UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice
The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 12.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–11, attempting to first address the items in which short argument is anticipated.

May 22, 2018, at 3:00 p.m.

1.	**18-22511-E-13** **PLC-1**	**HUONG MCGUIRE** **Werner Ogsaen**	**MOTION TO EXTEND AUTOMATIC STAY** **4-30-18 [11]**

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

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, parties requesting special notice, and Office of the United States Trustee on April 30, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any

other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Extend the Automatic Stay is granted.

Huong McGuire ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-21703) was dismissed on April 10, 2018, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 18-21703, Dckt. 14, April 10, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 4, 2018. Dckt. 17. The Chapter 13 Trustee states that he does not oppose the Motion, but he notes that the case is incomplete with a deadline of May 9, 2018, to file all documents. Nevertheless, he believes Debtor's explanation about why the prior case was dismissed is convincing to extend the automatic stay in this case.

DISCUSSION

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because after he received a notice of default regarding a mortgage, he contacted a law firm about what to do. That firm apparently instructed him (upon payment) to let the firm handle the foreclosure, but after Debtor received a notice of trustee sale, he contacted the firm, which then told him that he should file a bankruptcy. Debtor reports that he was instructed to a consulting group to prepare a skeletal filing, including a second time after the first case was dismissed. Debtor states that the firm told him it does not assist with bankruptcy cases and advised him to hire a bankruptcy attorney to prosecute this case.

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

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

A. Why was the previous plan filed?

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

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

A review of the docket shows that the remaining documents were filed before the deadline. Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

2.	**18-21531-E-13 DPC-1**	**JAIME ANDRADE OROPEZA AND KIMBERLEY LANCASTER Jasmin Nguyen**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-24-18 [23]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 24, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Jaime Oropeza and Kimberley Lancaster's ("Debtor") plan relies upon the court granting a related motion to value to be feasible.

The Chapter 13 Trustee's objection is well-taken. The court has granted Debtor's motion to value, but the court did not value the collateral at the amount Debtor requested. Debtor requested that a vehicle be valued at $15,000.00, but the court found cause to value the vehicle according to a Kelley Blue Book Valuation Report on the record at $16,599.00. That is a difference of $1,599.00.

When analyzing Debtor's Plan, there would have been approximately $16,162.04 in funds to pay the Class 2(B) claim to be valued at $15,000.00. With the claim actually being valued at $16,599.00, though, Debtor's Plan falls short by $436.96. The Plan is not feasible and cannot be confirmed. 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

3. 18-21335-E-13 DPC-1 | **AUGUSTINE DEGUZMAN** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-25-18 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on April 25, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Augustine DeGuzman ("Debtor") used the wrong plan form;

B. Debtor failed to provide tax returns and pay advices;

C. Debtor failed to provide the Class 1 Checklist;

D. The proposed plan payment is insufficient; and

E. Debtor failed to file Official Form 122C-2.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of

December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Debtor 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). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to submit the Class 1 Checklist and Authorization to Release Information to the Chapter 13 Trustee, but that has not been provided. 11 U.S.C. § 521(a)(3).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The proposed plan payment is $120.00, but the Chapter 13 Trustee notes that it is insufficient to pay even the Class 1 mortgage claim of $720.00 that Debtor listed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On Official Form 122C-1, Debtor listed that she is over median income, requiring submission of Official Form 122C-2, but that subsequent form has not been filed. 11 U.S.C. § 1325(a)(1).

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

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

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

4. **18-21335-E-13 DPC-2** | **AUGUSTINE DEGUZMAN** **Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **4-25-18 [25]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on April 25, 2018. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. The court shortens the time to the 27 days given.

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

The Objection to Claimed Exemptions is sustained.

David Cusick ("the Chapter 13 Trustee") objects to Augustine DeGuzman's ("Debtor") claimed exemptions under California law because Schedule C includes an exemption of $848,500.00 in real property, allegedly pursuant to California Code of Civil Procedure § 704.730.

California Code of Civil Procedure § 704.730 allows a maximum exemption of $175,000.00, and even then, only if the debtor qualifies for one of three exceptions pertaining to age, disability, or a combination of age and income.

On Schedule C, Debtor claimed an exemption in real property totaling $848,500.00, pursuant to California Code of Civil Procedure § 704.730. Clearly, that exceeds the limits established under that section of the California Code of Civil Procedure.

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

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemption of $848,500.00 in real property under California Code of Civil Procedure § 704.730 is disallowed in its entirety. Sustaining the Objection is without prejudice to Debtor filing an amended Schedule C claiming an exemption in the residence as permitted by applicable law.

5. 11-44540-E-13 PLC-3 | **MERCEDES PEREZ** **Peter Cianchetta** | **MOTION TO AVOID LIEN OF ANTONIO J. CARDONA** **4-20-18 [223]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and Office of the United States Trustee on April 20, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Antonio Cardona ("Creditor") against property of Mercedes Perez ("Debtor") commonly known as 6 Fourth Avenue, Isleton, California ("Property").

INSUFFICIENT NOTICE PROVIDED

The Proof of Service states that service was performed on Law Offices of Tosh G. Yamamoto pursuant to California Code of Civil Procedure § 684.010. The recorded abstract of judgment lists Law Offices of Tosh G. Yamamoto as the attorney in state court and as the party requesting recording of the judicial lien. Exhibit 2, Dckt. 226. Service was not provided on Creditor, just on his attorney in state court. That is insufficient.

