $2,423.38 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 Benjamin Edward Avila and Kristie Lea Avila ("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 Capitol One Bank, N.A., California Superior Court for Sacramento County Case No. 34-2018-00225261, recorded on May 10, 2018, Document No. 201805101327, with the Sacramento County Recorder, against the real property commonly known as 12212 Conservative Way, Rancho Cordova, California, is avoided in its entirety for all amounts in excess of $2,423.38 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.

21. **19-20075-E-13 SLE-4** **BENJAMIN/KRISTIE AVILA** **Steele Lanphier** **CONTINUED MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 3-8-19 [41]**

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on March 8, 2019. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capitol One Bank, N.A. ("Creditor") against property of Benjamin Edward Avila and Kristie Lea Avila ("Debtor") commonly known as 12212 Conservative Way, Rancho Cordova, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,373.83. Exhibit C, Dckt. 44. An abstract of judgment was recorded with Sacramento County on May 10, 2018, that encumbers the Property. *Id.*

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 11, 2019. Dckt. 49. Trustee argues that based on Debtor's values stated in the Motion, that $1,496.05 in equity exists and the Motion should be denied.

MARCH 26, 2019 HEARING

At the March 26, 2019 hearing the court continued the hearing on the Motion to April 30, 2019. Dckt. 55.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $430,471.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $353,047.62 , illustrated by the Proof of Claim, No. 8 filed by creditor Wilmington Savings Fund Society, FSB. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,081.04 on Schedule C. Dckt. 1.[FN. 1] Additionally, there was a senior judicial lien in the amount of $3,031.95. Exhibit C, Dckt. 39.

FN. 1. California Code of Civil Procedure § 704.730 provides for a homestead exemption of $75,000. The court is unsure of how the Debtor is claiming an exemption of $75,081.04.

Schedule A/B Value of the Property.....$430,471.00
Schedule D Stated Senior Consensual Liens.....($350,925.96)
Schedule D Stated Judgment Liens.....($ 4,464.00)

Value in Excess of Liens..... $ 75,081.04

It appears that Debtor and Debtor's counsel have attempted to amend California law to increase the amount of the homestead exemption to the value of the property. If the court were to use these amounts, there would be no impairment of the homestead exemption and none of the liens could be avoided.

Though Proof of Claim No 8-1 filed by the consensual senior lien creditor states that the secured claim is actually $353,047.62, that actual claim amount is ignored by Debtor and Debtor's counsel. The Motion seeks to have the lien avoided based on the erroneous numbers used in the Debtor's schedules. Because the amount of the secured claim is a fact that is in the court's records, the court uses the correct number to render the correct legal result. Though the court could have ignored the facts and based it on Debtor's erroneous allegations, such "punishment" is not an appropriate result.

The court notes that what appears to be a blatant misstatement of California law is an issue that falls under the certifications made under Federal Rule of Bankruptcy Procedure 9011. Such misstatements may be addressed by a separate order to show cause.

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 Benjamin Edward Avila and Kristie Lea Avila ("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 Capitol One Bank, N.A., California Superior Court for Sacramento County Case No. 34-2018-00225304, recorded on May 10, 2018, Document No. 201805101332, with the Sacramento County Recorder, against the real property commonly known as 12212 Conservative Way, Rancho Cordova, 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.

22. **19-21298-E-13** **JERRI LOWDEN** **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Gabriel Liberman** **4-9-19 [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.

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 April 9, 2019. By the court's calculation, 21 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.

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

A. Debtor's plan proposes to avoid the judicial liens of creditor Capital One Bank and GE Capital Retail Bank. However, no motion to avoid judicial lien has been filed.

B. In the additional provisions the plan provides that Debtor's ex-spouse, John Lowden, who resides and has a 50 percent interest in Debtor's real property commonly known as 9458 Sidesaddle Drive Wilton, California ("Property"), and that at some time the non-debtor spouse will refinance the Property.

Trustee's objections are well-taken. The plan lists two claims in Class 2c which are liens proposed to be avoided. Dckt. 2. However no motions to avoid lien have been filed. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

The additional provisions of the Plan state:

> Debtor's ex-spouse, John Lowden, who resides and has 50 percent interest, in the real property located at 9458 Sidesaddle Drive, Wilton, CA 95693 (the "Property") will refinance the Property within 24 months of the filing of this case. From the refinancing, the statutory tax liens recorded by Internal Revenue Service (3rd position) and Franchise Tax Board (4th position), and provided for in Class 2A of this Plan, will be paid in their entirety.

Plan, Dckt. 2.

Trustee raises concerns over the feasibility of financing. This point is well-taken, as Debtor has not demonstrated an ability of Debtor's ex-spouse to obtain the financing sought.

Furthermore, Debtor has not explained why The IRS and FTB holding secured claims should be forced to wait two years to be paid on their claim without any adequate protection payments, and in unequal payments. See 11 U.S.C. § 1325(a)(5)(B)(iii).

The information on Schedules I does not include any alimony or other support from Debtor's ex-spouse. Dckt. 1 at 35-37. On Schedule J Debtor lists an adult child as a dependant, but no information is provided as to the assistance provided by the ex-spouse for such dependent adult child.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("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. **19-20371-E-13 WW-3** **CHARLES RATLIFF** **Mark Wolff** **MOTION TO APPOINT PERSONAL REPRESENTATIVE** **4-16-19 [42]**

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.

Sufficient Notice Not Provided. The Notice of Hearing gives notice of the hearing date, the Motion, and that any party in interest should attend the hearing if they do not want the Motion granted or want to express their views to the court. Dckt. 43. This Notice does not meet the requirements of Local Bankruptcy Rules 9014-1(d)(3)(B).

