

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

**Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California**

**October 2, 2018 at 2:00 p.m.**

**Notice**

**The court has reorganized the cases, placing all of the  
Final Rulings in the second part of these Posted Rulings,  
with the Final Rulings beginning with Item 20.**

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1. <a href="#">18-22403-C-13</a>	NEWALOW/LINDA WEEKES	MOTION TO CONFIRM PLAN
<a href="#">BLG-2</a>	Chad Johnson	8-13-18 <a href="#">[47]</a>

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**Tentative Ruling:** The Motion to Confirm the Debtor's First 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). 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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.**

The Chapter 13 Trustee objects to the confirmation of the Debtors' Plan based on the following:

A. Debtors' Plan does not pay Debtors' 2017 tax refunds of \$15,854.41 from the IRS and \$4,084 from the Franchise Tax Board into the plan. The Trustee notes that the refunds are not listed as exempt on Debtors'

Amended Schedule (Dckt. 54) and the refunds are assets of the estate.

B. Debtors' claim to be below the median income; however, the Trustee asserts the Debtors are above the median income. The Trustee notes that the Debtors state in their Motion (Dckt. 47) that Debtors are receiving temporary disability income through February 2019 and claim this temporary income places Debtors over the median income. The Trustee asserts that even without the disability income, that Debtors' monthly income totals \$12,619.85 (\$151,438.20 annually) and that they are above the median income.

C. Debtors' Plan lists Creditor Loan Servicing, LLC in both Class 1 and Class 4. The Trustee notes that Lake Loan Servicing, LLC filed Claim No. 13, secured by real property 5810 Green Valley Rd, Placerville, CA. The Creditor's claim reports a default amount of \$1,570.61, which Debtors propose to pay in Class 1 of the Plan, while paying their ongoing mortgage directly in Class 4. Additionally, Debtor reports the ongoing payment in Class 4 as \$4,042 while the claim reports the payment as \$3,849.37.

D. Wells Fargo Deal Services filed Claim No. 10, secured by a 2004 Mercedes-Benz E320 in the amount of \$486.84. This claim is not provided for in Debtors' Plan and Debtors' Schedule J does not appear to list this as an expense.

### **Review of Debtor's Amended Chapter 13 Plan**

In the Amended Chapter 13 Plan before this court (Dckt. 52) Debtors provide for a sixty month term. To fund the Plan, for months one through three Debtors had made payments totaling \$2,200. For the remaining months, Debtors shall \$1,450 a month for months 4 through 10, and then \$1,076.00 for months 11 through 60. Plan § 7 Additional Provisions, Dckt. 52.

In Class 4 Debtor's state that they will continue to make a \$4,042.00 a month payment to Loancare Servicing for the obligation secured by the first deed of trust on their residence. To qualify for Class 4 treatment, "Class 4 claims mature after the completion of this plan, **are not in default**, and are not modified by this plan. Plan ¶ 3.10, *Id.*

However, for Class 1 treatment Debtors list a secure claim of LoanCare, LLC in the amount of \$1,570.61 for "Escrow Shortage & Fees on Residence." Plan ¶ 3.07(c), *Id.* In Section 7.02 of the Plan, Debtors state that this arrearage on the claim of Loancare, LLC will be paid at the rate of \$27.55 a month, stretched over the full 60 months term of the Plan. *Id.* at 7.

It appears that Debtors have improperly placed Loancare, LLC into Class 4 of the Plan.

In the Additional Provisions Debtors provide for a monthly Plan payment of \$501.14 to Mercedes-Benz Financial Services USA, LLC. On Amended Schedule A/B Debtors list a 2011 Mercedes-Benz E350 and a 2004 Mercedes-Benz E-320. Dckt. 54 at 5-6.

### **Debtors' Contention They Are Under-Median Income**

On Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period, Debtors state that they had \$11,250 a month in income for the six months preceding this bankruptcy case. Dckt. 14 at 46. Debtors state that they have over median income and the applicable commitment period is five years. *Id.* at 45, 47.

The Chapter 13 Trustee's Opposition includes that Debtors assert in the Motion to Confirm that if Debtor's disability income terminates, then Debtors, post-petition, would be under median income. Reference is made in the Motion to the Supreme Court decision in *Hamilton v. Lanning*, 560 U.S. 505 (2010). While using the words "median income," *Hamilton* is not a determination of applicable commitment period decision, but provides guidance as to how the court correctly computes "projected disposable income" for determining the required

payments under a Chapter 13 Plan.

