UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 20, 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 28.

1.	18-26806-C-13 PGM-1	LINDA VANPELT Peter Macaluso	MOTION TO EXTEND AUTOMATIC STAY 11-4-18 [9]

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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.

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 November 4, 2018. 14 days' notice is required. That requirement was met.

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 xxxxx.

Linda S. VanPelt ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-24875) was dismissed on September 10, 2018. *See* Order, Bankr. E.D. Cal. No. 17-24875, Dckt. 171. 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. Dckt. 11, Declaration. Debtor states that her prior bankruptcy case was dismissed because she failed to obtain a loan modification. *Id.* Debtor states that here she intends to complete a short sale of the property instead of obtaining a loan modification. *Ic.*

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.

The court in reviewing Debtor's prior bankruptcy proceeding notes that it took issue with certain claims made on Debtor's Schedules filed in her prior case, including:

1. Not listing her prior bankruptcy proceedings (Case Nos. 11-30525; 14-27048; 15-20897; and 15- 24979). The court notes that here Debtor has properly identified the prior proceedings in her petition;

2. Not listing sufficient taxes on her Schedule J. The court notes that this issue may not have been rectified in Debtor's most recently filed Schedule J, as $0.00 are allocated for taxes and $150.00 for taxes on Social Security. Dckt. 14, Schedule J, Lines 16; 21.

3. Debtor's claimed $600.00 for expenses for food and housekeeping her Debtor and her 45 year old son, that the court found the amount "highly unreasonable for two adults." Case No. 17-24875, Dckt. 164. Debtor claims the same amount on the most recently filed Schedule J in this proceeding. Dckt. 14, Schedule J, Line 7.

Review of Current Schedules and Plan

On Schedule I Debtor lists her employment as that of being a real estate agent. Dckt. 14 at 19-20. Debtor states that she has $2,605.00 in net income from her business and $1,610.00 in Social Security Income. These total $4,215.00 in monthly income. The court cannot locate the required statement of gross income and expenses for Debtor's business that is required. Schedule I ¶ 8(a), *Id.* On Schedule J Debtor lists $150.00 a month for income tax payments, which total $1,800.00 for $50,000 in income.

Debtor's proposed Chapter 13 Plan requires payments of $345.00 a month for sixty months. Plan ¶¶ 2.01, 2.03; Dckt. 15. There are no Class 1 or Class 2 claims to be paid through the Plan. *Id.*, ¶¶ 3.07(c), 3.08. There are no Additional Provisions for the proposed Chapter 13 Plan.

For Class 3 Claims, Debtor provides for the surrender of the English Hills Road home, allowing the creditors to exercise their lien rights. *Id.*, ¶ 3.09.

No Class 5 and 6 Claims are to be paid through the Plan, and there is a 0.00% dividend for Class 7 General Unsecured Claims. *Id.*,

DISCUSSION

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

The Motion is xxxx, and the automatic stay is xxxx 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 Linda S. VanPelt ("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 xxxx, and the automatic stay is xxxx 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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2.	15-24207-C-13	DONALD HILL	MOTION TO MODIFY PLAN
	DBL-1	Bruce Dwiggins	10-9-18 [21]

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Tentative Ruling: The Motion to Modify 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.

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 September 5, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Modify 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 deny the Motion to Modify the Plan.

The Trustee opposed confirmation on the basis that:

A. The Trustee is uncertain whether the Debtor is proposing the Trustee pay post-petition taxes without a proof of claim. Here, Debtor's Modified Plan proposes to increase the monthly payment to Tehama County Tax Collector in Class 2A to account for ongoing property taxes.

B. Debtor has not filed Supplemental Schedules I and J to support the income and expenses and proposed plan payment increase.

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 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 denied and the proposed Chapter 13 Plan is not confirmed.

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3.	17-21208-C-13	LOUIS BROWN	MOTION TO MODIFY PLAN
	MET-4	Mary Ellen Terranella	10-5-18 [82]

****

No Tentative Ruling: The Motion to Modify 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.