Further, the Notice has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2).

Failure to comply with the Local Bankruptcy Rules is cause to deny the motion, or other appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l)

The Motion to Appoint representative is ~~denied without prejudice.~~

The Debtor, Charles A. Ratliff ("Debtor") filed this Motion seeking to appoint Dorothy Ann Ratliff as a representative for the Debtor and Estate ("Proposed Representative").

The Motion states with particularity the following:

1. The case was filed January 22, 2019. Motion ¶ 1, Dckt. 42.

2. On February 21, 2019 the Sacramento Superior Court entered an Order naming Proposed Representative as a temporary conservator for Debtor due to Debtor's mental health and Debtor falling victim to various scams. *Id.,* ¶ 2.

3. Debtor filed this case to cure mortgage arrearages and addresses losses from financial scams. *Id.,* ¶¶ 3-4.

4. Proposed Representative has taken control of Debtor's finances. *Id.,* ¶ 5.

Debtor refers the court to a copy of the order appointing temporary conservator filed with the court on March 19, 2019 ("Temporary Order"). Dckt. 29. This was filed with the Declaration of Dorothy Ratliff (Dckt. 27) in support of the Motion to Confirm.

In reviewing the Temporary Order, it states "unless modified by further order of the court, this order expires on (date): 4/17/19." *Id*. On its face the appointment has expired.

SUBSTITUTION

Where a Debtor is incompetent in a Chapter 13 case, if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. FED. R. BANKR. P. 1016. Federal Rule of Civil Procedure 25, providing for substitution for incompetency, applies in adversary proceedings and contested matters. FED. R. BANKR. P. 7025, 9014(c). In relevant part, the Federal Rules of Civil Procedure provide:

> (b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

Fed. R. Civ. P. 25.

APPLICABLE LAW TO DETERMINE LEGAL COMPETENCY OF PARTY

California Probate Code §§ 810 et seq.

> **§ 810. Legislative findings and declarations regarding legal capacity**
> (a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.
>
> (b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.
>
> (c) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or

physical disorder.

§ 811. Unsound mind or incapacity

(a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decision making process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.

§ 812. Capacity to make decision

Except where otherwise provided by law, including, but not limited to, Section 813 and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:

(a) The rights, duties, and responsibilities created by, or affected by the decision.

(b) The probable consequences for the decision maker and, where appropriate, the persons affected by the decision.

(c) The significant risks, benefits, and reasonable alternatives involved in the

decision.

The Due Process in Competence Determinations Act, Prob. Code, §§ 810 to 813, 1801, 1881, 3201, and 3204, offers a wide range of potential mental deficits that may support a determination that a person is of unsound mind or lacks the capacity to make a decision or to do a certain act. *In re Marriage of Greenway*, 217 Cal. App. 4th 628, 640 (Cal. App. 4th Dist. 2013).

In California, a party is incompetent if he or she lacks the capacity to understand the nature or consequences of the proceeding, or is unable to assist counsel in the preparation of the case. *See* Cal. Prob. Code § 1801; *In re Jessica G.*, 93 Cal. App. 4th 1180, 1186 (2001); *Elder-Evins v. Casey*, 2012 U.S. Dist. LEXIS 92467 (N.D. Cal. July 3, 2012).

DISCUSSION

As discussed above, the Temporary Order expired on April 17, 2019. Dckt. 29. No subsequent order has been produced by Debtor in support of the Motion.

Furthermore, no evidence has been provided upon which the court might be able to determine Debtor's capacity t represent himself.

At the hearing, xxxxxxxxxxxxxx.

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 Appoint Representative filed by Charles A. Ratliff ("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.~~

24. **19-20371-E-13** **CHARLES RATLIFF** **MOTION TO CONFIRM PLAN**
WW-1 **Mark Wolff** **3-19-19 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 19, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); 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.

Charles A. Ratliff ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $3,357.00 for 60 months commencing April 25, 2019. Dckt. 30. The Amended Plan also provides 100 percent to unsecured claims totaling $22,350.00. 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 April 3, 2019. Dckt. 37. Trustee opposes confirmation of the plan on the basis that the Meeting of Creditors has yet to be concluded. While Debtor appeared at the Meeting of Creditors on both February 21, 2019 and March 21, 2019, Trustee did not conclude the Meeting because there appeared to be an Order Appointing Temporary Conservator.

Trustee further opposes confirmation because the Plan states that payments shall commence April 25, 2019 in the additional provisions. Because the case was filed January 22, 2019, the plan term

would be extended beyond 60 months.

DISCUSSION

Trustee's opposition is well-taken. Where the plan proposes 60 payments, commencing plan payments on April 25, 2019 would result in a plan extending beyond the 60 month term. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Furthermore, whether Debtor needs a representative or conservator is an issue pending before the court on another motion (Dckt. 42) set to be heard the same day.

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 Charles A. Ratliff ("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.

25. **19-21821-E-13 GEL-1** **DARRELL/CHUENTE RHYM** **Gabriel Liberman** **MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC. 3-28-19 [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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 28, 2019. By the court's calculation, 33 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 Santander Consumer USA, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,300.00.

The Motion filed by Darrell Kevin Rhym and Chuente Lenise Rhym ("Debtor") to value the secured claim of Santander Consumer USA, Inc. is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2015 Chrysler 200 Limited ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,547.00 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).

