UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 2, 2019 at 3:00 p.m.

1.	**19-20880-E-13** **FF-13**	**LAURA/DONALD ENGLAND** **Gary Fraley**	**MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT** **5-31-19 [202]**

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Employment Development Department ("Creditor") against property of Laura Elizabeth England and Donald Lee England Jr. ("Debtor") commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

Evidence in Support of the Motion

In support of the Motion Debtor filed a recorded abstract of judgement. Exhibit 2, Dckt. 202. However, Debtor has not attempted to authenticate the document. Instead Debtor makes a general request for judicial notice as to all the documents attached to the Motion.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

> The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole**. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."
>
> **This category is also limited to facts presently generally known within the jurisdiction**. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.
>
> The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.
>
> Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

> The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.
>
> **The second subcategory** of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."
>
> In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.
>
> The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

Authentication of Recorded Judgement

Some documents are self-authenticating. This includes domestic public documents that are sealed and signed, and certified copies of public records. FED. R. EVID. 902(1) and (4).

While counsel did not make the argument, the recorded abstract of judgement appears that it could be a self-authenticating document. On the last page of the three page Exhibit 2 there appears to be the reverse image of what appears to be a certification stamp from the County Recorder's Office. Holding the image up to the mirror and reversing the reverse image makes it legible enough for the court to conclude it is the necessary certification.

Review of Recorded Judgement

The recorded judgement indicates judgment was entered against Debtor in favor of Creditor in the amount of $3,252.35. Exhibit C, Dckt. 202. An abstract of judgment was recorded with Sacramento County on September 6, 2017, that encumbers the Property. *Id*.

Failure To Comply With Local Rules

The Trustee filed an Opposition on June 17, 2019, for the sole purpose of highlighting that Debtor's counsel filed the exhibits as an attachment to the Motion. Dckt. 231. Trustee notes the failure to file the documents separately makes it difficult for the parties to locate necessary information.

Trustee's argument is well-taken. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Here, Debtor's counsel is very well known in this District, appearing with very significant regularity. Debtor's counsel has been regularly reminded of the Local Rules, and still regularly fails to comply. Failure to comply with the Local Bankruptcy Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

In light of the totality of circumstances here, a monetary sanction of $15.00 is appropriate. This is a very modest amount. However, because counsel here appears so regularly, often with several motions in a single hearing day, the $15.00 sanction will quickly have a cumulative, corrective effect, encouraging counsel to more diligently comply with applicable rules.

Lien Avoidance Analysis

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $263,000.00 as of the petition date. Dckt. 33. The unavoidable and superior liens that total $353,359.63 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 101; *See* Declaration ¶ 4, Dckt. 204. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $16,892.00 on Schedule C. Dckt. 29. [FN.1.]

FN.1. In the Motion Debtor states an exemption of $1.00 is claimed. The only Schedule C filed in this case claims an exemption of $16,892.00. However, this error in the Motion does not affect the calculation.

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 Laura Elizabeth England and Donald Lee England Jr. ("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 judgment lien of Employment Development Department, California Superior Court for Sacramento County Case No. 34-2017-90016185, recorded on September 6, 2017, Document No. 201709060005, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.
>
> **IT IS FURTHER ORDERED** that counsel for the Debtor, Gary Fraley, shall pay a corrective sanction in the amount of $15.00 to the Clerk of the court on or before July 9, 2019.

2.	**19-20880-E-13** **FF-11**	**LAURA/DONALD ENGLAND** **Gary Fraley**	**MOTION TO AVOID LIEN OF CHASE BANK, USA, N.A.** **5-31-19 [196]**

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Chase Bank, USA, N.A. ("Creditor") against property of Laura Elizabeth England and Donald Lee England Jr. ("Debtor") commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

Evidence in Support of the Motion

In support of the Motion Debtor filed a recorded abstract of judgement. Exhibit 2, Dckt. 196. However, Debtor has not attempted to authenticate the document. Instead Debtor makes a general request for judicial notice as to all the documents attached to the Motion.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

The first category of adjudicative facts subject to judicial notice are facts which

are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole**. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."

This category is also limited to facts presently generally known within the jurisdiction. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

The second subcategory of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are facts capable of being determined precisely by astronomical and mathematical

> calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.
>
> The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

Authentication of Recorded Judgement

Some documents are self-authenticating. This includes domestic public documents that are sealed and signed, and certified copies of public records. FED. R. EVID. 902(1) and (4).

While counsel did not make the argument, the recorded abstract of judgement appears that it could be a self-authenticating document. On the last page of the three page Exhibit 2 there appears to be the reverse image of what appears to be a certification stamp from the County Recorder's Office. Holding the image up to the mirror and reversing the reverse image makes it legible enough for the court to conclude it is the necessary certification.

Review of Recorded Judgement

The recorded judgement indicates judgment was entered against Debtor in favor of Creditor in the amount of $11,511.26. Exhibit 2, Dckt. 196. An abstract of judgment was recorded with Sacramento County on May 8, 2014, that encumbers the Property. *Id*.

Failure To Comply With Local Rules

The Trustee filed an Opposition on June 17, 2019, for the sole purpose of highlighting that Debtor's counsel filed the exhibits as an attachment to the Motion. Dckt. 225. Trustee notes the failure to file the documents separately makes it difficult for the parties to locate necessary information.

Trustee's argument is well-taken. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a).

These document filing rules exist for a very practical reason. Operating in a near paperless

environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Here, Debtor's counsel is very well known in this District, appearing with very significant regularity. Debtor's counsel has been regularly reminded of the Local Rules, and still regularly fails to comply. Failure to comply with the Local Bankruptcy Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

In light of the totality of circumstances here, a monetary sanction of $15.00 is appropriate. This is a very modest amount. However, because counsel here appears so regularly, often with several motions in a single hearing day, the $15.00 sanction will quickly have a cumulative, corrective effect, encouraging counsel to more diligently comply with applicable rules.

Lien Avoidance Analysis

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $263,000.00 as of the petition date. Dckt. 33. The unavoidable consensual and senior liens that total $341,848.37 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 101. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $16,892.00 on Schedule C. Dckt. 29. [FN.1.]

FN.1. In the Motion Debtor states an exemption of $1.00 is claimed. The only Schedule C filed in this case claims an exemption of $16,892.00. However, this error in the Motion does not affect the calculation.

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 Laura Elizabeth England and Donald Lee England Jr. ("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 Chase Bank, USA, N.A., California Superior Court for Sacramento County Case No. 34200800012697CLCLGDS, recorded on May 8, 2014, Book 20140506 and Page 0463, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.
>
> **IT IS FURTHER ORDERED** that counsel for the Debtor, Gary Fraley, shall pay a corrective sanction in the amount of $15.00 to the Clerk of the court on or before July 9, 2019.

3. **19-20880-E-13 FF-12** **LAURA/DONALD ENGLAND** **Gary Fraley** **MOTION TO AVOID LIEN OF DICKINSON FINANCIAL, LLC 5-31-19 [199]**

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Dickinson Financial, LLC ("Creditor") against property of Laura Elizabeth England and Donald Lee England Jr. ("Debtor") commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

Evidence in Support of the Motion

In support of the Motion Debtor filed a recorded abstract of judgement. Exhibit 2, Dckt. 199. However, Debtor has not attempted to authenticate the document. Instead Debtor makes a general request for judicial notice as to all the documents attached to the Motion.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole**. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."

This category is also limited to facts presently generally known within the jurisdiction. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

The second subcategory of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are

> facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.
>
> The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

Authentication of Recorded Judgement

Some documents are self-authenticating. This includes domestic public documents that are sealed and signed, and certified copies of public records. FED. R. EVID. 902(1) and (4).

While counsel did not make the argument, the recorded abstract of judgement appears that it could be a self-authenticating document. On the last page of the three page Exhibit 2 there appears to be the reverse image of what appears to be a certification stamp from the County Recorder's Office. Holding the image up to the mirror and reversing the reverse image makes it legible enough for the court to conclude it is the necessary certification. (Though the reverse image of the stamp is mostly obliterated, it is sufficiently similar to the others for the court, in the absence of opposition to conclude that this is the County Recorder's Certification.)