While using the term “median income,” a commitment period term, the court understands the reference to be imprecisely used to explain the economic basis for the future step-down in plan payments.

**RULING**

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 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 the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on September 5, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to sustain the Objection.**

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

A. Debtors are delinquent in plan payment in the amount of \$550.00 and another plan payment of \$550.00 is due on September 25, 2018. The Debtors' have paid \$0.00 into the Plan.

B. Debtors have not filed required tax returns for the four years preceding the filing of the petition. Debtors admitted at the First Meeting of Creditors held on August 30, 2018, that no federal tax return for 2017 has been filed.

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

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors’ Attorney on August 28, 2018. Fourteen days’ notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court’s decision is to sustain the Objection.**

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

A. Debtor’s Plan requires a motion to value the claim of Westlake Services, LLC (Claim No. 1-1) in order to be feasible. Debtor has not filed a motion to value.

At the hearing -----.

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

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

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

~~The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.~~

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 5, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to sustain the Objection.**

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

A. Debtor did not appear at the First Meeting of Creditors held on August 30, 2018.

B. Debtor is delinquent in plan payments in the amount of \$2,350.00 and has paid \$0.00 into the Plan to date. Another plan payment is due on September 25, 2018 in the amount of \$2,350.00.

C. Debtor has not provided the Trustee with 60 days of employer payment advices.

D. Debtor has not provided the Trustee with a tax transcript or copy of the most recent pre-petition tax return.

E. Debtor has not filed all required tax returns for the four years preceding the filing of the petition. The IRS filed an amended claim on August 17, 2018 (Claim No. 1-1) that indicates no tax return was filed for the 2017 tax year.

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

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors’ Attorney on September 5, 2018. Fourteen days’ notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court’s decision is to overrule the Objection.**

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

A. Debtors may not be able to make the plan payments or the plan may not be the Debtors best efforts under 11 U.S.C. § 1325 because the Debtors Schedules I and J do not appear to accurately reflect their income and expenses. Additionally, Debtor Anthony Jones’ income related to his truck driving income and Debtor Peggy Jones’ Social Security income is not supported.

The court notes that on September 6, 2018 and September 20, 2018, Debtors filed Amended Schedules I and J and Business Income and Expenses. Dckts. 18; 19. The Amended Schedules appear to address the Trustee’s concerns.

At the hearing -----.

~~-----The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~\_\_\_\_\_ **IT IS ORDERED** that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan is confirmed.~~

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to ~~XXXXX~~ the Motion to Confirm the Modified Plan.**

**TRUSTEE'S OBJECTION:**

The Trustee opposes confirmation on the basis that the Trustee is uncertain if there has been proper service because no proof of service was filed with the initial Motion and the Amended Notice does not indicate whether the Plan was served. (Dckt. 99).

**SECURED CREDITOR U.S. BANK, N.A.'S OBJECTION:**

Secured creditor, U.S. Bank, N.A., as legal title trustee for Truman 2012 SC2 Title Trust ("Creditor") objects, without a declaration, to the confirmation of Debtor's Second Amended Plan because it does not appear that the Debtor has sufficient income to fund the Plan. Creditor asserts that because Debtor did not perform under the Original Chapter 13 Plan and the First Amended Plan, Debtor will similarly not be able to perform under the proposed Modified Plan.

Creditor notes that Debtor's Motion acknowledges that Debtor is \$11,820 delinquent under the confirmed Plan and was unable to make the payments due to a loss of income. (Dckt. 91). Creditor argues that Debtor's income has reduced and Plan payments have increased. Creditor further argues that Debtor's statements that she anticipates replacing the lost income is insufficient to support confirmation of the Plan.

**DEBTOR'S RESPONSE:**

Debtor's counsel responds only to the Trustee's objection regarding uncertainty regarding proper service. Debtor's counsel states, without a declaration, that he believes proper service was effectuated. Debtor's response does not address Creditor's Objection.

**DISCUSSION:**

The Trustee’s response flagged the issue of proper service due to the absence of a filing of proof of service specifically indicating that the proposed modified Plan was served. Debtor’s counsel responded that it is his belief that all parties were served but that his recollection does not “rise to the certainly necessary for signing a certificate of service under penalty of perjury.” (Dckt. 110). The court notes that both the Trustee and Creditor responded to the motion.