Proof of Claim of Chrysler Capital

On April 10, 2019, Chrysler Capital filed Proof of Claim, No. 4 ("Claim"). The Claim is

secured by property identified as a 2015 Chrysler 200. Based on the Claim, it appears creditor, Chrysler Capital ("Creditor"), holds the claim secured by the Vehicle that is the subject of this Contested Matter.

The Claim asserts a debt in the amount of $14,997.79, of which $12,300.00 is asserted to be secured (the value of the Vehicle). The Claim also asserts arrearages of $1,878.83 as of the filing of the petition.

DISCUSSION

Creditor has provided a valuation of the Vehicle in the Claim. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Debtor's Declaration states the following:

> The retail value of the [Vehicle] is likely around $7,547.00 based on our knowledge of the mileage and condition of the vehicle and based on examining current market conditions. Hence the replacement value of the vehicle is $7,547.00

Declaration ¶ 5, Dckt. 10. No detail is provided as to the condition of the Vehicle or market conditions to explain Debtor's conclusion. Therefore, Debtor did not present substantial evidence to rebut Credit's Proof of Claim. *In re Austin,* 583 B.R. at p. 483. [FN. 1.]

FN. 1. Fortunately for Debtor there is not an opposition raised by Creditor. Debtor's testimony as to the value of the vehicle is minimalistic at best - merely dictating to the court (which is the actual finder of fact) Debtor's personal factual finding that based upon many unstated factors that the value is $7,547.00. This appears to be a one size fits all formulaic declaration form in which the debtor is unable to provide any personal knowledge testimony as to the condition of the vehicle. Rather, Debtor appears to admit that the vehicle is in sale floor retail value condition.

The lien on the Vehicle's title secures a purchase-money loan incurred on July 25, 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 $14,997.79. Proof of Claim, No. 4. 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 $12,300.00, 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 Darrell Kevin Rhym and Chuente Lenise Rhym ("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 Chrysler 200 Limited ("Vehicle") is determined to be a secured claim in the amount of $12,300.00, 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 $12,300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

26. **19-21821-E-13 GEL-2** **DARRELL/CHUENTE RHYM** **Gabriel Liberman** **MOTION TO VALUE COLLATERAL OF LENDMARK FINANCIAL SERVICES, LLC** **3-28-19 [12]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 28, 2019. By the court's calculation, 33 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 Lendmark Financial Services, LLC ("Creditor") is denied without prejudice.

The Motion filed by Darrell Kevin Rhym and Chuente Lenise Rhym ("Debtor") to value the secured claim of Lendmark Financial Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 14. Debtor is the owner of a 2005 Chevrolet Suburban 1500 LT ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,924.00 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).

Creditor's Proof of Claim

On April 5, 2019, Creditor filed Proof of Claim, No. 2 ("Claim").The Claim asserts a debt in the amount of $8,180.45 , of which $6,675.00 is asserted to be secured (the value of the Vehicle). The Claim also asserts arrearages of $312.88 as of the filing of the petition.

DISCUSSION

The Hanging Paragraph of 11 U.S.C. § 1325(a)(9) provides that 11 U.S.C. § 506 shall not apply to a claim if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle acquired for the personal use of the debtor.

Debtor has not provided the date the debt was incurred in the Motion or Debtor's Declaration. However, in reviewing the Disclosure Statement, Promissory Note, and Security Agreement attached to Proof of Claim, No. 2, it appears the debt was incurred on November 29, 2018. Debtor filed this case on March 25, 2019, only 116 days later.

The first payment date is indicated to be January 14, 2019. That was a mere 70 days prior to filing. The Claim further indicates an arrearage of $312.88 at the time of filing.

Ordinarily, the court would presume Debtor bringing this Motion, notwithstanding valuation is barred by 11 U.S.C. § 1325, to be an oversight. However, the present situation is unique in that Debtor has filed two motions to value secured claims set for the same hearing day. Dckts. 8, 12. The two motions and their supporting declarations are near copies of each other.

In reviewing the other motion to value, Debtor's counsel stated:

> The Debtors believe and assert that this creditor holds a valid security interest in the 2015 Chrysler 200 Limited in the nature of a Purchase Money Agreement which was acquired more than 910 days from the Petition Date.

Motion ¶ 6, Dckt. 8. The Declaration of Debtor filed in support stated:

> We believe and assert that SANTANDER CONSUMER USA INC. holds a valid security interest in the 2015 Chrysler 200 Limited in the nature of a purchase money security agreement which was acquired more than 910 days from the filing date of our case.

Declaration ¶ 6, Dckt. 10.

Thus, it is clear Debtor's counsel was aware of the limitation set by 11 U.S.C. § 1325. However, in drafting the present Motion and supporting Declaration, Debtor's counsel was careful to remove any reference to the 910 day limitation. Dckts. 12, 14.

Debtor, having stated under penalty of perjury that this claim is "in the nature of a purchase money security interest," Debtor has testified that the Motion cannot be granted.

In making representations to the court, claims, defenses, and other legal contentions made by counsel must be warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. FED. R. BANKR. P. 9011(b)(2).

Debtor has not met this requirement. The present Motion was brought requesting the court value Creditor's secured claim pursuant to 11 U.S.C. § 506, where Debtor's counsel knew such a request for relief was barred by 11 U.S.C. § 1325.

Based on the pleadings filed in this case, it appears Debtor's counsel hoped to walk the present Motion through unnoticed and unseen, obtaining relief which Debtor had no meritorious basis to receive. However, just as "one does not simply walk into Mordor," [FN.1] the court too is not a place to slip things under the radar.

FN.1. *The Lord of the Rings: The Fellowship of the Ring*, directed by Peter Jackson, based on *The Lord of the Rings* by J. R. R. Tolkien, New Line Cinema, December 10, 2001.