As discussed extensively in *Frates v. Wells Fargo, N.A. (In re Frates)*, judges in the Ninth Circuit have considered whether due process as interpreted by the United States Supreme Court requires service on attorneys for judgment creditors according to California law. 507 B.R. 298, 302–05 (B.A.P. 9th Cir. 2014). Much of the discussion had been initiated in dicta in *All Points Cap. Corp. v. Meyer (In re Meyer)* responding to the Bankruptcy Appellate Panel's decision in *Beneficial Cal. Inc. v. Villar (In re Villar)*. *See id.* at 303–05 (citing *All Points Cap. Corp. v. Meyer (In re Meyer)*, 373 B.R. 84 (B.A.P. 9th Cir. 2007); *Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88 (B.A.P. 9th Cir. 2004)).

The Bankruptcy Appellate Panel resolved the due process discussion by holding that "even if service was made on [the state court attorney] in compliance with CCP § 684.010, that would be inadequate under the holding in *Villar*," which itself held that a court "cannot presume from [the state court attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Id.* at 305 (quoting *In re Villar*, 317 B.R. at 93).

In this case, no attorney from the Law Offices of Tosh G. Yamamoto has entered an appearance, indicating that there is no reason to presume that the law office is authorized to represent Creditor for this Motion. The court has reviewed its historical docket for appearances by the Law Offices of Tosh G. Yamamoto. The law office has appeared twice in this district, both times in the early 1990s. The law office does not appear to be a regular participant in bankruptcy proceedings that would lead any party to believe that the attorneys in the office are sufficient parties to serve with lien avoidance papers, despite representing the named creditors in state court.

As discussed further by the Bankruptcy Appellate Panel, lien avoidance motions must adhere to "strict compliance with procedural matters" and must follow the framework established by Federal Rules of Bankruptcy Procedure 4003(d), 9014, and 7004. *Id.* at 302.

Improper service having been provided, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Mercedes Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES SUFFICIENT SERVICE TO THE JUDGMENT CREDITOR

A judgment was entered against Debtor in favor of Creditor in the amount of $110,603.57. An abstract of judgment was recorded with Sacramento County on November 30, 2001, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $150,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $176,800.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 111. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $20,000.00 on Schedule C. Dckt. 1.

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 Mercedes Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Antonio Cardona, California Superior Court for Sacramento County Case No. 00PR0515, recorded on November 30, 2001, Book 20011130 and Page 1383, with the Sacramento County Recorder, against the real property commonly known as 6 Fourth Avenue, Isleton, 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.

6. **17-21173-E-13** **ODETE CABRAL** **OBJECTION TO NOTICE OF**
PGM-1 **Peter Macaluso** **MORTGAGE PAYMENT CHANGE**
4-4-18 [30]

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, Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 4, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Objection to Notice of Mortgage Payment Change is xxxxxxxxx.

Odete Cabral ("Debtor") objects to the Notice of Mortgage Payment Change filed by Wilmington Savings Fund Society, FSB d/b/a Christina Trust, not individually but as Trustee for Pretium Mortgage Acquisition Trust as serviced by Selene Financing LP ("Creditor") on January 11, 2018. Debtor argues that the Notice reads that the new mortgage payment will be $1,218.08, but the Modification Payment Information attached to the Notice shows that the total is $1,101.86.

Debtor also discusses how he filed a proof of claim on behalf of Creditor, listing $8,604.83 in pre-petition arrears, and Debtor appears to be arguing that the pre-petition arrearage may be part of Creditor's calculation of the increased mortgage payment. Debtor's argument is unclear why pre-petition arrears are being discussed, however.

Debtor asserts that he is entitled to an award of attorney's fees under California Civil Code § 1717 pursuant to his contract with Creditor. Debtor requests $1,200.00 be awarded for the attorney's fees incurred in bringing this Objection.

REVIEW OF NOTICE OF MORTGAGE PAYMENT CHANGE
(Filed January 11, 2018)

The Notice states that on February 1, 2018, the interest rate on Debtor's obligation will increase to 4% per annum, which shall be the interest rate for the remaining term of the loan. It states that the monthly principal and interest payment is, commencing with February 2018, $785.04. No amount is shown for estimated monthly escrow payment for February 2018, but the amount of $316.82 is shown for the initial period.

However, attached to the Notice is an Annual Escrow Account Disclosure Statement, which is dated March 1, 2017. It states an escrow payment of $433.04, which was the escrow amount as of March 1, 2017.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 5, 2018. Dckt. 34. The Chapter 13 Trustee agrees that the increase should be limited to the information on the Modification Payment Information document showing a total amount of $1,107.86 because Creditor has not provided any notice of a change in the escrow amount.

The Chapter 13 Trustee notes Debtor's discussion of the pre-petition arrearage and argues that if Debtor is objecting to the arrearage, then such an objection should be overruled or struck as irrelevant to the particular Objection.

RESPONSE OF WILMINGTON SAVINGS FUND SOCIETY, FSB
AS TRUSTEE

Wilmington Savings Fund Society, FSB, as Trustee, ("Wilmington Trustee"), the creditor issuing the Notice of Mortgage Payment Change, has filed a Response to the Objection. Dckt. 36. The Response is summarized as follows:

A. On June 28, 2017, the servicing of the Loan was transferred to Wilmington Trustee.

B. On January 11, 2018, Wilmington Trustee filed the Notice of Mortgage Payment change to give notice of the February 1, 2018 increase of the interest rate to 4% per annum.