~~At the hearing -----.~~

The Creditor Objects to the proposed Modified Plan because the income necessary for Debtor to complete the Plan is too speculative. While not addressed in Debtor’s response, Debtor’s declaration submitted with the Motion, states that Debtor runs a care facility and that Debtor fell behind in payments in July and August of 2018 because two of the facility’s residents died. (Dckt. 93). Debtor further stated that she found a new client, that if approved by the Veteran’s Administration, will be a source of income of \$1,200 a month, higher than previous patient. *Id.* Debtor also stated that she is working to fill the remaining vacancy. *Id.*

~~At the hearing -----.~~

~~-----The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.~~

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

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

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

~~-----**IT IS ORDERED** that Motion to Confirm the Modified Plan is granted and the proposed Chapter 13 Plan is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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7. [18-20628-C-13](#)  
[PGM-5](#)

**LEON DOTSON**  
Peter Macaluso

**MOTION FOR CONTEMPT**  
8-15-18 [[174](#)]

**TO BE HEARD IN DEPT. 35**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2018. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

**The Motion to Extend the Automatic Stay is granted.**

Jay Quilter ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 16-27969 ) was dismissed on July 11, 2018, after Debtor did not make required payments. *See* Order, Bankr. E.D. Cal. No. 16-27969, Dckts. 36; 37. 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. Debtor is disabled and Debtor's caretaker, Dawna Wood-Mirchell, was the person who was supposed to make the Plan payments in the previous bankruptcy case. Dckt. 12, Decl. Dawna Wood-Mirchell. Mirchell explains that during the previous case she became sick with hepatitis C and type 2 diabetes which caused her to become confused about when to make the payments. *Id.* at ¶ 5. Mirchell states that she is now on medication and able to make the payments and also offers that Debtor has additional rental income that was not available during the previous case. *Id.* at ¶¶ 6-7.

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

year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay filed by Jay Quilter (“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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 201x. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Justin Wade Walker ("Debtor") commonly known as 9630 Iris Meadow Way Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$15,692.45. An abstract of judgment was recorded with Sacramento County on June 7, 2011, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$178,600.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$270,528.42 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 56. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703/140(b)(5) in the amount of \$1.00 on Amended Schedule C. Dckt. 56.

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 in its entirety 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 Justin Wade Walker ("Debtor") having been presented to the court, and upon review of the



pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Discover Bank, California Superior Court for Sacramento County Case No. 34-2011-00095949, recorded on June 7, 2011, Book 20110607 and Page 0767, with the Sacramento County Recorder, against the real property commonly known as 9630 Iris Meadow Way Elk Grove, California is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 5, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to sustain the Objection.**

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

A. Debtors Plan relies on a Motion to Value and is otherwise not feasible.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Specialized Loan Servicing, LLC. Debtor has filed a Motion to Value the Secured Claim of Specialized Loan Servicing, LLC. Dckt. 8. The Motion to Value was heard on August 28, 2018 and continued to November 6, 2018. On September 27, 2018, Debtor withdrew it Motion to Value. Dckt. 30.

Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on May 24, 2017. Fourteen days’ notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**~~The court’s decision is to sustain the Objection.~~**

On June 18, 2018, the Chapter 13 Trustee filed an opposition to the Plan. The July 17, 2018 hearing was continued to August 21, 2018. On August 2, 2018, the Debtor filed additional declarations addressing the Trustee’s concerns.

On August 10, 2018, the Chapter 13 Trustee filed a Status Report stating that the Debtor satisfied the Trustee’s original concerns. However, the Chapter 13 Trustee stated in the Status Report that the Debtor is delinquent in plan payments. On August 21, 2018, the hearing was again continued to October 2, 2018.

At the hearing -----.

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

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

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

~~The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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~~**IT IS ORDERED** that Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.~~

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

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

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

The Motion to Convert 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.~~**

This Motion to Convert the Chapter 13 bankruptcy case of Robert Stanley ("Debtor") has been filed by the United States on behalf of the Internal Revenue Service ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor has not filed all pre-petition tax returns by the date of the meeting of creditors required under 11 U.S.C. § 1308. Debtor has not filed the following required tax returns:

1. Form 941 "Employer Quarterly Tax Returns" for the following tax periods: 09/30/2017; 12/31/2017; 03/31/2018; and 06/30/2018.
2. Debtor has not filed Form 940 "Employer's Annual Federal Unemployment Tax Return" for the tax years 2013 through 2017, inclusive.
3. Debtor has not filed a federal income tax return for the tax year 2017.

B. Movant asserts, through the declaration of IRS Bankruptcy Specialist Rhonda Roberts, that on June 15, 2018, Debtor and Debtor's attorney were sent a letter from a representative of the IRS identifying the unfiled tax returns identified above.