Review of Proof of Claim No. 2-1

Proof of Claim No. 2-1 is very interesting. Creditor asserts that the obligation is secured pursuant to an "electronic title lien." This is a program where rather than "old fashion" paper title and lien documents are issued, the California Department of Motor Vehicles then has the sole record of such title and lien, which is stated on the DMV website as:

> 2 Q. What is an Electronic Title?
>
> A. An electronic title is a **title that exists only in electronic form on our database**. An electronic title is just as legal as a paper title. Each participant is provided with a unique ELT Lienholder ID number on the electronic record.
>
> With electronic titles, lien notifications and releases are transmitted electronically between the Department and the lienholder. **No paper title certificate exists**, thus it is referred to as an "electronic title."

https://www.dmv.ca.gov/portal/dmv/detail/vr/eltp (emphasis added). No print out, screen shot, or other documentation of such "electronic lien" has been included with Proof of Claim No. 2-1.

The claim is also interesting in the context of the obligation. The annual interest rate stated on Proof of Claim No. 2-1 is 35.82%. Such an extraordinary interest rate could well be viewed as one in which the Creditor knows that the borrower cannot repay the loan, the value of the collateral is less than the loan, and that Creditor needs to pocket as much interest as possible as quickly as possible before the

borrower defaults.

The copy of a document titled Disclosure Statement, Promissory Note, and Security Agreement attached to Proof of Claim No. 2-1 includes the following information:

A. The loan was for $7,906.80

B. Term of the loan is forty-eight months

C. The loan is to pay a prior loan with Creditor for $7,537.97.

D. The Security is described as a Motor Vehicle identified as the 2004 Chevrolet Truck, VIN ending in 8705.

E. The finance charge is $7,228.14

The court denies the Motion without prejudice. Though it appears from Proof of Claim No. 2-1 that it is not a purchase money security interest, Debtor testifies to the contrary. To the extent that Debtor's testimony under penalty of perjury is in error, by denying the Motion without prejudice Debtor will have the opportunity to being a new motion. Additionally, Debtor and counsel can appreciate that pleadings and testimony under penalty of perjury are not documents in which "you know what I should me" statements are permitted.

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 Darrell Kevin Rhym and Chuente Lenise Rhym ("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.

27. **18-27720-E-13** **DAVID RYNDA**
ASM-1 **Tracy Woods**

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
1-15-19 [25]

ELINA MACHADO VS.

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 Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were only served on Debtor's Attorney on January 15, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is XXXXXXXX.

Elina Machado ("Movant") seeks relief from the automatic stay with respect to David J Rynda's ("Debtor") real property commonly known as 9436 Windrunner Lane, Elk Grove, California ("Property"). Movant has provided the Declaration of Armando S. Mendez, Movant's counsel, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

As discussed at the at the prior hearings on this Contested Matter (Civil Minutes, Dckts. 62, 78, 132), this Contested Matter hinges on issues extensively litigated in state court to this point in time,

for which various orders and judgments are on appeal. Debtor's proposed Chapter 13 Plans in this case (Debtor filed a Seventh Amended Plan on April 25, 2019 (Dckt. 203)) attempt to provide a vehicle to cure the default on the Property and forestall foreclosure while the parties litigate their dispute. However, it appears that there is a decision, for which Debtor has file an appeal in *pro se*, determining that Debtor has no interest in the Property and that Movant is to sell the Property.

FEBRUARY 22, 2019 ORDER

After the third hearing on this Contested Matter (Civil Minutes, Dckt. 132), the court issued an Order denying without prejudice on an interim basis the request for relief from the Automatic Stay , subject to Debtor making the following adequate protection payments:

> 1. Current Monthly Mortgage Payment to Ocwen Loan Servicing., Claim flied as Proof of Claim No. 4-1 in the amount of $1,493.37 as state in said Proof of Claim;
>
> 2. Monthly Mortgage Arrearage cure payments of $375.06 for the Ocwen Loan Servicing, LLC claim (Proof fo Claim 4-1);
>
> 3. Monthly Home Owners Association dues and fees arrearage payments of $116.18, for the secured arrearage claim of Lakeside Community Owners Association, Proof of Claim No. 6-1. This amount is $25 months higher then stated in the Plan and is based on the secured claim stated by this creditor in Proof of Claim No. 6-1 ($6,971.97 secured claim/60 months = $116.18 a month).

Order, Dckt. 136. The court further Ordered Debtor shall timely make all post-petition regular payments for Home Owners Association fees, due, and other amounts, which are stated to be $68.33 a month, as well as amounts for insurance which were not identified at the continued hearing. *Id.*

The Order continued the hearing on the Motion to April 30, 2019 for consideration of adequate protection issues and whether further relief is necessary. *Id.*

SEVENTH AMENDED PLAN &
MOTION FOR SANCTIONS

On April 25, 2019, Debtor filed the Seventh Amended Plan. Dckt. 203. Debtor did not set a confirmation hearing, or serve the plan on parties in interest.

In reviewing the docket to determine whether the Seventh Amended Plan was served, the court noticed a Certificate of Service was filed by Debtor on April 25, 2019. Dckt. 206. That Certificate, which is not tethered to any contested matter, states that Debtor served a Motion For Sanctions Under Rule 11 Against Attorney Armando S. Mendez. *Id.*

In large part, the plan has remained unchanged. From the Sixth to Seventh Amended Plan, the only apparent change is a reduction in the payment made in the final 58 months of the plan from $2,640.52 to $2,470.52.