C. The Modification Step Rate Table attached to the February 1, 2018 notice listed an escrow amount of $316.83, and may appear to be the only noticed change.

The court notes that its review of the Notice indicates that the Notice appears to state that the monthly principal and interest payment increased to $785.04 beginning in February 2018. Notice, at 1. Presumably, that is the change in the interest rate to 4% per annum.

On the Annual Escrow Account Disclosure Statement, the most recent monthly escrow payment amount is stated to be $433.04. Though stated as of the March 1, 2017 effective date, it is the latest amount stated by Wilmington Trustee in the attachment to the Notice showing the increase in the monthly principal and interest payment. The $316.82 amount for the monthly escrow payment is stated to be only for months 1–5 of the loan, dating back to 2012, years prior to the 2017 Annual Notice attached to the Notice of Mortgage Payment Change.

Thus, it does not appear unreasonable to interpret the Notice of Mortgage Payment Change to advise Debtor that the monthly payment will be, as of February 1, 2018, $1,218.08 ($785.04 monthly principal and interest payment + $433.04 monthly escrow payment).

D. To "clarify" the matter, Wilmington Trustee will amend the Notice to state that the monthly payment amount is $1,101.86, consisting of the $785.04 principal and interest payment + 316.82 monthly escrow payment.

E. Wilmington Trustee will need to re-analyze the computation of the escrow amount and may need to change it in the future.

Given the limits placed on local government to raise property taxes (Prop. 13) and there not being an identified increased insurance risk, it appears that such adjustments, if any, are likely to be modest.

RULING

On its face, using the most recent escrow payment amount included with the Notice of Mortgage Payment Change, it could appear that there was an increase in the total monthly payment beyond what everyone agrees is the current correct amount (with the increase in the interest rate to 4%).

It is not unreasonable that Debtor could have been confused and believed that the impound amount being demanded by Wilmington Trustee was the higher $433.04, in addition to the increased monthly mortgage and interest payment.

No declaration providing testimony concerning this confusion and efforts made to address the situation is provided by Debtor. Reviewing the exhibits, the court does not see a nice, polite, letter from Debtor's counsel to Wilmington Trustee or its counsel (if any at the time) requesting that Wilmington Trustee address the confusion created by the Notice of Mortgage Payment Change. *See* Dckt. 32.

Creditor Wilmington Trustee's predecessor in interest elected not to file a proof of claim in this case. In the eleven months since obtaining this claim, Wilmington Trustee has not availed itself of the opportunity to file a proof of claim that would clearly and accurately state the claim by which it asserts a right to be paid in this case.

In considering the request for attorney's fees in connection with this Objection, the court considers what is reasonable. In posting the tentative ruling in advance of the hearing, the court notes that for both Debtor and Creditor Wilmington Trustee, there is merit in the parties addressing the

attorney's fees issue in advance of the hearing and reporting to the court any agreement they have reached on this Objection and the related attorney's fee request.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

The Objection is xxxxxxxxxxxxxxxxx.

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

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

The Objection to Notice of Mortgage Payment Change filed by Odete Cabral ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Notice of Mortgage Payment Change is **xxxxxxxxxxxxxxxx**.

7. 18-21487-E-13 DPC-1 | **ROBERT BATEY** / **Richard Jare** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **4-26-18 [27]**

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 26, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Robert Batey ("Debtor") is delinquent on plan payments;

B. Debtor has not provided tax returns; and

C. Debtor has attempted to inappropriately alter the plan form.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $300.00 delinquent in plan payments, which represents one month of the $300.00 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).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(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 cannot comply with the Plan under 11 U.S.C. § 1325(a)(6). Section 1.03 of the Plan states "No alteration to form plan permitted," but Debtor has inserted interlineations in Sections 2.01, 3.06, and 3.08. Any non-standard provisions are to be appended to the Plan separately in Section 7.

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

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

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

8. **18-20290-E-13** **LUIS MANZO** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ESTEBAN CARDIEL**
FWP-1 **Peter Macaluso**
2-22-18 [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 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, and Chapter 13 Trustee on February 22, 2018. By the court's calculation, 33 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.

Esteban Cardiel ("Creditor") holding an unsecured claim opposes confirmation of the Plan on the basis that Luis Manzo ("Debtor") has not included his community property interest in five properties, causing him to fail the liquidation analysis.

MARCH 27, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on May 15, 2018. Dckt. 56, 72.

DEBTOR'S REPLY

Debtor filed a Reply on April 13, 2018. Dckt. 67. Debtor argues that the liquidation analysis has been satisfied for the proposed plan. He argues that Creditor may file an adversary proceeding to allege that

there have been preferential transfers, but he notes that such a complaint has not been filed in Elizabeth Manzo's case.

Debtor states that the liquidation summary attached as Exhibit A shows a total property value of $4,105. That liquidation summary shows a total property value of $4,105.00 (all from personal property) less $0.50 for non-debtor equity and less $4,104.50 for an exemption from Schedule C. Exhibit A, Dckt. 68. Debtor calculates that $0.00 is available to pay total general unsecured claims of $153,283.20.

STIPULATION AND ORDER APPROVING

On April 16, 2018, Debtor and Creditor filed a joint Stipulation to continue the hearing to 3:00 p.m. on May 22, 2018, because of a scheduling conflict. Dckt. 73. The court entered an Order Approving on April 27, 2018. Dckt. 89.