C. Movant filed Claim No. 3-3 asserting

Movant also flags for the court that this is Debtor's fifth consecutive bankruptcy.

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

The Chapter 13 Trustee responds that Debtor's Plan was confirmed on July 11, 2018 over the Trustee's Objection. (Dckt. 60). The Debtor is current under the terms of the Plan. Debtor has paid a total of \$14, 880.00. The Meeting of Creditors was held open to allow Debtor to provide his Social Security number.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on September 4, 2018. Dckt. 74. Debtor acknowledges in his declaration that the federal tax returns identified by the United States have not been filed and intends to file all required tax returns within 30 days.

Debtor claims that certain circumstances starting in early 2017 impacted Debtor's ability to file timely tax returns. Debtor identified difficulties with his former business manager, his former landlord, and the telephone company as factors affecting his ability to file his tax returns. Additionally, Debtor states that his former business manager, who he let go in August 2017, created a bookkeeping mess that is taking time to address.

## **UNITED STATES' REPLY:**

The United States claims that the mandatory language of 11 U.S.C. § 1307(e) requires that this case be dismissed or converted because required pre-petition tax returns were not filed.

## **HEARING HELD ON SEPTEMBER 18, 2018:**

A continuance was granted at the hearing held on September 18, 2018 to allow for additional time for the Debtor to file the required tax returns.

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

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

## **DISCUSSION**

The court notes that Debtor acknowledges that pre-petition tax returns within the four-year period ending on the date of the filing of the petition were not filed, as required under 11 U.S.C. § 1308(a). The meeting of creditors was not held open for the purpose of filing those tax returns and the Debtor did not request that it be held open for that purpose. The Chapter 13 Trustee noted in its Response that the Meeting of Creditors was held open to allow the Debtor to provide his Social Security Number, not to file required tax returns.

Debtor's declaration indicates that at some point after August 2017, Debtor knew that there were business tax returns that were not filed and hired his mother to help him "straighten our the mess." (Dckt. 75). However, Debtor does not provide a specific date on which he knew that the pertinent tax returns for his business were not filed. Debtor does not provide the date he hired his mother, nor does Debtor indicate whether he knew that the tax returns were not filed prior to filing his bankruptcy petition on May 8, 2018. Moreover, Debtor also acknowledges that his personal tax return for 2017 was not filed.

The United States submitted evidence that indicates that the Debtor and Debtor's attorney were notified about the non-filed returns by a letter sent by the IRS dated June 15, 2018, prior to closing of the meeting of creditors on July 20, 2018. Additionally, the court notes that the IRS' Claim 3-1 filed on May 29, 2018 includes notations indicating there were unfiled tax returns within the four year period ending on the date of the petition. (Claim No. 3-1). There is no evidence to indicate when Debtor began taking proactive steps to file the required tax returns or what specific were steps were taken by the Debtor.

~~Cause exists to convert this case pursuant to 11 U.S.C. § 1307(e). The Motion is granted, and the case is converted to a case under Chapter 7.~~

~~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 Convert the Chapter 13 case filed by the United States ("a creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.~~

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**No Tentative Ruling:** The Motion to Confirm the Debtor's First 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). 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.**

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

**Insufficient Notice Provided.** The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2018. **Thirty-five days' notice is required. That requirement was not met.**

**The court's decision is to deny the Motion to Confirm the Plan.**

The Chapter 13 Trustee objects to the confirmation of the Debtors' Plan based on the following:

A. Insufficient notice was provided for the Motion. Debtor needed to serve the required documents 35 days before the hearing. Debtor provided on 22 days.

B. Debtor's Plan may not be feasible. The Plan payment is insufficient to pay the Class 1 adequate protection payments. This same issue was raised by the Trustee in a previous Motion to Confirm where the Trustee's Objection was sustained. (Dckts. 18; 23).

C. Debtor's Plan fails the Chapter 7 liquidation analysis. Debtor's non-exempt equity totals approximately \$47,824.59 and Debtor proposes a 0% dividend to general unsecured creditors. Additionally, the Trustee has filed an Objection to Debtor's Exemptions because the Debtor appears to exceed the exemption allowance. (Dckt. 33).

D. Debtor has not filed all required tax returns. The Franchise Tax Board's filed claim indicated Debtors has not filed tax returns for the tax years 2017 and 2016. (Claim 3-1). The Trustee notes, that this was an Objection that was raised by the Trustee in previously filed Plan. (Dckt. 18).