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 October 5, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Modify 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 opposed confirmation on the basis that :

A. Debtor is delinquent $657.74 under the terms of the proposed modified Plan. Debtor has a paid a total of $24,769.26 into the Plan.

B. Debtor does not incorporate language regarding potential non-exempt proceeds form a pending lawsuit pursuant to the August 17, 2017 Order Confirming requiring that any non-exempt proceeds from the state court action shall be turned over to the Trustee. Dckt. 69.

DEBTOR'S RESPONSE:

Debtor's counsel responds that the delinquent payment was sent to the Trustee on November 13, 2018 and proposes additional language addressing potential proceeds from the pending state court action to be included in any order confirming the Modified Plan. Dckts. 94; 95.

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 the Motion is granted, Debtors' Chapter 13 Plan filed on October 5, 2018, as incorporating the agreed upon additional language, is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying 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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4. DPC-1	18-24411-C-13	LINA VALLEJO MONTES Julius Cherry	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-28-18 [15]
Thru #5			

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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.

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 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.

The October 2, 2018 hearing was continued to allow for the resolution of Debtor's Motion to Value. Dckt. 26.

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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5. 18-24411-C-13 JJC-1 | LINA VALLEJO MONTES
Julius Cherry | MOTION TO VALUE COLLATERAL OF WESTLAKE FINANCIAL SERVICES
10-1-18 [19]

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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.

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 October 1, 2018. 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Westlake Financial Services ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,500.00.

The Motion filed by Lina Yaritza Vallejo Montes ("Debtor") to value the secured claim of Westlake Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Dodge Charger SE ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $2,031.00 as of the petition filing date, despite listing the value of the Vehicle as of the date of the petition as $7,200.00. 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).

Debtor lists the value of the Vehicle as $7,200.00 on Schedule A/B. (Dckt. 1). However, Debtor seeks to value the Vehicle at $2,031.00 by deducting from the stated value of the Vehicle $5,169.00. Debtor claims that $5,169.00 should be deducted form the replacement cost of the vehicle because they represent optional services that are not part of the purchase money security interest. Debtor argues that the amounts attributable to those optional contracts should be treated a unsecured claims. Debtor also states that the debt was incurred on October 28, 2015, more than 910 days before the filing of the petition.

TRUSTEE'S RESPONSE:

On September 24, 2018, the Chapter 13 Trustee filed a response stating that the Creditor is included

in Class 2(B) in the Debtor's Plan with a claim amount of $20,059.71 and a value of $10,923.00. Claim 1-1. The Vehicle is included on Debtor's Schedule A/B with a reported value of $7,200.00.

DISCUSSION:

Here, Debtor is seeking to deduct from the fair market value of the Vehicle the value of an optional service contract and optional gap insurance for a debt incurred more than 901 days before the filing of the petition. Debtor has not provided authority for the method of separating the purchase money security interests (secured) from the optional service contract and optional gap insurance(unsecured)for an obligation that falls outside of the 910 provision of 11 U.S.C. § 1325(a).

Review of Grounds Stated With Particularity in Motion

Debtor's Motion represents a novel concept by Debtor's counsel - that the Bankruptcy Code terminates the rights of a creditor in its collateral to the extent that the portion of the debt is part of a purchase money security interest. Debtor argues that since Debtor financed the acquisition of gap insurance and the service contract when purchasing the vehicle, that obligation cannot be a secured claim in bankruptcy. If extended, it would appear that Debtor contends that the obligation owing on a non-purchase money line of creditor cannot be a secured claim in bankruptcy.

Outline of Grounds

A. Debtor commenced this bankruptcy case on July 14, 2018.

B. Debtor owns a 2012 Dodge Charger ("Vehicle"), in which Debtor has claimed an exemption.

C. On Schedule A/B Debtor states that the fair market value of the Vehicle is $7,200.

D. Debtor believes that the obligation owed to creditor is secured by the Vehicle is $19,435.00. Creditor filed Proof of Claim No. 1, stating the secured claim to be $20,259.71 and asserting a pre-petition default in the amount of $2,497.91.