The substantial change between the prior and current proposed Amended Plans is not a plan term, but merely a summary of events related to the case. The Seventh Amended Plan includes the following information in section 7.01:

> Debtor purchased his home located at 9436 Windrunner Ln, Elk Grove, CA 95758 from Elina and Gabriel Machado on 11/22/2014. The Machados executed a quitclaim of all right, title and interest in the property to David J. Rynda that was notarized and Mr. Rynda's acceptance of the quitclaim was notarized as well. The notary recorded the parties' signatures, IDs, and fingerprints in her journal, and has provided a declaration under penalty of perjury that the above is true. The notaries declaration and her journal with the parties' fingerprints were filed with the court 2/15/2019. Mr. Rynda gave his original notarized quitclaim to his former attorney, Earnest Anderson, who subsequently lost it, such that the original quitclaim has not been recorded. The parties had an oral agreement for the sale of the property, the terms were that Mr. Rynda would pay $4,319 for Elina Machado to move into an apartment, and Mr. Rynda would provide Gabriel Machado one year of room and board. In exchange, the parties quitclaimed the property located at 9436 Windrunner Ln, Elk Grove, CA 95758 to Mr. Rynda. All agreed upon consideration has been paid and performed. The contract is valid, and binding, and cannot be rescinded. The statute of limitations on contracts under California Civil Code has passed, and Ms. Machado is time barred from asserting any claims, as well barred by Judicial Estoppel for the fraud committed in her prior bankruptcy, as well as the Statute of Frauds and promissory estoppel.
>
> 15-21423 Elina Meredith Machado
> Case type: bk Chapter: 13 Asset: Yes Vol: v Hon.: Ronald H. Sargis
> Date filed: 02/25/2015 Date of last filing: 11/15/2016 Plan confirmed: 05/13/2015
> Debtor dismissed: 09/09/2016
> Date terminated: 11/15/2016
>
> Elina Machado listed the property as belonging to her in her bankruptcy schedules, and claimed it was her personal residence, when she filed a Chapter 13 on 2/25/2015, and failed to disclose she had sold the property to David J. Rynda on 11/22/2014 and no longer lived in the property. Ms. Machado failed to list any claims against David J. Rynda, therefore her claims that Debtor's home is her community property, asserted in her UD, Divorce, and Motion for Relief in this court were fraudulent, past the statute of limitations, and judicially estopped for failing to list them on Schedule A of her bankruptcy petition. In addition, Debtor paid all of Elina Machado's plan payments to the Trustee, and subsidized her apartment rent for three years, all of which she failed to disclose on her schedules as income, while keeping her own income to spend as she pleased, rather than pay creditors.
>
> Debtor has lived in the home for over four years and paid the mortgage, however, the mortgage payments fell into arrears when Elina Machado filed a motion to

join Debtor to her divorce, so she could assert a claim on Debtor's home, when she noticed property values have gone up and there is equity in the home. Fearing Elina Machado might misrepresent to a court that the property is hers, which she has, Debtor stopped making payments on the mortgage because he was not represented by counsel and was uncertain of what the outcome of this meritless litigation.

Debtor's original notarized quitclaim was lost or stolen before he could properly record it, leaving a cloud on title by the Machados which must be removed. Elina Machado now claims an interest in Debtor's home and has obtained an order from a family law court, lacking personal and subject matter jurisdiction, ordering Debtor to vacate his home. Debtor has filed a timely notice of appeal, and a quiet title complaint Sacramento County, Case No. 34-2018-00247111. The complaint has been served on Mr. Mendez, with a notice and acknowledgment of receipt to signed by his client. Ms. Machado has failed to return the signed doc, forcing Mr. Rynda to incur more attorney fees and costs to serve her personally, for which she will be liable. Being that Debtor was forced to file a Chapter 13 to save his home form foreclosure, he has filed an adversary complaint for quiet title, Case No. 19-02023, because the family law court violated his civil rights and right to a fair trial and right to present evidence, Debtor may pursue that claim in addition to his state claims under pendant jurisdiction in the bankruptcy court by adversary proceeding.

Debtor has requested Elina Machado execute a new quitclaim or grant deed that can be recorded to remove their cloud on title, and the pending litigation can be dropped, Elina Machado has refused. Debtor has advised Elina Machado's attorney he will seek attorney fees and costs for all litigation necessary to remove the Machado's cloud on title, jointly and severally from Elina Machado and her attorney. Gabriel Machado has not been located for service.

Marriage of Elina Machado and Gabriel Machado
Superior Court, Sacramento County, Case No. 17FL02730
Debtor appeals an order of 10/16/2018, from a hearing to consolidate a UD filed by Elina Machado in Sacramento County, Cased No. 18UD04149, with her divorce case in Sacramento County, Case No. 17FL02730, was a clear case of forum shopping. The family court denied the motion to consolidate the UD, set aside a default on joinder of Debtor, claimed debtor had an interest in the home to be determined later, and ordered Debtor to vacate his home in 30 days. Debtor filed a timely notice of appeal, and appellate brief, that is pending the Third Appellate District of California, Case No. C088381. Elina Machado has not filed a response. A notice of stay has been filed on both cases.

David Rynda v Elina and Gabriel Machado Quiet Title Complaint Superior Court, Sacramento County, Case No. 34-2018-00247111. This has been served on Elina

Machado by mail via her attorney with a Notice of Acknowledgment and Acceptance, which she has failed to complete and return to Debtor's counsel. A notice of stay has been filed on this case.