E. Debtor has not provided all requested documents to the Trustee. Specifically, documents with financial information pertaining to Debtor's business. The Trustee notes, that this was an Objection that was raised by the Trustee in previously filed Plan. (Dckt. 18).

F. Debtor did not provide the Class 1 Checklist and Authorization to Release Information forms to the Trustee as required in Local Bankruptcy Rule 3015-1(b)(6). The Trustee notes, that this was an Objection that was raised by the Trustee in previously filed Plan. (Dckt. 18).

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 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 the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on July 5, 2018. Fourteen days’ notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**~~The court’s decision is to sustain the Objection.~~**

The Creditor, Deutsche Bank National Trust Company objects to confirmation on the basis that the plan does not propose to pay the creditor’s pre-petition arrears. Furthermore, the plan relies upon a modification of the creditor’s loan and this is pure speculation.

At the August 7, 2018 hearing, the court continued the hearing to permit the Debtors time to prove that the loan modification application was sent and received by Movant.

At the hearing -----.

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

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

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

~~The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

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~~**IT IS ORDERED** that Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2018. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion for Entry of Hardship Discharge is XXXXX.**

Felicia Lauese ("Debtor") moves for entry of a hardship discharge on the grounds that Debtor states she is unable to make all required Plan payments as a result of a work related injury that occurred in January 2017. Debtor argues that as a result of the January 2017 injury, her ability to work has been reduced.

Debtor states that her ex-husband has been making the plan payments since October 2017. Debtor claims that she has applied for disability but that her application for disability will not be heard until November 2018. Debtor states that her confirmed Plan proposed to pay 0% to the general unsecured creditors, as such the unsecured creditors would receive no less than they would have received in a Chapter 7. Further, Debtor claims that a modification under 11 U.S.C. § 1329 is not practical because the Plan is already in its 60th month.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee opposes Debtor's motion on the basis that:

A. The Trustee argues that a hardship discharge under 11 U.S.C. § 1328(b) will not discharge the secured claim of Bank of New York Mellon (Claim 7-1). As noted by the Trustee, the Bank of New York Mellon's secured claim was valued at \$0.00. (Dckt. 120, Order Granting Motion to Value).

B. Debtor did not file supplemental Schedules I and J stating the change in income. The Trustee notes that the Trustee has set a hearing for Motion to Dismiss three times since January 2017 (Dckts. 167; 179; 186) and the Debtor did not disclose the changed circumstances until August 20, 2018. Debtor has not provided evidence, other than the declaration, to support the claimed injury, reduced income, claim for disability, or reason why payments by ex-husband cannot continue.

The Trustee also included information regarding the status of Debtor's case. The Trustee notes that Debtor is in the 61<sup>st</sup> month of the plan. Debtor is delinquent \$17,542.00 (with Trustee's balance on hand of \$3,419.92), with current plan payments in the amount of \$4,459.01. Debtor's confirmed Plan included ongoing mortgage and arrears, a

secured vehicle, attorneys fees, and 0% to general unsecured creditors. The Trustee states that the mortgage arrears claim has been paid in full.

**DEBTOR’S SUPPLEMENTAL DECLARATION:**

On September 27, 2018, Debtor filed a supplemental declaration stating that a cashier’s check made out to the Chapter 13 Trustee in the amount of \$14,122.08 has been mailed. (Dckt. 202). Debtor states that the check, along with the Trustee’s balance on hand of \$3,419.92, covers the delinquent amount of \$17,542.00. *Id.*

**APPLICABLE LAW**

Section 1328(b) of the Bankruptcy Code states:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–

- (1) the debtor’s failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g., In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden of proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). “Unsubstantiated and conclusory statements” about a debtor’s inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g., In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a “debtor is justly accountable for the plan’s failure.” *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

- A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;
- B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;
- C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;
- D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;
- E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

- F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

*Id.*

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event “such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments.” *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) “requires that the circumstances leading to the debtor’s failure to make payments be beyond the debtor’s control.” *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be “truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability.” *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the “best interests” test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan “is not ‘practicable’ if there is no source of income to fund the modified plan.” *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that “[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan.” *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, “the availability of case closure does not eliminate a bankruptcy court’s duty to ensure that a debtor complies with the Bankruptcy Code’s ‘best interests of creditors’ test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan.” *Id.* The Ninth Circuit found explicitly that a “bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter.” *Id.*

## DISCUSSION

The Trustee has raised concerns regarding whether the Debtor’s declaration has sufficiently proven facts to support a hardship discharge under 11 U.S.C. § 1328(b). Specifically, Debtor has not submitted evidence regarding her ex-husband’s ability to continue making Plan payments, evidence other than Debtor’s statements regarding the claimed injury, workers compensation payments, and the application for disability.