CREDITOR'S RESPONSE

Creditor filed a Response on April 27, 2018. Dckt. 90. Creditor re-argues that five grant deeds were recorded in April 2016 that created a community property interest for Debtor and that those interests are not included in Debtor's liquidation analysis.

Creditor notes that Elizabeth Manzo has filed a motion for relief from the automatic stay to have the division of marital assets and debts adjudicated in state court. Creditor asserts that this court cannot determine if the proposed plan satisfies the liquidation analysis until the state court adjudication is issued. Because of there being a matter to determine in state court, Creditor argues that confirmation should be denied.

DISCUSSION

Creditor argues that Debtor's spouse, Elizabeth Manzo, filed a Chapter13 bankruptcy case on November 22, 2017. Case No. 17-27692. Creditor argues that the Statement of Financial Affairs in that case shows that Elizabeth Manzo transferred five properties into a living trust in 2016. Case No. 17-27692, Dckt. 9 at 31. According to the grant deeds for those properties, they were each transmuted "into community property shared between Elizabeth Manzo and Luis Manzo (Husband) and Veronica Elizabeth Manzo (Daughter)." Exhibits A–E, Dckt. 39.

The addresses and values for each of those properties, as pleaded in Elizabeth Manzo's case, are:

A. 5046 Willow Vale Way, Elk Grove, California ($275,000.00);

B. 8965 Grantline Road, Elk Grove, California ($140,000.00);

C. 7321 Elefa Avenue, Elk Grove, California ($45,000.00);

D. 470 F Street, Galt, California ($85,000.00); and

E. 1319 Lord Street, Walnut Grove, California ($25,000.00). FN.1.

Case No. 17-27692, Dckt. 9.

FN.1. The court notes that the Objection and Elizabeth Manzo's Statement of Financial Affairs list the street address as 1319 for the Lord Street property, but Schedule A/B lists 1316 as the number.

The total value of those properties is $440,000.00 as pleaded by Debtor's spouse. All of the properties are listed in this case, but Debtor asserts that each of them has a value of $0.00 for him because they are all in his wife's name. Nevertheless, the grant deeds for the trust name him as a beneficiary. There may be as much as $440,000.00 in additional equity for this case.

While Creditor asserts that awaiting a state court determination means that the Plan should be denied confirmation, the court disagrees. If the state court rules in Debtor's favor, then the current plan may be confirmable as is.

Alternatively, it may well be that the property determination issue may more properly be determined by the court pursuant to 11 U.S.C. § 541. *See* 28 U.S.C. § 1334(e) (exclusive federal court jurisdiction over all property of the bankruptcy estate, including determining what is property of the bankruptcy estate).

The filing of this bankruptcy case by Debtor and the filing of the bankruptcy case by Debtor's spouse have put all of the assets, whether separate, joint, or community, into the bankruptcy cases. With the two bankruptcy cases putting all of the property subject to the jurisdiction of this court, it may well be that the division of property as between Debtor and his spouse can properly be made only after the bankruptcy cases have been completed.

Additionally, given the fiduciary duties that Debtor and his Spouse have to their respective bankruptcy estates and under their bankruptcy plans, it may well be necessary to have the hard fought ownership issues be conducted in this court to ensure that such fiduciary duties are not breached, or if necessary, have independent fiduciaries appointed to assert the respective rights of the parties. FN.1.

FN.1. The court nots that in the Elizabeth Manzo case, the Spouse has filed a motion to avoid transfers of property as fraudulent conveyances pursuant to 11 U.S.C. § 548. 17-27692, Dckt. 48. It appears that the "motion" also seeks relief pursuant to California Civil Code § 1577 to undue transfers as "mistakes of fact." *Id.*, Motion ¶¶ 11–18. These allegations include very complex factual allegations.

In the Points and Authorities filed in support of the motion to avoid transfers, Spouse Manzo states that the relief is sought pursuant to 11 U.S.C. § 544, Federal Rule of Bankruptcy Procedure 7001(2) and California Family Code § 850 et seq. *Id.*; Points and Authorities, Dckt. 52 at 1:20–23. The Points and Authorities further relies on various California Civil Code sections.

While citing to Federal Rule of Bankruptcy Procedure 7001(2) presumably for the proposition that the transfers may be avoided as fraudulent conveyances, the court can adjudicate the community

property rights, and that purported transmutations can be vacated under other California Law, by "motion," this Rule is to the contrary.

An adversary proceeding is governed by the rules of this Part VII. The following **are adversary proceedings**:

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
>
> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 [11 U.S.C. § 506(a) claim valuation, § 507 administrative expense] or Rule 4003(d) [objection to claim of exemptions];

The above is not a basis for the court to conduct contested matter hearings to adjudicate the rights, title, and interests of the bankruptcy estates for the various properties. As specified in Federal Rule of Bankruptcy Procedure 7001(2), such rights must be adjudicated in an Adversary Proceeding. Though parties may request that they be allowed to have such matters determined by contested matter, the court does not see grounds in this situation. It appears that there are factually complex issues. Additionally, in light of Spouse Manzo trying to "slip it by the court" and mis-cite Rule 7001 to the court, it is clear that an adversary proceeding will be necessary. If Debtor and Spouse Manzo are not up to fulfilling their fiduciary duties to properly litigate the rights of their respective estates, it may be necessary to appoint personal representatives or convert the cases to ones under Chapter 7 (notwithstanding a determination of a debtor's failure to fulfill their fiduciary duties and not diligently prosecute their bankruptcy case resulting in that debtor being denied a discharge in the Chapter 7 case after their assets are liquidated).