Review of Recorded Judgement

The recorded judgement indicates judgment was entered against Debtor in favor of Creditor in the amount of $2,468.43. Exhibit 2, Dckt. 199. An abstract of judgment was recorded with Sacramento County on March 6, 2012, that encumbers the Property. *Id*.

Failure To Comply With Local Rules

The Trustee filed an Opposition on June 17, 2019, for the sole purpose of highlighting that Debtor's counsel filed the exhibits as an attachment to the Motion. Dckt. 228. Trustee notes the failure to file the documents separately makes it difficult for the parties to locate necessary information.

Trustee's argument is well-taken. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Documents filed with this court comply as required by

Local Bankruptcy Rule 9004-1(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Here, Debtor's counsel is very well known in this District, appearing with very significant regularity. Debtor's counsel has been regularly reminded of the Local Rules, and still regularly fails to comply. Failure to comply with the Local Bankruptcy Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

In light of the totality of circumstances here, a monetary sanction of $15.00 is appropriate. This is a very modest amount. However, because counsel here appears so regularly, often with several motions in a single hearing day, the $15.00 sanction will quickly have a cumulative, corrective effect, encouraging counsel to more diligently comply with applicable rules.

Lien Avoidance Analysis

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $263,000.00 as of the petition date. Dckt. 33. The unavoidable consensual and senior liens that total $339,379.94 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 101. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $16,892.00 on Schedule C. Dckt. 29.[FN.1.]

FN.1. In the Motion Debtor states an exemption of $1.00 is claimed. The only Schedule C filed in this case claims an exemption of $16,892.00. However, this error in the Motion does not affect the calculation.

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 Laura Elizabeth England and Donald Lee England Jr. ("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 Dickinson Financial, LLC, California Superior Court for Sacramento County Case No. 34201100109261, recorded on March 6, 2012, Book 20120306 and Page 2165, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.
>
> **IT IS FURTHER ORDERED** that counsel for the Debtor, Gary Fraley, shall pay a corrective sanction in the amount of $15.00 to the Clerk of the court on or before July 9, 2019.

4. **19-20880-E-13 FF-14** | **LAURA/DONALD ENGLAND** **Gary Fraley** | **MOTION TO AVOID LIEN OF GCFS, INC.** **5-31-19 [205]**

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of GCFS, Inc. ("Creditor") against property of Laura Elizabeth England and Donald Lee England Jr. ("Debtor") commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

Evidence in Support of the Motion

In support of the Motion Debtor filed a recorded abstract of judgement. Exhibit 2, Dckt. 205. However, Debtor has not attempted to authenticate the document. Instead Debtor makes a general request for judicial notice as to all the documents attached to the Motion.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

> The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This**

category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."

This category is also limited to facts presently generally known within the jurisdiction. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

The second subcategory of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the

> phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.
>
> The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

Authentication of Recorded Judgement

Some documents are self-authenticating. This includes domestic public documents that are sealed and signed, and certified copies of public records. FED. R. EVID. 902(1) and (4).

While counsel did not make the argument, the recorded abstract of judgement appears that it could be a self-authenticating document. On the last page of the three page Exhibit 2 there appears to be the reverse image of what appears to be a certification stamp from the County Recorder's Office. Holding the image up to the mirror and reversing the reverse image makes it legible enough for the court to conclude it is the necessary certification.

Review of Recorded Judgement

The recorded judgement indicates judgment was entered against Debtor in favor of Creditor in the amount of $7,551.29. Exhibit 2, Dckt. 205. An abstract of judgment was recorded with Sacramento County on February 6, 2012, that encumbers the Property. *Id*.

Failure To Comply With Local Rules

The Trustee filed an Opposition on June 17, 2019, for the sole purpose of highlighting that Debtor's counsel filed the exhibits as an attachment to the Motion. Dckt. 234. Trustee notes the failure to file the documents separately makes it difficult for the parties to locate necessary information.

Trustee's argument is well-taken. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and

other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Here, Debtor's counsel is very well known in this District, appearing with very significant regularity. Debtor's counsel has been regularly reminded of the Local Rules, and still regularly fails to comply. Failure to comply with the Local Bankruptcy Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

In light of the totality of circumstances here, a monetary sanction of $15.00 is appropriate. This is a very modest amount. However, because counsel here appears so regularly, often with several motions in a single hearing day, the $15.00 sanction will quickly have a cumulative, corrective effect, encouraging counsel to more diligently comply with applicable rules.

Lien Avoidance Analysis

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $263,000.00 as of the petition date. Dckt. 33. The unavoidable consensual liens that total $331,828.65 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 101. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $16,892.00 on Schedule C. Dckt. 29.[FN.1.]

FN.1. In the Motion Debtor states an exemption of $1.00 is claimed. The only Schedule C filed in this case claims an exemption of $16,892.00. However, this error in the Motion does not affect the calculation.

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 Laura Elizabeth England and Donald Lee England Jr. ("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 GCFS, Inc., California Superior Court for Sacramento County Case No. 34201100110333CLCLGDS, recorded on February 6, 2012, Book 20120206 and Page 0773, with the

Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.

IT IS FURTHER ORDERED that counsel for the Debtor, Gary Fraley, shall pay a corrective sanction in the amount of $15.00 to the Clerk of the court on or before July 9, 2019.

5. **19-20880-E-13 FF-10** | **LAURA/DONALD ENGLAND** **Gary Fraley** | **MOTION TO AVOID LIEN OF CACH, LLC** **5-31-19 [193]**

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of Laura Elizabeth England and Donald Lee England Jr. ("Debtor") commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

Evidence in Support of the Motion

In support of the Motion Debtor filed a recorded abstract of judgement. Exhibit 2, Dckt. 193. However, Debtor has not attempted to authenticate the document. Instead Debtor makes a general request for judicial notice as to all the documents attached to the Motion.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

> The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the**

geographical area of the court, but not of the United States as a whole. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."

This category is also limited to facts presently generally known within the jurisdiction. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

The second subcategory of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial

> and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.
>
> The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

Authentication of Recorded Judgement

Some documents are self-authenticating. This includes domestic public documents that are sealed and signed, and certified copies of public records. FED. R. EVID. 902(1) and (4).

While counsel did not make the argument, the recorded abstract of judgement appears that it could be a self-authenticating document. On the last page of the three page Exhibit 2 there appears to be the reverse image of what appears to be a certification stamp from the County Recorder's Office. Holding the image up to the mirror and reversing the reverse image makes it legible enough for the court to conclude it is the necessary certification.

Review of Recorded Judgement

The recorded judgement indicates judgment was entered against Debtor in favor of Creditor in the amount of $16,047.86. Exhibit 2, Dckt. 193. An abstract of judgment was recorded with Sacramento County on June 8, 2010, that encumbers the Property. *Id*.

Failure To Comply With Local Rules

The Trustee filed an Opposition on June 17, 2019, for the sole purpose of highlighting that Debtor's counsel filed the exhibits as an attachment to the Motion. Dckt. 222. Trustee notes the failure to file the documents separately makes it difficult for the parties to locate necessary information.

Trustee's argument is well-taken. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of

pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Here, Debtor's counsel is very well known in this District, appearing with very significant regularity. Debtor's counsel has been regularly reminded of the Local Rules, and still regularly fails to comply. Failure to comply with the Local Bankruptcy Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

In light of the totality of circumstances here, a monetary sanction of $15.00 is appropriate. This is a very modest amount. However, because counsel here appears so regularly, often with several motions in a single hearing day, the $15.00 sanction will quickly have a cumulative, corrective effect, encouraging counsel to more diligently comply with applicable rules.

Lien Avoidance Analysis

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $263,000.00 as of the petition date. Dckt. 33. The unavoidable consensual and superior liens that total $315,780.79 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 101. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $16,892.00 on Schedule C. Dckt. 29.[FN.1.]

FN.1. In the Motion Debtor states an exemption of $1.00 is claimed. The only Schedule C filed in this case claims an exemption of $16,892.00. However, this error in the Motion does not affect the calculation.

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 Laura Elizabeth England and Donald Lee England Jr. ("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 judgment lien of CACH, LLC , California Superior Court for Sacramento County Case No. 34-2009-0062919, recorded on June 8, 2010, Book 20100608 and Page 0756, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.
>
> **IT IS FURTHER ORDERED** that counsel for the Debtor, Gary Fraley, shall pay a corrective sanction in the amount of $15.00 to the Clerk of the court on or before July 9, 2019.