E. Debtor stated on Schedule D that the secured claim of creditor was $5,616.00.

F. The Motion is brought pursuant to 11 U.S.C. § 506(a), with the creditor bound by a determination of the value pursuant to 11 U.S.C. § 1325(a)(5).

G. Creditor's lien in the Vehicle that secures the claim arises pursuant to a written security agreement.

H. The contract creating the obligation and granting the lien was executed more than 910 days before the filing of this bankruptcy case.

I. Debtor asserts that creditor holds a purchase money security interest in the Vehicle.

1. Debtor cites to the definition of a purchase money security interest as provided in California Commercial Code § 9103.

2. It is asserted that the purchase money security interest secures, in addition to the purchase price of the Vehicle, the following obligations:

a. Optional Theft Deterrent Tracker.....$ 189.00
b. LoJack Theft Deterrent.....$ 795.00
c. Extended Warranty.....$2,495.00
d. Dent Repair Insurance.....$ 895.00
e. GAP Insurance.....$ 795.00

J. Debtor then asserts:

> The negative equity of a vehicle traded in during a new vehicle purchase, gap insurance to provide indemnification for undervalued insurance, theft deterrent systems, dent repair insurance, extended service warranty, et cetera, do not hold a close nexus to property securing the obligation and are not PMSI as defined by Cal. Comm. Code § 9103. Debt for items not PMSI is unsecured. *See In re Penrod*, 611 F.3d at 1162 (9th Cir. 2008), Points & Authorities Paragraph 9.

K. Debtor then asserts that creditor's purchase money secured claim, which arose more than 910 days before the commencements of the case should be reduced by the above amounts totaling $5,169.00, since they are not part of the "purchase price" of the vehicle.

Dckt. 19.

In the Points and Authorities Debtor cites the court to the provisions of 11 U.S.C. § 506(a), quoting those provisions, as set forth below (emphasis added):

> 4. 11 U.S.C. § 506(a)(1) provides that "(a)n allowed claim of a creditor secured by a lien on property in which the estate has an **interest…is a secured claim** to the **extent of the value** of such creditor's interest in the **estate's interest in such property**…and is an unsecured claim to the extent that the value of such creditor's interest…is less than the amount of such allowed claim."

Points and Authorities ¶4, Dckt. 21.

Debtor then directs the court to the provisions of 11 U.S.C. § 1325(a)(5) that specifies the permissible plan terms for treatment of a secured claim, which are (as applicable): (1) creditor has accepted the plan, (2) creditor shall retain the lien until payment of the allowed secured claim, or (3) debtor surrenders the collateral.

Debtor then directs the court to the hanging paragraph (unnumbered by Congress) appearing after paragraph (a)(9) of 11 U.S.C. § 1325(a), which provides (emphasis added):

> For purposes of paragraph (5), **section 506 shall not apply** to a claim described in that paragraph if the **creditor has a purchase money security interest securing the debt** that is the subject of the claim, the debt was

> **incurred within the 910-day period preceding** the date of the filing of the petition, and the **collateral for that debt consists of a motor vehicle** (as defined in section 30102 of title 49 acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

On its face this section states that if the creditors hold a purchase money security interest for which the collateral is a motor vehicle and the debt was incurred within 910 days of the bankruptcy case being filed, then there can be no 11 U.S.C. § 506 valuation. Thus, the plain language of this section states that for a purchase money obligation, secured by a vehicle, in which the obligation was incurred within 910 days, then the debtor cannot reduce the secured claim below the purchase money claim amount, irrespective of the value of the vehicle.

Here, as stated by Debtor, the obligation incurred more than 910 days before the July 14, 2018 commencement of this bankruptcy case. Proof of Claim No. 1 filed by Creditor, Attachment, has a copy of the Retail Installment Contract Sales Contract upon which the claim is based, which is dated October 28, 2015 (993 days before the commencement of this bankruptcy case).