> At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.
>
> The proposed Plan does not comply with the provisions of 11 U.S.C. §§ 1325 and 1322, and the Objection is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Esteban Cardiel ("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 is sustained, and the proposed Chapter 13 Plan is not confirmed.

9. **18-21590-E-13 DPC-1** **JANE DECHAVEZ** **David Ritzinger** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-25-18 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 25, 2018. 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.

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

A. Jane DeChavez ("Debtor") cannot afford the plan payments, and

B. Debtor did not list her gambling losses on the Statement of Financial Affairs.

DEBTOR'S RESPONSE

Debtor filed a Response on May 3, 2018. Dckt. 21. Debtor states that she filed an Amended Statement of Financial Affairs on April 24, 2018, to disclose her gambling losses.

Debtor states that her ability to afford plan payments is conditioned upon continuing to earn $1,200 per month in overtime income. Debtor states that if overtime income is cut (by up to $1,200 per

month), then she will eliminate her voluntary retirement contributions of $1,188.07 per month to account for the difference.

Debtor states that she does not expect to have to eliminate retirement contributions, but she notes that her income projection is based upon what she has been able to earn in the past.

RULING

The Chapter 13 Trustee's objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Schedule I shows that Debtor deducts $913.60 per month for voluntary retirement contributions, and it also shows that her non-filing spouse deducts $1,188.07. Debtor's promise to reduce "her" voluntary contributions of $1,188.07 per month means that at least a portion of the reduction would have to be attributed to her non-filing spouse. There is no testimony from the non-filing spouse that such a reduction is a viable option. Furthermore, Debtor has not shown that such a decision is a viable financial option. Schedule I shows that Debtor deducts $417.73 per month for required payments of retirement fund loans, and she deducts $193.61 per month for her non-filing spouse as well. Debtor appears to be paying back loans drawn against her future retirement funds, and now she is proposing that she will further risk her retirement funds by ceasing contributions to them. Such is not a reasonable financial decision for a debtor in bankruptcy proposing to make monthly payments for five years. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed an Amended Statement of Financial Affairs on April 24, 2018. Dckt. 15. There is one amendment: Debtor added "Gambling Losses at Cache Creek Casino Resort" from 2017 in the amount of $293,628.00. That addresses the specific point first raised by the Chapter 13 Trustee.

However, it opens the door to another: Where did the $293,628.00 in assets come from to be lost to the casino in 2017? The court notes that Debtor reports having $363,406 of gambling winnings in 2016 and $234,973.00 of gambling winnings in 2017. Debtor appears to have substantial gambling income in 2017. In addition to their substantial $13,700 monthly income, there is $600,000 of additional income from gambling, without there appearing to be assets to where these winnings, even taking into account the reported losses, have been placed.

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

10.	**18-22713-E-13**	**DAMION HRIBIK**	**MOTION TO EXTEND AUTOMATIC STAY O.S.T.**
	FF-1	**Gary Fraley**	**5-11-18 [11]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 14, 2018. By the court's calculation, 8 days' notice was provided. The court set the hearing for 3:00 p.m. on May 22, 2018. Dckt. 16.

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

The Motion to Extend the Automatic Stay is denied.

Damion Hribik ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-20048) was dismissed on March 13, 2018, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 17-20048, Dckt. 37, March 13, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because his girlfriend left work due to illness and was not contributing funds to the household income. Now, Debtor states that his girlfriend has returned to work.

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

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

A. Why was the previous plan filed?

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

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

Review of Debtor's Declaration

In attempting to rebut the presumption of bad faith, Debtor has provided what appears to be a boilerplate, perfunctory declaration. Dckt. 13. (It appears that this is a stock declaration used to support a motion to confirm a plan, not testimony intended to address the presumption of bad faith.) With respect to the presumption of bad faith, Debtor is willing to testify under penalty of perjury:

A. He has no domestic support obligations.

The court is unsure what this testimony has to do with rebutting the presumption of bad faith.

B. The proposed plan (which is not now before the court), complies with the provisions of Chapter 13.

Debtor shows no basis for expressing such a legal conclusion or having any basis for such knowledgeable personal testimony. Debtor attempts to provide such testimony, without testifying, by qualifying the above statement by further stating under penalty of perjury, "as explained to me by my counsel." Debtor provides no basis for providing hearsay testimony of this legal conclusion.

However, Debtor has successfully waived the attorney-client privilege by stating that he is testifying about everything his lawyer has told him about the law in this case. The court accepts Debtor's waiver of the attorney-client privilege, clearly demonstrating his intention to do so in this declaration prepared by his attorney.

C. Debtor has made all installment payments, fees, and charges required pre-petition.

Presumably, Debtor is showing that he is fulfilling his obligations in this case.

D. Debtor states his personal factual findings and his personal legal conclusion that his plan meets the Chapter 7 liquidation requirement.

The court is unsure as to how this is relevant to providing the court with testimony to rebut the presumption of bad faith.

E. Debtor then merely repeats the possible alternative ways secured claims may be provided for in a Plan, failing to state what he is or intends to provide for secured claims in his case.

Again, Debtor appears to be willing to sign anything he believes helps him, without regard to having any actual knowledge of the truth of the statement. Rather than helping to rebut the presumption, but reinforces it.

F. Debtor then testifies that he will begin making plan payments in June 2018 and that he intends to comply with the plan.