At the hearing -----.

The Chapter 13 Trustee asserts that the Bank of New York Mellon’s secured claim valued at \$0.00 will not be discharged. The Trustee questions whether the Debtor, knowing this, would continue to seek the requested relief. The Trustee provides no legal support to indicate that a “secured” claim valued at \$0.00 would be treated any different than a general unsecured claim under 11 U.S.C. § 1328(b).

~~Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Debtor’s life that prevents Debtor from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor in this case.~~

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

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

~~The Motion for Hardship Discharge filed by Felicia Lauese (“Debtor”) having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion is granted, and the court shall enter a “hardship” discharge pursuant to 11 U.S.C. § 1328(b) for Felicia Lauese in this case based on the Plan as performed as of the October 2, 2018 hearing date on this Motion.~~

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**No Tentative Ruling:** 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). 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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to grant the Motion to Modify the Plan.**

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent \$6,050.00 under the proposed terms of the Plan. The Debtor has paid a total of \$51,875.00 into the Plan.

**DEBTOR'S RESPONSE:**

Debtor's counsel responds, without a declaration from the Debtor, that the delinquency will be cured prior to the hearing.

~~At the hearing -----.~~

~~The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.~~

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

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

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

~~IT IS ORDERED that Motion to Confirm the Modified Plan is granted and~~

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2018. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Value Collateral and Secured Claim of Credit Loan Mart ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$9,000.00.**

The Motion filed by Danielle N. Delgado ("Debtor") to value the secured claim of Credit Loan Mart ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Hyundai Sonata ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in January of 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 \$12,312.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$9,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

On September 14, 2018, the Chapter 13 Trustee filed a response stating that the Trustee does not oppose the Motion to Value. (Dckt. 14). Additionally, on September 12, 2018, Creditor filed a claim for \$12,779.07 with \$9,000.00 listed as a secured claim.

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 Danielle N. Delgado ("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 Credit Loan Mart (“Creditor”) secured by an asset described as a 2012 Hyundai Sonata (“Vehicle”) is determined to be a secured claim in the amount of \$9,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2018. Thirty-five days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

The Motion to Confirm the 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 Plan is denied.**

The Chapter 13 Trustee Opposes Debtor Michelle Barrick's Motion to Confirm Plan based on the following reasons:

A. Debtor is \$1,100.00 delinquent in plan payments, which represents one monthly proposed plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

B. The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor's non-exempt equity totals at least \$64,253 and Debtor is proposing a 0% dividend to unsecured creditors. To date, there were filed unsecured claims totaling \$15,556.31.

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2018. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Value Collateral and Secured Claim of Bank of America, NA and/or Veripro Solutions("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Susan B. Lowery ("Debtor") to value the secured claim of Bank of America, NA and/or Veripro Solutions ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 879 Harlan Ave, Oroville, California ("Property"). Debtor seeks to value the Property at a fair market value of \$135,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such

disposition or use or on a plan affecting such creditor's interest.

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

### **NO PROOF OF CLAIM FILED**

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

### **OPPOSITION**

Creditor has not filed an Opposition.

### **TRUSTEE RESPONSE**

On September 19, 2019, the Chapter 13 Trustee filed a response stating that the Trustee does not oppose the Debtor's Motion to Value Collateral. The Trustee flags for the court that Debtor's Motion does not cite applicable code such as 11 U.S.C. § 506(a). The Trustee also notes that the Debtor provides for the Creditor on Schedule D and in Class 2C of the proposed Plan.

### **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$139,000.00. Creditor's second deed of trust secures a claim with a balance of approximately \$30,000. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Susan B. Lowery ("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 Bank of America, NA and/or Veripro Solutions ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 879 Harlan Ave, Oroville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$135,000.00 and is encumbered by a senior lien securing a claim in the approximate amount of \$139,350.61 which exceeds the value of the Property that is subject to Creditor's lien.

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# FINAL RULINGS

20. [18-22795-C-13](#)      SARAH GARLICK      **OBJECTION TO DEBTOR'S CLAIM OF**  
[DPC-3](#)                      Peter Macaluso                      **EXEMPTIONS**  
8-21-18 [133]

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2018. Twenty-eight notice is required. That requirement was met.