6.	**19-20880-E-13 FF-15**	**LAURA/DONALD ENGLAND Gary Fraley**	**MOTION TO AVOID LIEN OF KELKRIS ASSOCIATES, INC. 5-31-19 [208]**

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Kelkris Associates, Inc. ("Creditor") against property of Laura Elizabeth England and Donald Lee England Jr. ("Debtor") commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

Evidence in Support of the Motion

In support of the Motion Debtor filed a recorded abstract of judgement. Exhibit 2, Dckt. 208. However, Debtor has not attempted to authenticate the document. Instead Debtor makes a general request for judicial notice as to all the documents attached to the Motion.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole**. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."

This category is also limited to facts presently generally known within the jurisdiction. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

The second subcategory of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are

> facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.
>
> The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

Authentication of Recorded Judgement

Some documents are self-authenticating. This includes domestic public documents that are sealed and signed, and certified copies of public records. FED. R. EVID. 902(1) and (4).

While counsel did not make the argument, the recorded abstract of judgement appears that it could be a self-authenticating document. On the last page of the three page Exhibit 2 there appears to be the reverse image of what appears to be a certification stamp from the County Recorder's Office. Holding the image up to the mirror and reversing the reverse image makes it legible enough for the court to conclude it is the necessary certification. (Though the reverse image of the stamp is mostly obliterated, it is sufficiently similar to the others for the court, in the absence of opposition to conclude that this is the County Recorder's Certification.)

Review of Recorded Judgement

The recorded judgement indicates judgment was entered against Debtor in favor of Creditor in the amount of $27,656.52. Exhibit 2, Dckt. 208. An abstract of judgment was recorded with Sacramento County on January 28, 2010, that encumbers the Property. *Id*.

Failure To Comply With Local Rules

The Trustee filed an Opposition on June 17, 2019, for the sole purpose of highlighting that Debtor's counsel filed the exhibits as an attachment to the Motion. Dckt. 237. Trustee notes the failure to file the documents separately makes it difficult for the parties to locate necessary information.

Trustee's argument is well-taken. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Documents filed with this court comply as required by

Local Bankruptcy Rule 9004-1(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Here, Debtor's counsel is very well known in this District, appearing with very significant regularity. Debtor's counsel has been regularly reminded of the Local Rules, and still regularly fails to comply. Failure to comply with the Local Bankruptcy Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

In light of the totality of circumstances here, a monetary sanction of $15.00 is appropriate. This is a very modest amount. However, because counsel here appears so regularly, often with several motions in a single hearing day, the $15.00 sanction will quickly have a cumulative, corrective effect, encouraging counsel to more diligently comply with applicable rules.

Lien Avoidance Analysis

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $263,000.00 as of the petition date. Dckt. 33. The unavoidable consensual and superior liens that total $288,124.27 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 101. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $16,892.00 on Schedule C. Dckt. 29.[FN.1.]

FN.1. In the Motion Debtor states an exemption of $1.00 is claimed. The only Schedule C filed in this case claims an exemption of $16,892.00. However, this error in the Motion does not affect the calculation.

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 Laura Elizabeth England and Donald Lee England Jr. ("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 Kelkris Associates, Inc. , California Superior Court for Sacramento County Case No. 34-2009-00043806, recorded on January 28, 2010, Book 20100128 and Page 1149, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.
>
> **IT IS FURTHER ORDERED** that counsel for the Debtor, Gary Fraley, shall pay a corrective sanction in the amount of $15.00 to the Clerk of the court on or before July 9, 2019.

7. **19-20880-E-13 FF-16** **LAURA/DONALD ENGLAND** **Gary Fraley** **MOTION TO AVOID LIEN OF HOUSEHOLD FINANCE CORPORATION** **5-31-19 [211]**

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Household Finance Corporation ("Creditor") against property of Laura Elizabeth England and Donald Lee England Jr. ("Debtor") commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

Evidence in Support of the Motion

In support of the Motion Debtor filed a recorded abstract of judgement. Exhibit 2, Dckt. 211. However, Debtor has not attempted to authenticate the document. Instead Debtor makes a general request for judicial notice as to all the documents attached to the Motion.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole**. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."

This category is also limited to facts presently generally known within the jurisdiction. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

The second subcategory of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are

> facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.
>
> The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

Authentication of Recorded Judgement

Some documents are self-authenticating. This includes domestic public documents that are sealed and signed, and certified copies of public records. FED. R. EVID. 902(1) and (4).

While counsel did not make the argument, the recorded abstract of judgement appears that it could be a self-authenticating document. On the last page of the three page Exhibit 2 there appears to be the reverse image of what appears to be a certification stamp from the County Recorder's Office. Holding the image up to the mirror and reversing the reverse image makes it legible enough for the court to conclude it is the necessary certification.

Review of Recorded Judgement

The recorded judgement indicates judgment was entered against Debtor in favor of Creditor in the amount of $13,720.17. Exhibit 2, Dckt. 211. An abstract of judgment was recorded with Sacramento County on May 19, 2009, that encumbers the Property. *Id*.

Failure To Comply With Local Rules

The Trustee filed an Opposition on June 17, 2019, for the sole purpose of highlighting that Debtor's counsel filed the exhibits as an attachment to the Motion. Dckt. 240. Trustee notes the failure to file the documents separately makes it difficult for the parties to locate necessary information.

Trustee's argument is well-taken. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Here, Debtor's counsel is very well known in this District, appearing with very significant regularity. Debtor's counsel has been regularly reminded of the Local Rules, and still regularly fails to comply. Failure to comply with the Local Bankruptcy Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

In light of the totality of circumstances here, a monetary sanction of $15.00 is appropriate. This is a very modest amount. However, because counsel here appears so regularly, often with several motions in a single hearing day, the $15.00 sanction will quickly have a cumulative, corrective effect, encouraging counsel to more diligently comply with applicable rules.

Lien Avoidance Analysis

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $263,000.00 as of the petition date. Dckt. 33. The unavoidable consensual liens that total $274,404.10 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 101. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $16,892.00 on Schedule C. Dckt. 29.[FN.1.]

FN.1. In the Motion Debtor states an exemption of $1.00 is claimed. The only Schedule C filed in this case claims an exemption of $16,892.00. However, this error in the Motion does not affect the calculation.

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 Laura Elizabeth England and Donald Lee England Jr. ("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 Household Finance Corporation, California Superior Court for Sacramento County Case No. 34200800024972CLCLGDS, recorded on May 19, 2009, Book 20090519 and Page 0731, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.
>
> **IT IS FURTHER ORDERED** that counsel for the Debtor, Gary Fraley, shall pay a corrective sanction in the amount of $15.00 to the Clerk of the court on or before July 9, 2019.

8. **19-20880-E-13 FF-9** | **LAURA/DONALD ENGLAND** **Gary Fraley** | **CONTINUED MOTION TO CONFIRM PLAN** **4-25-19 [104]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 25, 2019. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

Laura Elizabeth England and Donald Lee England ("Debtor") seek confirmation of the Amended Plan. The Amended Plan provides for payments of $5,000.00 for 60 months. Dckt. 103. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 13, 2019. Dckt. 134. Trustee opposes confirmation on the following grounds:

1. Debtor is delinquent $230.00 in plan payments.

2. The plan is not feasible because it relies on several motions to avoid lien. Debtor has 7 liens on Debtor's property commonly known as 7235 Larchmont Drive, North Highlands, California.

3. The box under section 1.02 is not checked, indicating nonstandard provisions will not be given any effect. Further, it is unclear whether the

nonstandard provisions, filed separately, were served on creditors.

DEBTOR'S REPLY

Debtor filed a Response on May 23, 2019. Dckt. 175. Debtor states Debtor is not delinquent as payments were reduced from $5,000.00 to $4,882.20; the 7 creditors with liens were included in the plan; and Debtor can file a Second Amended Plan where the box is checked in section 1.02, but requests instead this be address in the order confirming the plan.

JUNE 4, 2019 HEARING

At the June 4, 2019 hearing the court continued the hearing to allow Debtor to prosecute several lien avoidance motions. Dckt. 221.