G. Debtor then provides his personal finding of fact and conclusion of law that he has: (1) proposed his plan in good faith and (2) not by any means forbidden by law.

Again, Debtor demonstrates his willingness to say anything under penalty of perjury, without regard to having any personal knowledge of the truthfulness, "SO LONG AS IT MEANS I WIN!!!!!" Debtor also demonstrates that he is unwilling to provide any testimony of any of his actions or acts, but only conclusions that "MEAN I WIN."

H. Debtor does testify that his significant other was unable to work due to an unstated illness, and that loss of income caused the prior plan to fail. But now the significant other is able to work and can help fund the plan.

While providing a generalized reason for the prior default, Debtor provides no testimony as to why such debilitating illness is not likely to reoccur.

Unfortunately, Debtor's testimony does not provide credible evidence to rebut the presumption of bad faith. To the contrary, the "testimony" reinforces the presumption.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Damion Hribik ("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 extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

11. 13-35315-E-13 WSS-6 — STUART/TAMMIE CLARK — Steven Shumway — CONTINUED MOTION TO SELL — 5-1-18 [84]

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 Not 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 May 1, 2018. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Stuart Clark and Tammie Clark, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 556 Alden Way, Roseville, California ("Property").

MAY 15, 2018 HEARING

Movant provided fourteen days' notice of this Motion originally. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice of the hearing. Movant provided seven fewer days than the minimum. At the May 15, 2018 hearing, the court was prepared to deny the Motion without prejudice, but instead, the court continued the hearing to 3:00 p.m. on May 22, 2018, to allow Movant to supplement the record. Dckt. 92.

DISCUSSION

The proposed purchasers of the Property Ernesto Reyes and Christina Reyes, and the terms of the sale are:

A. Purchase price of $430,000.00;

B. A broker's commission of $25,800.00;

C. Movant to pay for a natural hazard zone report, smoke alarm and carbon monoxide device installation and water heater bracing, owner's title insurance, city and county transfer taxes, private transfer fees, and a one-year home warranty plan up to $500.00; and

D. Movant and buyer to split the escrow fee equally.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 3, 2018. Dckt. 89. The Chapter 13 Trustee does not oppose the Motion, but he requests that clarification for a portion of the Motion that reads "The remaining funds will be deposited with and administered by the Chapter 13 trustee."

The Chapter 13 Trustee states that he would not oppose language in the order stating that all remaining proceeds, after the first Deed of Trust and real estate commissions are paid, be paid to the Chapter 13 Trustee as a plan payment, above and beyond the existing payments.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will generate approximately $30,000.00 in net proceeds for Movant.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $25,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

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

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

The Motion to Sell Property filed by Stuart Clark and Tammie Clark, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Stuart Clark and Tammie Clark, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ernesto Reyes and Christina Reyes or nominee ("Buyer"), the Property commonly known as 556 Alden Way, Roseville, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $430,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 87, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Connect Realty.com Inc. and Coldwell Banker-Res R E Srv.

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

FINAL RULINGS

12.	**18-21531-E-13 JTN-1**	**JAIME ANDRADE OROPEZA AND KIMBERLEY LANCASTER Jasmin Nguyen**	**MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION 3-29-18 [15]**

Final Ruling: No appearance at the May 22, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 29, 2018. By the court's calculation, 54 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 Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $16,599.00.

The Motion filed by Jaime Oropeza and Kimberley Lancaster ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Cadillac Escalade, VIN ending in 2726 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $15,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 8, 2018. Dckt. 27. The Chapter 13 Trustee does not actually oppose the substance of the Motion. Instead, he raises the point that

no legal citation to the Code or case law has been provided by Debtor. The Chapter 13 Trustee states that he is willing to waive his opposition to the Motion, but he raises the point out of caution.

DISCUSSION

The Motion does not contain a single reference to the Bankruptcy Code provision applicable to this Motion (11 U.S.C. § 506), nor does it contain references to case law interpreting valuation procedures. Despite that defect, the court is prepared to consider the Motion because such oversight does not appear typical of Debtor's counsel and because the concepts discussed in the Motion are drawn clearly from the applicable provisions of the Code such that a bankruptcy practitioner would know what matter was being discussed. Debtor's counsel should not expect leniency in the future and would do well to include specific legal references to comply with Federal Rule of Bankruptcy Procedure 9013.

Debtor has not provided any evidence of the Vehicle's value other than Debtor's layperson testimony. As part of Proof of Claim No 1-1, Creditor attached a Kelley Blue Book Valuation Report for the Vehicle, dated as of March 20, 2018, five days after the petition date. The report shows a retail value of $16,599.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on January 21, 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 $22,524.32. 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 $16,599.00, the value of the collateral as demonstrated on the Kelley Blue Book Valuation Report filed with Proof of Claim No. 1-1. *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 Jaime Oropeza and Kimberley Lancaster ("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 2007 Cadillac Escalade, VIN ending in 2726 ("Vehicle") is determined to be a secured claim in the amount of $16,599.00, 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 $16,599.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

13. **11-44540-E-13** **MERCEDES PEREZ** **MOTION TO AVOID LIEN OF LEDER &**
PLC-2 **Peter Cianchetta** **WHITEFORD, LLP**
4-20-18 [218]

Final Ruling: No appearance at the May 22, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 20, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Leder & Whiteford, LLP ("Creditor") against property of Mercedes Perez ("Debtor") commonly known as 6 Fourth Avenue, Isleton, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,967.96. An abstract of judgment was recorded with Sacramento County on April 7, 2003, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $150,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $176,800.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 111. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $20,000.00 on Schedule C. Dckt. 1.