Elina Machado v David Rynda Unlawful Detainer in Superior Court, Sacramento Count, Case No.18UD04149. On 10/10/2018, hearing was held in this court before Judge Steven Lapham. Elina Machado fraudulently claimed to be the owner of the property at 9436 Windrunner Lane, Elk Grove, CA and asked the court to order David Rynda to vacate the property. David Rynda produced a copy of his quitclaim signed by Elina Machado and notarized on 11/22/2014. Elina Machado and her attorney looked shocked and embarrassed that David Rynda was able to produce this document. David Rynda was representing himself in pro per, and on cross examination he asked Elina Machado to read the document. Elina Machado proclaimed she cannot read. The judge asked her if she cannot read, or refuses to read, she stated she refuses to read the document, the judge ordered to read it, and she admitted she signed it, and that she did in fact sell the home to David Rynda on 11/22/2014. The judge then became very angry, and said to Elina Machado's attorney, why the hell are we here on this? Elina Machado's attorney feigned ignorance and asked for a continuance to examine the document and read the case that the judge cited, Marvell v Marina Pizzeria (1984) Appellate Department, Superior Court, Los Angeles [Civ. A. No. 15787. Mr. 15, 1984] Judge Lapham continued the hearing to 11/07/2018. Before the next hearing could be held, and case dismissed for lack of standing, Elina Machado's attorney forum shopped the matter to the family court with a motion to consolidate in order to dupe an judge less wise than Judge Lapham, on the issues of property and contract law. All hearings in Unlawful Detainer court are tape recorded, and the admissions by Elina Machado that she made in court about the signing the quitclaim and selling her home are preserved on tapes. Debtor requested transcripts of this hearing on 11/14/018, and received this reply

Good afternoon:

Unfortunately, we will be unable to provide you with the Unlawful Detainer transcript you have requested. Although we record the proceedings in Unlawful Detainer court, the recordings are used only for monitoring of subordinate judicial officers, but are not to be "used for any other purpose or made publicly available" pursuant to Section 69957(b)of the Government Code.

Sincerely,
Mary Duccini
Judicial Services Officer
Sacramento Superior Court
(916) 875-7771

Debtor's counsel will attempt to subpoena these recordings and transcripts, as

> they contain important admissions by Elina Machado that prove her claims of ownership are fraudulent. In addition, Debtor will subpoena Judge Steven Lapham to testify in this courtroom as to the testimony given in that courtroom, and his findings of facts. Should this be necessary it and Elina Machado's fraud proven by Judge Lapham's testimony, it will will be appropriate to order Elina Machado to compensate Judge Lapham for his time in taking him away from running his own court calendar.

Amended Plan, Dckt. 203.

It appears that Debtor confuses the Chapter 13 plan with the concept of a disclosure statement in a Chapter 11 case, allegations in a complaint, documentary evidence, and testimony at trial.

DISCUSSION

In prior hearings on this Contested Matter the court expressed concern that this bankruptcy case was merely being used in lieu of an injunction to keep the status quo while Debtor litigates an ownership interest in the Property. Further review of the case and Seventh Amended Plan does not put those concerns to rest.

The Seventh Plan does not appear to be a plan to be prosecuted in good faith in this Chapter 13 case. Rather, Debtor and Debtor's counsel seems to think the Plan is a good place to keep the court updated on the status of the state court litigation–or worse, Debtor's counsel may think the Plan is a proper extension of the Adversary Proceeding where an argument on Debtor's claims can be won.

In reviewing the docket, nothing has been filed by the Creditor or any other party in interest alleging Debtor has not complied with the Adequate Protection Order.

On April 22, 2019, the court dismissed without prejudice Debtor's motion to avoid a judicial lien. Order, Dckt. 201. As discussed in the ruling on that motion, Debtor may well be indicating that there is a significant avoiding transfer to be recovered for the benefit of the bankruptcy estate and all creditors, not merely the one who received what may be an avoidable transfer.

The court has addressed with Debtor's counsel the possible need to obtain experienced bankruptcy counsel to prosecute this case and the rights of the bankruptcy estate. Counsel has assured the court that his client wants him to do it. In reviewing the court's records, counsel appears in a number of Chapter 7 (23) and Chapter 13 (20) cases. Of the twenty Chapter 13 cases, eighteen have been dismissed and the current one is pending. For the one Chapter 13 case that was not dismissed and in which a discharge was entered in September 2013, counsel did not substitute into the case as counsel for that debtor until August 2014 when that debtor's prior counsel was retiring from practice.

While it may be that Debtor's current counsel can successfully navigate state court litigation, this Chapter 13 case is not flourishing. Rather, it appears to be taking on the character of a state court family law proceeding which exists only for the purpose of the parties being locked in never ending judicial proceedings.

At the hearing, xxxxxxxxxxxxxx.

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

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

The Motion for Relief from the Automatic Stay filed by Elina Machado ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **XXXXXXXXXXXXXXXXX**.

FINAL RULINGS

28. **19-20815-E-13 DPC-1** | **TRE BALL** **Bruce Dwiggins** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK 4-1-19 [29]**

Final Ruling: No appearance at the April 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 1, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Discharge is sustained.

The Chapter 13 Trustee, David Cusick ("Objector"), objects to Tre Wilbur Ball's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on January 4, 2017. Case No. 17-20044. Debtor received a discharge on May 1, 2017. Case No. 17-20044, Dckt. 15.

The instant case was filed under Chapter 13 on February 11, 2019.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a

discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on May 1, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 17-20044, Dckt. 15. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-20815), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the Chapter 13 Trustee, David Cusick ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-20815, the case shall be closed without the entry of a discharge.

29. **19-21026-E-13 CAS-1** | **LISA MOORE** **Steele Lanphier** | **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR CAPITAL ONE AUTO FINANCE** **3-19-19 [21]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 30, 2019 hearing is required.