DISCUSSION

A review of the docket shows all of Debtor's lien avoidance motions have been granted.

Debtor proposes changing the plan payment and fixing the additional provisions issue in the order confirming the plan.

At the hearing, xxxxxxxxxxxxxx.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Laura Elizabeth England and Donald Lee England ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXXXX**.

9.	**19-23781-E-13** **BB-1**	**VERLIN JOHNSON** **Bonnie Baker**	**MOTION TO EXTEND AUTOMATIC STAY** **6-18-19 [8]**

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

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, and Office of the United States Trustee.

However, it is unclear when service was made. The Proof of Service indicates it was executed July 16, 2018. Dckt. 11. Given that the case was filed June 14, 2019, the date of service stated in the Proof of Service is clearly inaccurate.

At the hearing, xxxxxxxxxxxxxx.

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 denied without prejudice.

Debtor failed to show timely service was made. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Verlin K. Johnson

("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.

ALTERNATIVE RULING IN THE EVENT TIMELY SERVICE IS SHOWN

The Motion to Extend the Automatic Stay is denied.

Verlin K. Johnson ("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 first bankruptcy petition pending in the past year. Debtor's bankruptcy case (No. 2019-22107) was dismissed on May 9, 2019, after Debtor failed to file all the necessary documents on time. *See* No. 2019-22107, Dckt. 20, May 9, 2019. 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.

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

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

A. Why was the previous plan filed?

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

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

Debtor has 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.

Debtor herein essentially states he filed his first case as a negotiating tool, staying foreclosure of his property and allowing negotiation over a loan modification. Declaration ¶ 1, Dckt. 10. After the loan modification fell through and Debtor realized he "really" had to pursue bankruptcy, he was left only a few days to prepare his filing documents and could not do so timely. *Id.*, ¶ 2.

While Debtor "really" wants to prosecute a bankruptcy case this time, he still has only filed a skeletal petition, and has not filed the basic filing documents. *Id.,* ¶ 3. A skeletal petition was filed even though Debtor filed this case over a month after his first case was dismissed. Not all of the necessary filing documents have been filed, even weeks after this Motion was filed. The deadline for filing such documents was June 28, 2019. Though the Schedules have now been filed, it appears that debtor has no "plan" about how to prosecute this case as no Chapter 13 plan has been filed.

As set forth in the Motion and the Declaration, Debtor is filing bankruptcy so he can cure the default on his mortgage and retain his home. He has been prosecuting a loan modification.

The prior bankruptcy case and the current case have both been assigned to Department E of this court. In Department C and E of this court, debtors regularly use the Additional Ensminger Provision in their Chapter 13 plans to build the loan modification process into the plan. The "downside" to such provision is that the debtor must make adequate protection payments during the loan modification process, not merely live in the house payment free and protected by the automatic stay from foreclosure.

On Schedule I Debtor shows having $4,019.00 in monthly income. Dckt. 14 at 26-27. On Schedule J Debtor's reasonable and necessary expenses (which includes an allocation for income and self-employment taxes) total ($3,260). *Id.* at 28-28. This leaves Debtor with only $759.00 a month to fund a plan, and more significantly, make the principal and interest mortgage payments, property tax payments, and property insurance payments.

On Schedule D Debtor lists the following creditors having liens against his residence, which he states to have a value of $290,000:

Shellpoint Mortgage, Deed of Trust.....($182,972)
Internal Revenue Service, Liens.....($ 53,000)

For the Internal Revenue Service secured claim, over five years, the monthly principal only payment would be ($884) [$54,000/60 = $883.340]. This, in and of itself, exceeds the $759.00 a month to fund the plan.

Thus, it appears that the present case is again filed only for the purpose of delay,

not as part of an effort to fund a plausible plan in this case.

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 Verlin K. Johnson ("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.

10. **14-22500-E-13 MET-3** | **JOSE ACOSTA GOMEZ AND ANA ACOSTA** Mary Ellen Terranella | **MOTION TO REFINANCE 6-17-19 [87]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 17, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Refinance is granted.

The debtors, Jose Luis Acosta Gomez and Ana Maria Acosta ("Debtor"), seek permission to for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification.

The modification will capitalize the pre-petition arrears for a new principal amount of $466,951.90 with a fixed interest rate of 3.875 percent. The new monthly payment is $2,094.43 with an additional estimated $1,098.02 for escrow.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions."

FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion 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 Refinance filed by the debtors, Jose Luis Acosta Gomez and Ana Maria Acosta ("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 Jose Luis Acosta Gomez and Ana Maria Acosta is authorized to incur debt pursuant to the terms of the Recast Agreement (Exhibit A, Dckt. 90).

11. 19-22617-E-13 RHS-1 — TRAVIS GROSJEAN, Pro Se — FURTHER HEARING RE: MOTION TO VACATE DISMISSAL, 6-4-19 [13]

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

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

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

Sufficient Notice Provided. The court issued an Order on June 4, 2019 setting the hearing. Dckt. 13. 28 days' notice was provided.

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

The Motion to Vacate is XXXXXXXXXX.

Travis Grosjean ("Debtor") filed the instant case on April 26, 2019. Dckt. 1.

On May 14, 2019, the case was dismissed for failure to timely file documents.

Debtor appeared in open court on June 4, 2019, making an oral Motion To Vacate Dismissal supported by the following statements:

A. He had commenced the current bankruptcy case to address a pending foreclosure sale of his family residence.

B. Though appearing to have filed this case in *pro se*, he has been assisted by an attorney in San Francisco ("SF Attorney") who is (was) a family friend of the Debtor's spouse.

C. The Debtor had, with the assistance of the SF Attorney, filed a skeletal petition in this case and was awaiting the rest of the documents from the SF Attorney.

D. When Debtor was not receiving the other required documents from the SF Attorney, Debtor attempted to contact him, but no response was received from the SF Attorney.

E. On or about June 3, 2019, Debtor found on his doorstep a file folder with copies of various notices and other documents issued by the court, including the notice of intent to dismiss this case for failure to file documents and the order dismissing this case.

F. Debtor states that though the certificate of service states that a copy of the Order dismissing this case was sent to his residence address, he did not receive a copy of the Order.

G. Debtor and his spouse have sufficient income to fund a plan and cure any arrearage that may exist, or to fund a modified loan.

H. Debtor now understands the need to engage the services of an attorney, not merely have a "friend" kibitz free assistance.

I. Debtor believes that a foreclosure sale is pending for Wednesday June 5, 2019, and their home will be lost if the dismissal is not vacate.

J. Debtor is now actively seeking counsel to represent him in this bankruptcy case.

Interim Order, Dckt. 13.

The court issued an Interim Order on June 4, 2019, vacating the order dismissing the case and setting this hearing. *Id.* The court further ordered Debtor to file and serve the written Motion to Vacate on or before June 18, 2019, and Oppositions, if any, filed and served by June 27, 2019.

APPLICABLE LAW

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

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

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

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

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an

earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

Nothing further has been field in this case. No attorney has substituted in to represent Debtor in this case.

At the hearing, xxxxxxxxxxxxxx.

Therefore, in light of the foregoing, the Motion is **XXXXXXXXXX**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Travis Grosjean ("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 **XXXXXXXX**.

12. 19-22727-E-13 MGG-1 — SALATHIA WILLIAMS — Matthew Grech — MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE — 5-29-19 [13]

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

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 29, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Carmax Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $9,550.00.

The Motion filed by the debtor, Salathia Williams ("Debtor"), to value the secured claim of Carmax Auto Finance ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 15. Debtor is the owner of a 2014 Kia Optima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,403.00 as of the petition filing date. As the owner, Debtor's opinion of value is

evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 24, 2019. Dckt. 27. Trustee notes there was a typo in the Proof of Service, though the notice and address served were correct.

DEBTOR'S REPLY

Debtor filed a Reply on June 24, 2019. Dckt. 27. Debtor reiterates that service was made properly.

CREDITOR'S PROOF OF CLAIM

Creditor filed a Proof of Claim, No. 2 (the "Claim"), on May 2, 2019. The Claim states the value of the Vehicle is $9,550.00, and that Creditor's claim is entirely secured in the amount of $11,284.52.