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 Mercedes Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Leder & Whiteford, LLP, California Superior Court for Sacramento County Case No. 03 SC02016, recorded on April 7, 2003, Book 20030407 and Page 0904, with the Sacramento County Recorder, against the real property commonly known as 6 Fourth Avenue, Isleton, 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.

14. 18-20243-E-13 JOHN HATZIS MOTION TO CONFIRM PLAN
MRL-1 Mikalah Liviakis 3-29-18 [27]

Final Ruling: No appearance at the May 22, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2018. By the court's calculation, 53 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. John Hatzis ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on May 3, 2018. Dckt. 37. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by John Hatzis ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on March 29, 2018, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. 18-21469-E-13 APN-1 | **DONNA WELCH** **David Foyil** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 4-4-18 [36]**

Final Ruling: No appearance at the May 22, 2018 hearing is required.

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

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 U.S. Trustee on April 4, 2018. By the court's calculation, 48 days' notice was provided. 14 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot.

Wells Fargo Bank, N.A. (""Creditor") holding a secured claim opposes confirmation of the Plan. Donna Welch ("Debtor") set a confirmation hearing for May 15, 2018, and at that hearing, the court denied confirmation of the current plan. The court having determined already that the proposed plan is not confirmable, the Objection is overruled 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 Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. (""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 overruled as moot.

16. 18-21469-E-13 DONNA WELCH
DPC-2 David Foyil

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-23-18 [42]

Final Ruling: No appearance at the May 22, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 23, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan. Donna Welch ("Debtor") set a confirmation hearing for May 15, 2018, and at that hearing, the court denied confirmation of the current plan. The court having determined already that the proposed plan is not confirmable, the Objection is overruled 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 Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled as moot.

17. 17-25372-E-13 ANDRE/ROSARIA WELLES MOTION TO MODIFY PLAN
TLA-1 Thomas Amberg 4-13-18 [17]

Final Ruling: No appearance at the May 22, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2018. By the court's calculation, 39 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. Andre Welles and Rosaria Welles ("Debtor") have filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on May 8, 2018. Dckt. 25. 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 Andre Welles and Rosaria Welles ("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 April 13, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. 18-20290-E-13 DPC-2 | **LUIS MANZO** **Peter Macaluso** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **4-20-18 [79]**

Final Ruling: No appearance at the May 22, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 20, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Luis Manzo's ("Debtor") claimed exemptions under California law because Debtor claimed exemptions under California Code of Civil Procedure §§ 703.140(b) and 704.010 and because Debtor filed a Spousal Waiver electing to claim exemptions under Section 703.140(b) only but has claimed ones outside of that section.

Reviewing Amended Schedule C, the court notes that there is an exemption under California Code of Civil Procedure § 703.140(b)(2) listed, but Debtor claims nothing ($0.00) as an exemption. Dckt. 70. The remaining claimed exemptions on Amended Schedule C are under California Code of Civil Procedure §§ 704.010, 704.020, 704.040, and 704.110. *Id.* Those claimed exemptions conflict with the

Spousal Waiver filed on March 13, 2018, under which Debtor and his non-filing spouse elected to claim exemptions only under California Code of Civil Procedure § 703.140(b). Therefore, there is no claimed exemption that is allowable as pleaded. Debtor appears to need to either amend Schedule C again or elect a different exemption scheme than presented in the Spousal Waiver.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for a 2007 Lexus 305Gs, a 2000 Jaguar S, a 1996 Toyota pick-up truck, furniture, appliances, a computer, clothing, a costume, and a CalPERS retirement under California Code of Civil Procedure §§ 704.010, 704.020, 704.040, and 704.110 are disallowed in their entirety.

19. **18-20290-E-13** **LUIS MANZO**
PGM-2 **Peter Macaluso**

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 5-1 AND/OR MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)
4-2-18 [60]

Final Ruling: No appearance at the May 22, 2018 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 2, 2018. By the court's calculation, 45 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Proof of Claim Number 5-1 of Cavalry SPV I, LLC is sustained, and the claim is disallowed in its entirety.

Luis Manzo, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC as assignee of GE Money Bank / Dillards ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,238.80. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that date of last payment on the Proof of Claim states June 23, 2009. The Statement of Account attached to the Claim show a charge off date of September 25, 2009.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 5-1 lists the charge off date as September 25, 2009. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after June 23, 2009. Thus, the four-year statute of limitations expired on June 23, 2013.

This bankruptcy case was filed on January 19, 2018—1,671 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

Request for Award of Attorney's Fees

In addition, Objector asserts that Creditor is liable for $900.00 in attorney's fees for filing this Objection to correct Creditor's error that was "clearly beyond" the collection term. Dckt. 60 at 3–4. Exhibit B to the Objection is a statement of fees incurred. Dckt. 62. It shows that Objector's counsel bills $750.00 for 2.50 hours of work, and fees of $150.00 for 2.00 hours of work by counsel's legal assistant are included as well. *Id.*

Objector has not asserted any legal grounds for the court to award such relief, nor has Objector provided a copy of the original creditor agreement clearly including an attorney's fees provision.

Federal Rule of Bankruptcy Procedure 3001(c)(3)(A) states:

> When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:
>
> (i) the name of the entity from whom the creditor purchased the account;
>
> (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
>
> (iii) the date of an account holder's last transaction;
>
> (iv) the date of the last payment on the account; and
>
> (v) the date on which the account was charged to profit and loss.