Creditor Capital One Auto Finance having filed a "withdrawal of objection," which the court interprets to be an *Ex Parte* Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection was dismissed without prejudice, and the matter is removed from the calendar.**

30. **17-22150-E-13** **JAMES SMITH** **MOTION TO MODIFY PLAN**
MJD-3 **Matthew DeCaminada** **3-26-19 [94]**

Final Ruling: No appearance at the April 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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. James Howard Smith ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on April 16, 2019. Dckt. 100. 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 James Howard Smith ("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 26, 2019, 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.

31. **15-28322-E-13 MJD-6** **LISA TOLBERT** **Matthew DeCaminada** **MOTION TO MODIFY PLAN** **3-21-19 [181]**

Final Ruling: No appearance at the April 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 21, 2019. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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. Lisa Denise Tolbert ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on April 16, 2019. Dckt. 190. 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 Lisa Denise Tolbert ("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 21, 2019, 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.

32. **17-25557-E-13** **ERIC FRAZIER** **MOTION TO MODIFY PLAN**
DEF-1 **David Foyil** **3-6-19 [42]**

Final Ruling: No appearance at the April 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2019. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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. Eric Frazier

("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on April 16, 2019. Dckt. 49. 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 Eric Frazier ("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, 2019, 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.

33. 18-25569-E-13 MJD-2 — GRACE WOODRING — Matthew DeCaminada — OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES — 3-12-19 [44]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 30, 2019 hearing is required.

The debtor, Grace Gaspar Woodring ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection was dismissed without prejudice, and the matter is removed from the calendar.**

34. **18-25104-E-13** **CHRISTOPHER MORRIS** **MOTION TO CONFIRM PLAN**
FF-3 **Gary Fraley** **3-8-19 [41]**

Final Ruling: No appearance at the April 30, 2019 hearing is required.

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

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

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

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

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

35.	**19-20125-E-13** **PGM-3**	**ROBERT/DONNA DECELLE** **Peter Macaluso**	**CONTINUED MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION** **3-5-19 [44]**

Final Ruling: No appearance at the April 30, 2019 Hearing is required.

- - - - - - - - - - -

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2019. By the court's calculation, 32 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 Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $16,300.00.

The Motion filed by Robert DeCelle and Donna DeCelle ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Kia Sorento ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor's Declaration was filed in support of the Motion. Dckt. 47. Debtor's Declaration presents testimony of required repairs for the Vehicle (which Debtor considered in the valuation),

described as follows:

A. Back bumper
B. Drivers door
C. Front end leakage
D. Suspension
E. Damaged seats
F. Stained carpet

Id.

CREDITOR'S PROOF OF CLAIM

Creditor filed Proof of Claim, No. 5 on January 18, 2019. Creditor asserts a fully secured claim of $32,616.31. Creditor breaks down the amounts as follows:

Value of property:	$_____
Amount of the claim that is secured:	$ 32616.31
Amount of the claim that is unsecured:	$ 0.00

Question 9, Proof of Claim, No. 5, Official Claims Registry.

APRIL 16, 2019 HEARING

At the April 16, 2019 hearing the court continued the hearing to April 25, 2019. Dckt. 78.

STIPULATION

On April 24, 2019, the parties filed a signed a Stipulation wherein the parties agreed the value of the Vehicle was $16,300.00 at the time of filing. Dckt. 83.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on May 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 $32,616.31. Creditor's secured claim is determined to be in the amount of $16,300.00, the Stipulated value of the collateral. 11 U.S.C. § 506(a); Stipulation, Dckt. 83. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. 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 Robert and Donna DeCelle ("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 2015 Kia Sorento ("Vehicle") is determined to be a secured claim in the amount of $16,300.00, 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 $16,300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

36. 18-24658-E-13 CRG-2

WILLIAM FREEMAN AND CARLA TAVORMINA FREEMAN
Carl Gustafson

CONTINUED MOTION FOR COMPENSATION FOR CARL R. GUSTAFSON, DEBTORS ATTORNEY(S)
2-28-19 [38]

Final Ruling: No appearance at the April 30, 2019 Hearing is required.

- - - - - - - - - - -

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. While Applicant only provided 33 days' notice, the court continued the hearing on the Motion to allow for adequate notice. Civil Minutes, Dckt. 50.

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

The Motion for Allowance of First Interim Attorney's Fees for Counsel for the Chapter 13 Debtor is granted.

Carl Gustafson, the Attorney ("Applicant") for William and Carla Freeman, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 5, 2018, through January 18, 2019. Applicant requests fees in the amount of $5,287.50 and costs in the amount of $125.00.

The Order Confirming Chapter 13 Plan in this case was issued October 17, 2018. Order, Dckt. 36. While the Confirmed Plan (Dckt. 8) provided for $6,000.00 as a set fee in this case, the Order did not expressly provide for the set fee.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 13, 2019. Trustee opposes the Application on the following grounds:

1. Only 33 days' notice was provided where 35 was required.

2. The Application and supporting Declaration were filed as a single document despite the Local Bankruptcy Rules.

3. The Application does not meet the requirements of Federal Rule of Bankruptcy Procedure 9013.

4. Exhibits A and B were not included on the Proof of Service.

5. There is no task-billing analysis.

APPLICANT'S REPLY

Applicant filed a Reply to Trustee's Opposition on March 26, 2019. Dckt. 46. Applicant responds to Trustee's grounds for opposition as follows:

1. Notice was sufficient, as Local Bankruptcy Rule 9014-1(f)(1) only requires 28 days' notice.

2. The Application is based on the court's official form EDC 003-095-12. Therefore, Applicant's failure to comply with Federal Rule of Bankruptcy Procedure 9013 is not Applicant's fault.