The Objection to Debtor's Claim of Exemptions 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 Objection to Debtor's Claim of Exemptions is overruled, due to the conversion of the case the objection is moot.**

The Chapter 13 Trustee Objects to Debtor's Claim of Exemptions. However, on September 21, 2018 the court entered an Order converting the case to a proceeding under Chapter 7. Dckt. 152. Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 24, 2018.

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 Chapter 13 Trustee's Objection to Debtor's Claim of Exemptions 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 Debtor's Claim of Exemptions is overruled, due to the conversion of the case the objection is moot.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 27, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2018. Twenty-eight days’ notice is required. That requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Objection to Discharge is sustained.**

The Chapter 13 Trustee (“Objector”) objects to David Bounsavang’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 13 bankruptcy case on February 3, 2017. Case No. 17-20725. Debtor’s prior case was converted to a Chapter 7 on October 16, 2017 and Debtor received a discharge on January 19, 2018. Case No. 17-20725, Dckts. 40; 56.

The instant case was filed under Chapter 13 on July 3, 2018.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on January 19, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 17-20725, Dckt. 56. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-24204), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by the Chapter 13 Trustee, (“Objector”) having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-24204, the case shall be closed without the entry of a discharge.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2018. Thirty-five days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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. Dennis Budmark and Maria Budmar ("Debtors") have filed evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. The Chapter 13 Trustee filed a Response indicating non-opposition on September 14, 2018. Dckt. 60. 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 Dennis Budmark and Maria Budmar ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtors' Modified Chapter 13 Plan filed on August 22, 2018 is confirmed. Debtors' Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. On August 27, 2018, the Chapter 13 Trustee filed a statement of Non-Opposition to Debtors' Motion. (Dckt. 55).

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 17, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. On August 28, 2018, the Chapter 13 Trustee filed a statement of Non-Opposition to Debtors' Motion. (Dckt. 48).

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 17, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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26. [18-24431-C-13](#)  
[DPC-1](#)

JOHN WILSON  
Mohammad Mokarram

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
8-29-18 [15]

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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**The Objection to Debtor's Claim of Exemptions without prejudice.**

David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Objection on September 19, 2018, Dckt. 23; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by John Wilson ("Debtor"); **the Ex Parte Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, the court removes this Objection from the calendar.**

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2018. Twenty-eight days’ notice is required. That requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Objection to Discharge is sustained.**

David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Kamaljit K. Gosal’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 13 bankruptcy case on July 28, 2017. Case No.17-24973. That case was converted to a Chapter 7 on August 21, 2017. Case No.17-24973, Dckt. 25. Debtor received a discharge on November 28, 2017. Case No.17-24973, Dckt. 67.

The instant case was filed under Chapter 13 on July 11, 2018.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on November 28, 2017, which is less than four years preceding the date of the filing of the instant case. Case No.17-24973, Dckt. 67. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-24333), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-24333, the case shall be closed without the entry of a discharge.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. On September 5, 2018, the Chapter 13 Trustee filed a statement of Non-Opposition to Debtor's Motion. (Dckt. 79).

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 27, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2018. Thirty-five days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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. Cameron McClellan ("Debtor") having filed evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. The Chapter 13 Trustee filed a Response indicating non-opposition on September 14, 2018. Dckt. 59. 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 Cameron McClellan ("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 August 21, 2018 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. On September 18, 2018, the Chapter 13 Trustee filed a statement of Non-Opposition to Debtors' Motion. (Dckt. 29).

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 17, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. On September 7, 2018, the Chapter 13 Trustee filed a statement of Non-Opposition to Debtors' Motion. (Dckt. 47).

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 24, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2018. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Value Collateral and Secured Claim of Ford Motor Credit Company ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$4,733.00.**

The Motion filed by Randall ShROUT and Rose ShROUT ("Debtors") to value the secured claim of Ford Motor Credit Company ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Ford Fusion ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$4,733.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on December 26, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$7,346.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$4,733.00, 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.

On September 14, 2018, the Chapter 13 Trustee filed a response stating that the Trustee does not oppose the Motion to Value. (Dckt. 14). Additionally, on September 24, 2018, Ford Motor Credit Company filed Claim No. 13-1 that lists a secured claim in the amount of \$4,721.53.