DISCUSSION

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

Here, Debtor states "As of the commencement of this case the Collateral had a fair market value of $7,403.00." Declaration ¶ 5, Dckt. 15. For this valuation it is clear that Debtor relies on a Kelly Blue Book valuation (Exhibit A, Dckt. 17), which states the private-party sale value is $7,403.00.

11 U.S.C. § 506(a)(2) provides that the replacement value of the property is valued at what a retail merchant would charge. Where Debtor has clearly relied on a valuation of the private party sale value, Debtor's valuation is not persuasive.

Furthermore, Debtor has not presented evidence of factual detail to rebut the prima facie validity of a proof of claim. Debtor has merely concluded what the value of the Vehicle is without further explanation.

The lien on the Vehicle's title secures a purchase-money loan incurred on March 28, 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 $11,616.24. Declaration, Dckt. 15. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $7,403.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Salathia Williams ("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 Carmax Auto Finance ("Creditor") secured by an asset described as 2014 Kia Optima ("Vehicle") is determined to be a secured claim in the amount of $9,550.00 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 $9,550.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

13. **19-22727-E-13 DPC-1** **SALATHIA WILLIAMS** **Matthew Grech** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 6-11-19 [19]**

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 June 11, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that Debtor's plan relies on the Motion to Value Collateral of Carmax Auto Finance, set for hearing the same day as this motion.

Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Carmax Auto Finance. The court has granted that Motion, but valued the claim higher than Debtor intended.

Debtor's disposable income is $553.07 (Dckt. 1) and the Plan payment was $550.00. Dckt. 4. With the secured claim of Carmax Auto Finance being roughly $2,100.00 greater than Debtor anticipated, it appear the plan is no longer feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

14. **19-22841-E-13 DPC-1** **KRISHNAPRASAD NALAJALA** **Brian Coggins** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **6-11-19 [22]**

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

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 June 11, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. the debtor, Krishnaprasad Nalajala's ("Debtor"), attorney failed to appear at the First Meeting of Creditors held on June 6, 2019. The Meeting was continued to July 11, 2019 at 1:00 p.m.

B. Debtor failed to provide Trustee with Business Documents.

C. Debtor has not filed a Motion to Avoid Lien on creditors reduced to $0.00 under Class2(C) of Debtor's Plan.

DISCUSSION

Trustee's objections are well-taken.

Debtor's counsel did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has failed to timely provide Trustee with business documents including:

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements,
D. Six months of bank account statements, and
E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor's plan relies on avoiding several lien, but no lien avoidance motions have been filed. Therefore the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

15.	**19-22841-E-13 KSR-1**	**KRISHNAPRASAD NALAJALA Brian Coggins**	**OBJECTION TO CONFIRMATION OF PLAN BY NEW SAC ARENA PROPERTIES LLC 6-13-19 [26]**

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

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 June 13, 2019. By the court's calculation, 19 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.

New Sac Arena Properties LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan incorrectly states Creditor's claim is $40,435.51 where the Proof of Claim, No. 4 filed on June 13, 2019 evidences it is $45,335.31.

Creditor's objection is well-taken. The plan does not provide for the full value of Creditor's secured claim. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

16. **19-22841-E-13 SAK-1** | **KRISHNAPRASAD NALAJALA** **Brian Coggins** | **OBJECTION TO CONFIRMATION OF PLAN BY RAM TALLURI** **5-31-19 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and the Chapter 13 Trustee on May 31, 2019. By the court's calculation, 32 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.

Ram Talluri ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan relies on valuing Creditor's claim based on the value of the debtor, Krishnaprasad Nalajala's ("Debtor"), real property, where Debtor has filed no valuation motions.

Creditor's argument is well-taken. The plan relies on valuing Creditor's secured claim, but no valuation motion has been filed. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

17.	**19-22653-E-13** **PGM-2**	**REECE/RODINA VENTURA** **Peter Macaluso**	**MOTION TO RECONSIDER** **5-31-19 [52]**

NO APPEARANCES REQUIRED IF THE PARTIES CONCUR WITH THE RULING

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. Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 31, 2019. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Vacate is denied.

On May 31, 2019, the debtors, Reece and Rodina Ventura ("Debtor"), filed this Motion seeking to have the court reconsider its " Order to Convert, or Dismiss this case."

Debtor argues the court addressed Debtor's eligibility for Chapter 13 Relief at a status conference without offering Debtor an opportunity to brief the issue. Debtor states "As such, the Court Ordered this case to be converted or dismissed."

The Motion then goes on to argue Debtor is eligible for Chapter 13 relief.

TRUSTEE'S OPPOSITION

On June 3, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed Opposition and Amended Opposition. Dckts. 57, 59. Trustee notes no order has been issued for the court to reconsider, no grounds for reconsideration were stated pursuant to Federal Rule of Civil Procedure 60, and no objection to various claim amounts has been made.

JOINDER IN TRUSTEE'S OPPOSITION

On June 13, 2019, creditors Benjamin Villianueva and Adela Guania ("Creditor"), filed a "joinder" in Trustee's Opposition. Dckt. 88.

Federal Rules of Civil Procedure 20 being incorporated into Federal Rule of Bankruptcy Procedure 7020, Rule 20 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b).

Therefore, there is no forced "joinder" as asserted by Creditor. They can, as a party in interest, file their own opposition. [FN. 1]

FN. 1. The court notes that yes, the use of the word "joinder" has been commonly misused by courts and attorneys, much in the same way that attorneys, and occasionally some courts, corrupt the statutorily defined term "debtor" and use it in place of another statutorily defined term "debtor in possession." Joinder is a specific legal term of art. Here, a party can file their own opposition or statement in support, to the extent they have standing.

DEBTOR'S REPLY

Debtor filed a Reply on June 25, 2019. Dckt. 102. Debtor states the case is being converted to Chapter 7.

APPLICABLE LAW

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

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

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

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

(4) the judgment is void;

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

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham*

v. Wells Fargo Bank, N.A., 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

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

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

DISCUSSION

The Chapter 13 Trustee's response that the final order to dismiss the case had not been entered, focuses on the specific language of the order. As noted by the Chapter 13 Trustee the conditional order addressed further legal proceedings, not the dismissal of the case. The order at issue states:

> **IT IS FURTHER ORDERED** that if Debtor has not converted this case to one under Chapter 11 on or before June 15, 2019, the court shall issue an order to show cause why this case should not be converted to one under Chapter 7 or dismissed.

Dckt. 48.

By its plain language, there is no order dismissing or converting the case. The court merely provided that an order to show cause would be issued if events transpired in a certain way. It would then be at the hearing on the order to show cause that Debtor would have been provided with the specific grounds upon which the dismissal was to be based, afforded (as would all parties in interest) the opportunity to file legal and evidentiary responses, and then have the opportunity to present oral argument.

Debtor argues there was no time to brief the issue. This is somewhat misleading as the issue is a reocurring one which Debtor has briefed and argued at great length. However, as stated, the order to show cause would have let Debtor provide further briefing.

It appears that in the excitement of the case and the exuberance of trying to keep this case in Chapter 13, Debtor and Debtor's counsel just got "too far over their skis" and have taken a tumble. [FN. 2]

FN. 2. The online Urban Dictionary gives this simple definition of the phrase "out over our skis:,"

> **out over our skis**
>
> To get entirely **too far** **ahead** of yourself
>
> Look, I just said that I liked the girl, **not that** I wanna marry her. **Let's not** get out over our **skis**, here.
>
> #ski#over#ahead#out#far

https://www.urbandictionary.com/define.php?term=out%20over%20our%20skis.

Though having rushed out to raise a concern Debtor had walking out of the courtroom, after taking some time and considering the options in the cool, clear air with their attorney, Debtor has elected to take up the option of converting this case to one under Chapter 7. Response, Dckt. 102.

No order having been issued for the court to vacate, 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 Vacate filed by Reece Ventura and Rodina Cordero Ventura ("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.

18.	**19-22653-E-13 DPC-1**	**REECE/RODINA VENTURA Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 6-11-19 [74]**

NO APPEARANCES REQUIRED IF THE PARTIES CONCUR WITH THE RULING

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 June 11, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. the debtors, Reece and Rodina Ventura ("Debtor"), disclosed a prior case (Case No. 18-25342) in which Debtor was found ineligible for Chapter 13 relief before the court dismissed the case entirely on the Trustee's ex parte application. Case No. 18-25342, Dckt. 106.