Proof of Claim No. 5-1 contains an attachment entitled Statement of Account that includes each of those five requirements. Specifically, the attachment reads:

Name of the entity from whom the creditor purchased the account	GE Money Bank

Name of the entity to whom the debt was owed at the time of the account holder's last transaction on the account	GE Money Bank / Dillards
Last Transaction Date	06/23/2009
Last Payment Date	06/23/2009
Account Charge Off Date	09/25/2009

What Objector's counsel appears unhappy with is that a creditor would file a proof of claim several years after the statute of limitations on the underlying debt had run. In California, though, asserting that the applicable statute of limitations has run to bar a debt is an affirmative defense, not an automatic extinguishment of the debt. *See, e.g.*, *Van Buskirk v. Kuhns*, 164 Cal. 472, 475 (Cal. 1913) ("[T]he statute of limitations is an affirmative defense . . . .").

If Objector's counsel believes that there are valid grounds either under law or the credit agreement, then he may file a separate costs bill and motion for attorney's fees pursuant to Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 & 9014.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Cavalry SPV I, LLC as assignee of GE Money Bank / Dillards ("Creditor") filed in this case by Luis Manzo, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 5-1 of Cavalry SPV I, LLC as assignee of GE Money Bank / Dillards is sustained, and the claim is disallowed in its entirety.

20. 17-20827-E-13 MRL-3 | **STEPHEN ALBERTS** **Mikalah Liviakis** | **CONTINUED MOTION TO SELL 4-24-18 [49]**

Final Ruling: No appearance at the May 22, 2018 hearing is required.

Local Rule 9014-1(f)(2) Motion— Final Hearing, No Appearance Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Objection. The defaults of the non-responding parties in interest are entered.

The Motion to Sell Property is granted, with the order granting the sale lodged by Movant issued by the court.

The Bankruptcy Code permits Stephen Alberts, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 4524 McDonald Drive, Sacramento, California ("Property").

The proposed purchaser of the Property is Todd Miller and Juliette Miller, and the terms of the sale are:

A. Purchase price of $380,000;

B. Real estate agent commission of $22,800 to be paid through escrow;

C. Closing costs of $8,686.56 for a home warranty, property taxes, notary fees, title and escrow fees, repairs, and transfer tax;

D. Net proceeds of $88,767.29 to Movant; and

E. $15,000 of the net sales proceeds to be paid directly from escrow to David Cusick ("the Chapter 13 Trustee") with the balance to be distributed directly to Movant.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on May 7, 2018. Dckt. 55. He does not oppose the terms of the Plan, but he notes that the Plan calls for the mortgage arrears to be paid by the Chapter 13 Trustee. He states that he is willing to submit a demand into escrow for payment of those arrears.

He also notes that Movant is delinquent $22,904.39 under the Plan.

MAY 15, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on May 22, 2018, to allow Movant to correct the fees stated in Section E. Dckt. 58.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the May 15, 2018 hearing no overbids were presented.

The court continued the hearing to May 22, 2018, to afford Debtor and the Chapter 13 Trustee to address the proper payment of claims through the Plan and those directly by Debtor. Pursuant to the court's direction, the Chapter 13 Trustee and Debtor lodged with the court a proposed order addressing that issue, which language is consistent with that addressed by the court for the May 15, 2018 hearing.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides sufficient funding to fully pay the claims in this case. The court does not approve payments to be made directly to Movant, however. Funds shall be disbursed to the Chapter 13 Trustee for payment of the claims in this case, and then they may be disbursed to Movant.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $22,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not granted. FN.1.

FN.1. This court has repeatedly stated to the attorneys that if they seek a waiver of a Rule of Procedure adopted by the Supreme Court, they must provide the court with a basis for such. To provide a basis, the

movant must so state in the motion, and not merely "throw up a prayer" that such relief be granted. The Motion seeks, or demands, that this court waive the fourteen-day stay imposed by the Supreme Court for no reason other than because "Movant so instructs the court." Possibly, grounds may exist, but Movant does not state them for the court.

However, the court having continued the continued the hearing to allow the parties to address the final issues, and that continuance having caused delay, the court waives the fourteen day stay of enforcement to avoid the further additional interest payments on the secured claims to be paid through the sale.

The Chapter 13 Trustee requests that Movant cure the delinquencies to be paid through the Plan, which include the arrearage on the secured claim. The Chapter 13 Trustee has been forced to expend time and money in administering this case through Movant's substantial defaults.

As a practical matter, the creditor being paid its secured claim would expect that it all be paid through escrow, rather than part through escrow and part through the Chapter 13 Trustee, when it is requested to release its deed of trust so the Property may be transferred unencumbered to the Buyer.

To facilitate the transaction and to have the end-of-plan results most closely match up to the Plan, and to account for the work created by Movant's defaults, the court authorizes Movant to pay the arrearage portion of the payments due on the secured claim through the Plan. Movant will have disbursed from escrow to the Chapter 13 Trustee, prior to any disbursement to Movant, the $15,000 proposed to pay the remaining claims and an additional $1,947.00, which additional amount will be used to ensure the full payment of the Chapter 13 Trustee's fees for all monies disbursed "through the Plan," including the arrearage portion of the secured claim. The court does not authorize the Chapter 13 Trustee to compute the fees in this case to include the non-arrearage portion of the secured claim paid directly from escrow.