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 Randall ShROUT and Rose ShROUT ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ford Motor Credit Company (“Creditor”) secured by an asset described as a 2014 Ford Fusion (“Vehicle”) is determined to be a secured claim in the amount of \$4,733.00, 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 \$4,733.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2018. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Steven Sandoval ("Debtor") seeks court approval for Debtor to incur post-petition credit. Specialized Loan Servicing, LLC ("Creditor"), whose claim the Plan provides for in Class 1 and 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$1,369.63 per month to \$1,089.90 per month. The modification will capitalize the pre-petition arrears with an interest rate of 3.875% with a maturity date of July 1, 2058.

The Motion is supported by the Declaration of Steven Sandoval. Dckt. 110. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

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

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

The Motion to Approve Loan Modification filed by Steven Sandoval ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Steven Sandoval to amend the terms of the loan with Specialized Loan Servicing, LLC ("Creditor"), which is secured by the real property commonly known as 1396 Garden HWY STE 150, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 109).

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). 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 court's decision is to grant the Motion to Confirm the Modified Plan.**

The Trustee opposes confirmation on the basis that:

A. The Trustee is uncertain of the treatment of Citimortgage, Inc. The Debtor's modified Plan moves this creditor from Class 3 to Class 1 and provides for pre-petition arrear in the amount of \$30,000.00. The Trustee is not sure whether there is a second deed of trust requiring post-petition payments in Class 1 or if the entire claim has come due and should be provided for in Class 2. Further the Trustee notes, that this creditor has not filed a proof claim and the Trustee is uncertain whether the Debtor is proposing the Trustee pay the creditor without a proof of claim being filed.

B. The Debtor does not provide an explanation for the modification.

C. The Debtor filed Supplemental Schedules I and J as attachments to the proposed Plan rather than filing them separately with the court.

D. The Debtor's Supplemental Schedule J adjusts expenses without explanation. Most notably an increase in mortgage payments by \$1,360.00.

E. The Debtor's Motion and Declaration are inconsistent with the terms of the proposed Plan, specifically with respect to the monthly payment amounts and Plan term regarding Navy Federal Credit Union and Springleaf Financial Services.

On August 28, 2018, the Court continued the hearing to October 2, 2018 to permit the additional time to file explanations for changes in the modified Plan and supplemental documents.

On September 5, 2018, Debtor filed a Declaration stating that he obtained a loan modification and explanations for reduced expenses.

**TRUSTEE'S SUPPLEMENTAL RESPONSE:**

The Trustee filed a Supplemental Response stating that the Debtor addressed the Trustee's concerns and not longer opposes the Motion. However, flags that Debtor has not provided an explanation why the motion states a different commitment period and different monthly installment payments for Navy Federal Credit Union and Springleaf Financial Services.

The Plan does complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Modified Plan is granted and the proposed Chapter 13 Plan is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on September 5, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to continue the Objection to October 16, 2018 at 2:00 p.m.**

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

A. Debtors Plan relies on a Motion to Avoid Lien of Midlanding Funding, LLC. The court notes that Debtors' Motion to Avoid the Lien was granted on September 11, 2018. Dckt. 33.

B. Debtors list GMC Financial as a Class 2(A) creditor regarding a 2015 Chevrolet Traverse. Based on the claim relating to this creditor (Claim 1-1 filed by Americredit), it appears the vehicle can be valued.

**DEBTOR'S RESPONSE:**

Debtors respond by stating that a Motion to Value Collateral of Americredit Financial Services, Inc. dba GM Financial was filed on September 11, 2018 and is set for hearing on October 16, 2018. Debtor requests that this hearing be continued to October 16, 2018 to permit the court to resolve the Motion to Value and rule on the Trustee's Objection to Confirmation.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is continued to October 16, 2018 at 2:00 p.m.

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**Final Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on August 29, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to continue the Objection to October 23, 2018 at 2:00 p.m.**

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

A. Debtors' Plan relies on a Motion to Value Collateral of Santander Consumer USA, Inc. Which is set for hearing on October 16, 2018. (Dckt. 16) That Plan is not feasible if the Motion is not granted.

B. Debtor's Schedule I shows that a portion of Debtor's income is from family contribution but Debtor has not sufficiently demonstrated that the contributions are likely to continue. (Dckt. 1) Without these contributions the Plan is not feasible.

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

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

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

**IT IS ORDERED** that the Objection to confirmation the Plan is continued to October 23, 2018 at 2:00 p.m.

**IT IS ALSO ORDERED** that Frances Porter, Debtor, file supplemental evidence as to the ability to fund the plan by **October 16, 2018**.

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