B. Debtor's unsecured claims exceeds the $419,275.00 and Debtor is not entitled to Chapter 13 relief.

DISCUSSION

Trustee's objections are well-taken.

As the court has discussed at length, Debtor does not qualify for Chapter 13 treatment because the secured claims against the debtor exceed the 11 U.S.C. § 109(e) limit. Civil Minutes, Dckt. 45. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275.00 and noncontingent, liquidated, secured debts of less than $1,184,200."

Debtor has now stated, in connection with the dispute over how much is owed to whom for purposes of the 11 U.S.C. § 109(e) calculation, that Debtor is going to convert this case to one under Chapter 7. Response, Dckt. 102.

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

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

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

19. **19-22653-E-13 CLH-5** | **REECE/RODINA VENTURA** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY ADELA BON GAUNIA AND BENJAMIN ZAMORA VILLANUEVA 6-13-19 [78]**

NO APPEARANCES REQUIRED IF THE PARTIES CONCUR WITH THE RULING

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The creditors, Benjamin and Adela Gaunia ("Creditor"), oppose confirmation of the Plan on the basis that:

A. the Chapter 13 debtors, Reece and Rodina Ventura ("Debtor"), have $724,086.00 in claims, and are not entitled to Chapter 13 relief under 109(e).

B. Bank statements provided by Debtor indicate more than $16,000.00 per month is being withdrawn by Debtor.

C. Debtor's stated income and expenses have fluctuated significantly between this case and Debtor's prior case.

D. Debtor failed to file business income and expense schedules.

E. Bank statements provided by Debtor indicate several payments to family members.

F. Debtor has undervalued various assets, including businesses. Therefore, creditors are not receiving at least what they wold in a Chapter 7.

DISCUSSION

As the court has discussed at length, Debtor does not qualify for Chapter 13 treatment because the secured claims against the debtor exceed the 11 U.S.C. § 109(e) limit. Civil Minutes, Dckt. 45. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275.00 and noncontingent, liquidated, secured debts of less than $1,184,200."

Debtor has now stated, in connection with the dispute over how much is owed to whom for purposes of the 11 U.S.C. § 109(e) calculation, that Debtor is going to convert this case to one under Chapter 7. Response, Dckt. 102.

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

20. 17-24755-E-13 CYB-2 — ROBBIE/CHRISTI HOLCOMB — Candace Brooks — MOTION TO MODIFY PLAN — 5-28-19 [53]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Robbie and Christi Holcomb ("Debtor"), seek confirmation of the Modified Plan to cure a delinquency in plan payments that occurred when Debtor could not find employment as quickly as anticipated. Declaration, Dckt. 56. The Modified Plan proposes step payments, with $15,230.00 paid into the Plan as of the July 2019 payment, and monthly payments of $1,065.00 beginning in August 2019 and continuing for the duration of the Plan. Modified Plan, Dckt. 58. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick (Trustee"), filed an Opposition on June 17, 2019. Dckt. 63. The Trustee raises the following grounds for opposition:

A. To reach $15,230.00 paid through July 201, Debtor's would have to pay an additional $1,065.00.

B. The plan provides for and Debtor has paid $4,000.00 in attorney's fees. It is unclear what additional fees may be sought.

C. Section 7 projects payments to Class 2 Creditors through July, 2019 that do not appear to be accurate. To date Trustee has disbursed a total of:

i. $1,987.11 to RC Willey, where Debtor states RC Willey shall have received $1,376.53 through July, 2019.

ii. $542.12 to Celtic Bank, where Debtor states Celtic Bank shall have received $342.90 through July, 2019.

D. The Plan includes the IRS in Class 2 with $0.00 claimed by creditor, but then refers to the additional provisions, which do not include any reference to the IRS, for a monthly dividend. The IRS' claim is $31,136.38.

DISCUSSION

The Trustee's objections are well-taken.

Trustee's grounds for opposition all indicate the plan is not feasible. Debtor has not made the July 2019 payment required by the Modified Plan; Trustee has paid to creditors RC Willey and Celtic Bank greater amounts than what is authorized under the Modified Plan; and the IRS' claim is not provided for at all.

Based on the foregoing, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

21. 19-23641-E-13 PLC-1 ORLANDO CISNEROS MOTION TO EXTEND AUTOMATIC STAY O.S.T. 6-20-19 [10]

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 June 20, 2019. By the court's calculation, 12 days' notice was provided. The court approved the request for shortened time on June 25, 2019. Dckt. 26.

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.

The debtor, Orlando Cisneros ("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. 19-20132) was dismissed on April 26, 2019, after Debtor failed to pay a filing fee installment. *See* Order, Bankr. E.D. Cal. No. 19-20132, Dckt. 39, April 26, 2019. 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 there was a miscommunication between Debtor and his prior counsel, and Debtor was unaware of the filing fee installments.

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.

In his Declaration, Debtor provides testimony under penalty of perjury in support of the Motion to Extend the automatic stay in this case. His testimony includes the following:

> 2. As shown on page 8 of the filed petition of case, there was a previously-filed Bankruptcy petition. Specifically, on January 10, 2019, a prior Bankruptcy case (#2019-20132), **was filed on our behalf**. Said case was closed without discharge by Order of the Court on April 26, 2019.

Declaration ¶ 2, Dckt. 11 (emphasis added). It appears that Debtor is attempting to parse words, creating an impression that Debtor did not choose to file bankruptcy, but some other forces, possibly beyond his control, filed the bankruptcy on (and unidentified) "our behalf."

> 5. The dismissal of the prior case was not due to the willful inadvertence or negligence on my part. The prior case was dismissed because I was not aware that the filing fee was to be paid in installments, I thought it was paid. I did not understand I was supposed to make payments on the filing fee.

Declaration ¶ 5. It is unclear how the Debtor did not understand the filing fee installments that he requested and the court ordered to be paid actually "had to be paid" as ordered by the court. Debtor was

represented by experienced bankruptcy counsel in the prior case. 19-20132; Petition, Dckt. 1.

The Motion to Pay Filing Fees in Installments was filed by Debtor and Debtor's counsel in the prior case. *Id.*; Dckt. 2. It appears that Debtor and his current counsel (who is a different attorney than the one in the prior case) now seek to blame the other attorney, the empty chair in the room, for not "telling" Debtor to actually pay the filing fee installments that Debtor requested to pay.

> 7. Unless this Court extends the Automatic Stay, after 30 days, my home will be lost and saving my home from foreclosure is the purpose of this case.

Declaration ¶ 7. This is an interesting "admission" and possible "stipulation" for relief from the stay that the Debtor seeks to make in his current declaration.

The court acknowledges that there is a current split in the reading of the plan language of 11 U.S.C. § 362(c)(3). A minority of courts believe that Congress provided in 11 U.S.C. § 362(c)(3)(A) that, for a second repeat filing, the stay will terminate as to the "DEBTOR," but also as to the case. This minority view is notwithstanding Congress having expressly provided for the stay to not go into effect in the "CASE" (not using the same "as to the debtor language) in 11 U.S.C. § 362(c)(4)(A).

This judge and the judge in Department C have uniformly applied the plain language of the statute that termination of the stay provisions of 11 U.S.C. § 362(a) "as to the Debtor" does not terminate the stay provisions as to the bankruptcy estate or the trustee/fiduciary to the estate in lieu of a trustee separately provided for in 11 U.S.C. § 362(a).