3. Applicant complied with the Local Bankruptcy Rule requiring filing of separate documents with exception of the Application and Declaration filed using the joint form EDC 003-095-12.

4. While Exhibits A and B were not listed on the Proof of Service, they were incorporated through the Application by reference. Further, service was actually effected.

5. A task-billing analysis is not required in relatively low-value fee

applications.

APRIL 2, 2019 HEARING

At the April 2, 2019 hearing the court noted that while Applicant has performed valuable services for the Debtor and Estate for which some compensation is warranted. Applicant had opted out of the fixed fee agreement and required to file an interim request for fees on an hourly basis. Civil Minutes.

The court continued the hearing to allow Applicant the opportunity to file supplemental pleadings in support of an interim request for fees.

Overview of Bankruptcy Case

This bankruptcy case was filed on July 25, 2018. The Disclosure of Compensation of Attorney for Debtor filed in this case states that Applicant has agreed to accept $6,000.00 for legal services rendered or to be rendered to the Debtor. Dckt. 1 at 64. For the scope of services beyond the pre-petition review, preparation of petition and schedules, and representation of Debtor at the First Meeting of Creditors, the direction is given to review the Rights and Responsibilities of Consumer Debtors and their Attorneys. *Id.*

The Rights and Responsibilities document provides the following disclosure of the fees to be paid to Applicant in this case:

> "Initial fees charged in this case are $6000.00 , and of this amount, $1655.00 was paid by the Debtor before the filing of the petition. While this initial fee should be sufficient to fully and fairly compensate counsel for all pre-confirmation services and most post-confirmation services rendered in the case, where substantial and unanticipated post-confirmation work is necessary, the attorney may request that the court approve additional fees. If additional fees are approved, they shall be paid through the plan by the chapter 13 trustee unless otherwise ordered. The attorney may not receive fees directly from the Debtor."

Dckt. 7 at 3. This states that Applicant has opted for a set fee of $6,000.00, with the ability to seek additional fees for substantial and unanticipated post-confirmation work. See L.B.R. 2016-1(c).

The Order confirming the Plan provides with respect attorney's fees that compensation will be approved as provided under an 11 U.S.C. § 330 and § 329 analysis. Dckt. 36 at 2. The court has not approved a set attorney fee for Applicant.

Supplemental Declaration and Time Records

Applicant's Supplemental Declaration describes services performed in the case. Dckt. 51. Applicant also filed as Exhibit A time records separated by task. Exhibit A lists the following fees:

Task	Fees
Prepare/file BK Petition	$2,740.00
Send documentation to Trustee	$ 120.00
Preparation for 341	$ 77.50
Draft/file MTV	$1,672.50
Confirmation of Chapter 13 case	$1,232.50
Claims Audit	$ 390.00
Resolve clients' questions	$ 460.00
Draft/file Fee Application	$ 250.00
Total Fees:	**$6,942.50**

Applicant states that in this case, Debtors' financial situation had recently changed as the Debtor left self employment to be an employee and spent significant time and money fixing up the house as an investor. Declaration, Dckt. 51. The changing circumstances made for a more complex case to file. *Id*.

Applicant saw the Chapter 13 Plan through confirmation, prosecuted a motion to value a claim secured by Debtor's vehicle, reviewed and amended claims filed, and performed other general case administration duties. *Id*

Trustee's Response

Trustee filed a Response on April 23, 2019. Dckt. 54. Trustee states the hours spent on the tasks above appear reasonable.

Billing Rate

Exhibit A appears to set out the following billing rates:

Attorney.....$425/Hr

Paralegal.....$175/Hr

Legal Assistant.....$75/Hr

Dckt. 52.

DISCUSSION

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An

attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant has provided his Supplemental Declaration (Dckt. 51) providing the court with an overview of the complexity of this bankruptcy case and the nature of the legal services reasonably necessary to move these debtor forward under the Bankruptcy Code.

The Applicant testifies that since the case was filed Debtor left his "self-employment" and has become an "employee and spent significant time and money fixing up the house as an investor." Sup. Dec. ¶ 5, Dckt. 41. Reviewing Schedule I and the Statement of Financial Affairs, Debtor does not report being self-employed as his source of income (Schedule I showing $14,583 in wages (94% of monthly income) and $938 in rental/business income monthly, Statement of Financial Affairs Question 4 showing only wage income for the current and two prior calendar years; Dckt. 1).

The Chapter 13 Plan in this case provides for at least an 18% dividend to creditors holding general unsecured claims. Dckt. 8. While a disbursement to creditor's holding unsecured claims is not a requirement for a debtor's counsel be paid, it does indicate that there is a significant financial "enterprise" in this case.

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $6,942.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

While the initial Application requested $125.00 in expenses, no supplemental documentation was filed in support of those expenses. Therefore, those expenses are not allowed.

Conclusion

The court authorizes the Chapter 13 Trustee to pay 80% of the fees allowed by the court, less the $1,655.00 already advanced as an initial fee.

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

Fees $6,942.50

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Carl Gustafson ("Applicant"), Attorney for William and Carla Freeman, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Carl Gustafson is allowed the following fees and expenses as a professional of the Estate:
>
> Carl Gustafson, Professional employed by the Debtor,
>
> Fees in the amount of $6,942.50,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the requested costs of $120.00 are not allowed by the court.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay 80% of the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, less the $1,655.00 already advanced as an initial fee.