Debtor Prior Filings

Bankruptcy Case No. 19-20132, for which Debtor now testifies that he was bereft of any knowledge that he had to pay the filing fee installments that he requested to pay, is not Debtor's only recent bankruptcy case. His four recent bankruptcy cases are:

19-20132 Chapter 13 Case - Represented by Counsel

Motion Signed by Debtor and Debtor's Counsel to Pay Fee in Installments

Order Granting Payment of Filing Fee in Installments

Only Two of the Four Filing Fee Installments Paid

18-22528 Filed as Chapter 13 Case, Converted to Chapter 7 Case - Represented by Counsel

Filed.....April 25, 2018
Discharge Entered.....January 9, 2019
Case Closed.....Not Close, Trustee Administering Assets

Chapter 13 Filing Fee Paid in One Lump Sum

15-29444 Chapter 13 Case - Represented by Counsel

Filed.....December 3, 2015
Dismissed.....June 2, 2017

Order to Show Case for Dismissal Due to Failure to Pay Filing Fee

Order to Show Cause Discharged, Filing Fee Paid

15-27766 Chapter 13 Case - Represented by Counsel

Filing Fee Paid in Full When Case Filed

Debtor has been living in Chapter 13 since 2015, with a small detour into Chapter 7 for a discharge in one of his five bankruptcy cases (including the current case) without being able to perform a plan. Debtor has paid the filing fee, whether cash up front or installments in the prior four cases.

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, and the automatic stay, as to the Debtor, is not extended. The denial of the extension as to the Debtor as provided in 11 U.S.C. § 362(c)(3) does not relate to the other provisions of the automatic stay as it applies to the bankruptcy estate and the fiduciary of the estate, here the Debtor, exercising the powers of a bankruptcy trustee.

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 the debtor, Orlando Cisneros ("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, and the automatic stay is not extended pursuant to 11 U.S.C. § 362(c)(3)(B) as to the Debtor.
>
> This non-extension of the automatic stay which is provided to terminate "as to the Debtor" in 11 U.S.C. § 362(c)(3) does not effect the automatic stay provided for in the plain language of 11 U.S.C. § 362(a) for the bankruptcy estate, property and rights of the bankruptcy estate, and the fiduciary of the bankruptcy estate, here the Debtor, exercising the powers and rights of a trustee over property of the bankruptcy estate.

22. **18-27801-E-13** **ROBERT SCOTT** **MOTION TO SELL**
PGM-2 **Peter Macaluso** **5-27-19 [62]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 27, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is denied.

The Bankruptcy Code permits Robert C. Scott, Debtor in Possession, ("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 5293 Francesca Street, Elk Grove, California ("Property").

The Motion states the following with particularity (FED. R. BANKR. P. 9013) as to the sale terms:

A. The sale offer is $365,000.

B. The estimated net proceeds are $116, 392.26, of which half shall go to Debtor's ex-husband pursuant to their divorce agreement.

The essential terms not stated within the Motion are as follows (described fully in the Purchase Agreement (Exhibit A, Dckt. 65))

A. Proposed purchaser of the Property is Margery Young.

B. The Seller is Barbara Ozobiani.

C. Initial Deposit of $2,500.00.

D. 5 percent broker's commission.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 6, 2019. Dckt. 70. Trustee opposes the Motion on the following grounds:

1. Debtor has not received court authorization to employ the real estate brokers Thomas Harold and Thomas-Chambers Company.

2. Debtor's claims bar date as to government claims is June 17, 2019.

3. The arrearages of creditor Patelco Credit Union must be paid through escrow.

4. Debtor's Motion does not include a prayer for relief.

5. Debtor will need to file a change of address soon.

DEBTOR'S REPLY

Debtor filed a Reply on June 25, 2019. Dckt. 72. Debtor states a motion to employ will be filed before the hearing in this Matter, and requests a continuance to allow the court to hear that Motion.

DISCUSSION

The Motion has several deficiencies. Most important, not all the terms are stated with particularity (FED. R. BANKR. P. 9013) in the Motion. The court is not told who the buyer is, it is not explained why the seller is not Debtor, no commission for any broker is requested, and Debtor does not argue the sale here achieves the fair market value of the Property.

Additionally, as Trustee notes, the broker has not been authorized to be hired.

The purported Purchase Agreement is between Barbara Ozobiani, not the Debtor and Margery Young, the Purchaser.

The Motion clearly states that Robert Scott, the Debtor, and his attorney, request that the court authorize **them** (the Debtor and Attorney) to sell **their** (Debtor and Attorney) property. Motion, p. 1:17.5-18.5; Dckt. 62.

This "Barbara Ozobiani" who is the actual seller is not identified in the Motion.

In his Declaration the Debtor, Robert Scott, states under penalty of perjury that he has

received an "offer to purchase my property." Declaration, ¶ 2.; Dckt. 64.

But Mr. Scott then testifies that title to the property has been put "in the name of Robert Scott, **as Trustee** of the Barbara A. Ozobiani 2017 Revocable Living Trust." *Id.*, ¶ 4. It appears that the Debtor has a fiduciary duty as a trustee of a trust concerning this Property.

The Declaration states that Debtor's "divorce settlement" is attached as an Exhibit. *Id.* ¶ 8. There is no exhibit (improperly) attached to the Declaration, and nothing is included with the Exhibits document filed in support of the Motion. Dckt. 65.

The court cannot identify (and Debtor has not provided) any legal authority for this court to authorize the Debtor to sell real property pursuant to a contract in which Barbara Ozobiani personally is selling real property to Margery Young.

The court notes that the real estate professionals working on this sale and who are responsible for drafting the Purchase and Sale Agreement have drafted it to have Barbara Ozobiani to sign the contract, with a typed signature, next to the name of Ms. Ozobiani, of Robert Scott, Trustee. It appears to be that Robert Scott is the trustee of Barbara Ozobiani, not a trust. Exhibit A, Dckt. 6 at pp. 2, 6, 16

With respect to the Debtor, Robert Scott, being the trustee of a trust, included as Exhibit C is what is identified as a probate court order stating:

> The property is to be re-titled in the name of Robert Scott, as Trustee of the Barbara A. Ozobiani 2017 Revocable Living Trust.

Dckt. 65 at 19.

On Schedule A/B Debtor states under penalty of perjury that he personally, and only he, owns the Property that is the subject of the present Motion. Dckt. 16 at p. 3.

Under penalty of perjury the Debtor does not list any interest in a trust.

On Schedule C Debtor states the right to claim a homestead exemption in the Property, which he has stated under penalty of perjury he, and only he, personally owns. *Id.* at p. 9.

On Schedule E/F Debtor, under penalty of perjury, does not list any obligation he owes under any divorce agreement to any person. *Id.* at p. 12.

On the Statement of Financial Affairs Debtor states under penalty of perjury that he is single and that in the eight years preceding the bankruptcy case he has not lived with a spouse in any community property state. *Id.*, Statement of Financial Affairs Question1, 3.

On his Bankruptcy Petition Debtor states under penalty of perjury that he currently lives in the Property that is the subject of the Motion. Dckt. 1 at p. 2. In response to Question 2 he states under penalty of perjury that he has lived at that address for the three years preceding this case and nowhere else. Dckt. 16 at 21.

On the Statement of Financial Affairs, Part 4, in response to Question 9 Debtor states under

penalty fo perjury that he has not been part of any legal proceeding, including any dissolution proceeding, during the one year prior to the commencement of the bankruptcy case. *Id.* at p. 23.

Denial of Motion

The court cannot identify any good faith, legal supportable, Federal Rule of Bankruptcy Procedure 9011 certifiable basis for an order from this federal court authorizing Barbara A. Ozobiani to sell the Property.

The Property to be sold is property that the Debtor, with the assistance of his attorney, has stated under penalty of perjury he owns personally.

It could well appear that Debtor, with the active assistance of his attorney, is attempting to mislead this court into issuing an order that will be used to improperly sell the Property, and divert moneys away from the beneficiaries of a trust (if Debtor does not own the Property as he has stated under penalty of perjury on Schedule A/B) in breach of Debtor's fiduciary duties as trustee of such trust.

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 Sell Property filed by Robert C. Scott, Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for an order authorizing the sale of real property by non-debtor Barbara A. Ozobiani is denied.

23. **18-27801-E-13** **ROBERT SCOTT** **MOTION TO CONFIRM PLAN**
PGM-1 **Peter Macaluso** **5-27-19 [57]**

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion—Hearing Not 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 27, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan ~~is denied.~~

The debtor, Robert C. Scott ("Debtor"), seeks confirmation of the First Amended Chapter 13 Plan. The Plan provides for $1,550.00 to be paid through May 2019, and for monthly payments of $100.00 during June 2019, and $15,000 July 2019. Dckt. 59. The plan provides a 0 percent dividend to unsecured creditors. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 6, 2019. Dckt. 68. Trustee opposes confirmation on the grounds the claims to be paid from the lump sum total $17,650.00 and not $15,000.00. Trustee further opposes confirmation on the basis there was no prayer for relief in the Motion.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on June 25, 2019. Dckt. 74. Debtor proposes increasing the lump sum payment to $17,650.00 in the order confirming the plan.

DISCUSSION

While there was no clear prayer for relief requesting the Amended Plan be confirmed, the Motion otherwise appears to meet the pleading requirements.

Debtor further proposes increasing the lump sum payment to $17,650.00 in the order confirming the plan to address Trustee's Opposition.

However, such a payment is premised on the court approving sale of property which Debtor lists on his Schedules as property he owns. As addressed in the ruling on the Motion to Sell, Debtor now presents evidence that he does not own the property but it is in the Barbara Ozobiani Revocable Trust.

As addressed in reviewing the Motion to Sell, the Debtor has not provided the court with a legal basis for the court authorizing Barbara Ozobiani (the purported Purchase and Sale Contract is in her name personally, not for the sale of property by a trustee of a trust), not the debtor in this case, to sell property that is not property of the bankruptcy estate.

~~The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.~~

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by Robert C. Scott ("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.~~

FINAL RULINGS

24. **18-26184-E-13 MS-2** | **OLEG/SOMMER ZHURKO** **Mark Shmorgon** | **MOTION TO MODIFY PLAN** **5-28-19 [35]**

Final Ruling: No appearance at the July 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and creditors on May 28, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Oleg Zhurko and Sommer Zhurko ("Debtor"), have filed evidence in support of confirmation. Dckt. 37. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on June 14, 2019. Dckt. 43. 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 Oleg Zhurko and Sommer Zhurko ("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 May 28, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. 17-23305-E-13 CYB-1 — CHERRI DA ROZA — Candace Brooks — MOTION TO MODIFY PLAN — 5-28-19 [37]

Final Ruling: No appearance at the July 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 28, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Cherri

Mae Da Roza ("Debtor") has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("the Chapter 13 Trustee") filed Responses indicating non-opposition on June 17, 2019 and June 24, 2019. Dckts. 45, 50. 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 the debtor, Cherri Mae Da Roza ("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 May 28, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. **19-23412-E-13 MS-1** | **YANA VOROZHKO** **Mark Shmorgon** | **AMENDED MOTION TO AVOID LIEN OF DC MANAGEMENT, LLC 6-14-19 [25]**

Final Ruling: No appearance at the July 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 30, 2019. By the court's calculation, 33 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 DC Management, LLC ("Creditor") against property of the debtor, Yana Vorozho ("Debtor"), commonly known as 4456 Bogart Way Antelope, California ("Property").

Trustee's filed a Response on June 14, 2019 noting the Motion (Dckt. 8) failed to state all the consensual liens listed on Schedule D. Dckt. 22. Debtor filed an Amended Motion on June 14, 2019 to correct the stated total of consensual liens. Amended Motion ¶ 8, Dckt. 25.

A judgment was entered against Debtor in favor of Creditor in the amount of $164,339.04. Exhibit D, Dckt. 10. An abstract of judgment was recorded with El Dorado County on March 8, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $345,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $247,511.41 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Amended Schedule C. Dckt. 15.

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 Yana Vorozhko ("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 DC Management, LLC, California Superior Court for El Dorado County, Case No. PC20180466, recorded on March 8, 2019, Document No. 201903081116, with the Sacramento County Recorder, against the real property commonly known as 4456 Bogart Way, Antelope, 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.

27. **18-22378-E-13 MC-1** **PATRICIA COLEMAN** **Muoi Chea** **MOTION TO MODIFY PLAN** **5-26-19 [32]**

Final Ruling: No appearance at the July 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2019. By the court's calculation, 38 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. The debtor, Patricia Coleman ("Debtor"), has filed evidence in support of confirmation stating Debtor's plan is being modified to cure delinquent plan payments. Declaration, Dckt. 34. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on June 17, 2019. Dckt. 44.

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 Patricia Coleman ("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 May 26, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. **18-25150-E-13 LBG-3** **RICHARD GREENE** **Lucas Garcia** **CONTINUED MOTION TO CONFIRM PLAN**
4-16-19 [84]

Final Ruling: No appearance at the July 2, 2019 Status Conference is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

Richard Sterling Greene ("Debtor") seeks confirmation of the Second Amended Plan. Dckt. 84. The Plan provides for monthly payments of $250.00, a lump sum of $175,000.00 by month 12 from the sale of Debtor's partnership interest, and a 100 percent dividend to unsecured claims totaling $66,921.25. Dckt. 87. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 7, 2019. Dckt. 90. Trustee opposes confirmation on the grounds the plan depends on a pending Motion To Sell (Dckt. 79), and the plan does not address the Franchise Tax Board's claim as reflected in Proof of Claim, No. 6 filed on October 29, 2018.

ENTERPRISE GROUP'S OPPOSITION

Enterprise Group ("Enterprise") filed an Opposition on May 5, 2019. Dckt. 95. [FN.1.] Creditor argues the plan is not feasible and not proposed in good faith because it relies on the sale of a partnership interest that is not property of the Estate.

FN.1. The Opposition is a joint opposition to Debtor's Motion To Confirm (Dckt. 84), and Debtor's Motion To Sell. The Local Bankruptcy Rules require documents to be filed separately, and for separate requests for relief to be brought separately. LOCAL BANKR. R. 9004-2(c)(1), 9014-1(d)(5).

MAY 21, 2019 HEARING

At the May 21, 2019 hearing the court continued the hearing on the Motion to allow the motion to sell (Dckt. 79) to be heard.

ENTERPRISE'S SUPPLEMENTAL OPPOSITION

Enterprise filed a supplemental Opposition on June 18, 2019 reiterating that the plan is not feasible or proposed in good faith. Dckt. 119.

DISCUSSION

The motion to sell was denied without prejudice on May 21, 2019. Dckt. 110. Without the sale of Debtor's partnership interest, the proposed plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court has also granted the Motion to Modify the Automatic Stay to allow the estate's interest in the partnership. The Debtor stated he would file an amended plan that would incorporate that state court litigation as part of the plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied.

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

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

29.	**19-22753-E-13** **DPC-1**	**WILLIE/GRACE CABALES** **Eric Gravel**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-10-19 [18]**

Final Ruling: No appearance at the July 2, 2019 Status Conference is required.

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 June 10, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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 sustained.

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

A. the debtors, Willie and Grace Cabales' ("Debtor"), non-exempt equity totals $6,355.75, but the Plan proposes only a 1% dividend to unsecured creditors.

B. Debtor, Grace Cabales, failed to include her middle name on the Voluntary Petition, although she provided her middle name, "Magtoto", at the Meeting of Creditors.

C. Debtor's Schedule H failed to identify their daughter as a co-debtor for a lease to Toyota Financial Services. Debtor admitted that the vehicle that is the subject of the lease belongs to their daughter, who also makes all of the lease payments.

D. Debtor's Schedule I identifies "Outside Support from Daughter" in the amount of $800.00 as monthly income, but Debtor has failed to provide any Declaration from their daughter as part of their income over the duration of the Plan.

DISCUSSION

Trustee's objections are well-taken.

Debtor's non-exempt equity totals $6,355.75, but the Plan proposes only a 1% dividend in the amount of $628.84 to unsecured creditors. Declaration ¶ 3, Dckt. 20. Therefore, Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

In addition, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor claims to derive $800.00 in monthly income from "Outside Support from Daughter", but no Debtor's daughter offers no Declaration in support of Debtor's claim. Consequently, the court has no evidence to affirm this source of income will remain available to Debtor for the duration of the Plan. Debtor also has not stated clearly their liability on a lease of their daughter's vehicle.Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed an Amended Plan on June 26, 2019 (Dckt. 27) and a Motion to Confirm, with the hearing set for August 13, 2019. Motion, Dckt. 25. This Amended Plan constitutes a *de facto* dismissal of the prior Plan.

The court notes that no evidence has been filed in support of the Motion to Confirm the Amended Plan. The lack of evidence would doom that motion to denial. Presumably, Debtor and counsel will promptly rectify that oversight and get the evidence on file and served on parties in interest.

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

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

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