Given the plain language of the above hanging paragraph it does not come into plan for purposes of the current valuation motion.

Authorities Cited by Debtor

In support of the contention that the non-purchase money portion of the secured claim is ineligible to be a secured claim Debtor first provides the court with a long string citation to twelve decisions. No portions of the actual rulings are stated, but merely Debtor's reference that "The application of § 506(a) to bifurcate a creditor's claim and provide for payment of the secured and unsecured portions through the Chapter 13 Plan is followed by the majority of courts addressing this issue." Points and Authorities, p. 3:1-3; Dckt. 21. The court is unaware of there being any serious, or even frivolous, argument over the application of 11 U.S.C. § 506(a) to value secured claims.

Given the extensive citations, the court has reviewed each of the dozen cases generally cited and states what appears to be the relevant portion of the decisions that Debtor could have been making the non-specific reference (with no reference to any specific page to assist the court finding the relevant holding) to in the Points and Authorities.

A. *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36, 39 (B.A.P. 9th Cir. 1997):

> Justice Thomas, writing for a unanimous court, noted that the bank was the holder of a secured claim because "petitioners' home retains $ 23,500 of value as collateral. The portion of the bank's claim that exceeds $ 23,500 is an 'unsecured claim component' under § 506(a), however, that determination does not necessarily mean that the 'rights' the bank enjoys as a mortgagee, which are protected by § 1322(b)(2), are limited by the valuation of its secured claim." *Id.* at 329 (*citing United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 239 n.3, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989))."

This decision states that the value of the collateral is the value of the secured claim when computed

under 11 U.S.C. § 506(a). (The discussion related to the holding in *Nobelman v. American Savings Bank*, 508 U.S. 324 (1993), determining that in a Chapter 7 case a creditor's junior lien claim could not be lienstripped based on there being no value in the collateral above the senior lien.)

B. *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220, 1222, 1227 (9th Cir. 2002):

> The plain language of 11 U.S.C. § 1322(b)(2) provides that antimodification protection is only available to holders of secured claims. PSB Lending is not the holder of a secured claim under the definitions provided in the Bankruptcy Code, and therefore its rights may be modified under § 1322(b)(2).
> . . .
> We conclude that the district court erred in holding that a wholly unsecured lien is protected by the antimodification clause of § 1322(b)(2). We reverse the decision of the district court and remand for proceedings consistent with this opinion.

This decision determined that notwithstanding the antimodification provisions for a claim secured only by a debtor's residence, if there was no value in the collateral in excess of the senior liens, the 11 U.S.C. § 506(a) valuation can be made to determine that the secured value of the secured claim was $0.00 without violating the anti-modification provisions of the Bankruptcy Code.

C. *Eastern Savings Bank, FSB v. LaFata (In re LaFata)*, 483 F.3d 13, 18-19, 21 (1st Cir.2007):

> Therefore, in the instant case, if Eastern's claim is secured by the Debtor's principal residence, then the claim cannot be modified by bifurcating it into secured and unsecured claims, even though the value of the security is roughly one-tenth the value of the claim.
> . . .
> We begin with the language of the statute. See *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S. Ct. 2051, 64 L. Ed. 2d 766 (1980) ("the starting point for interpreting a statute is the language of the statute itself"). The key phrase in the statute is "secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2).
> . . .
> Our ruling today does no more than say that the anti-modification provisions of § 1322(b)(2) will not apply if the debtor's principal residence only encroaches on the mortgaged property.

D. *Lane v. Western Interstate Bancorp. (In re Lane)*, 280 F.3d 663, 664, 667-668, 669 (6th Cir. 2002):

> The bankruptcy code expressly provides that a Chapter 13 bankruptcy plan may modify the rights of holders of 'unsecured claims.' 11 U.S.C. § 1322(b)(2). This section also provides that such a plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . ." *Id.*
> . . .
> The Supreme Court's recognition of § 506(a) as the starting point in the analysis

means that it must make a difference whether the overall claim belongs in the pigeonhole marked "secured claims" or the pigeonhole marked "unsecured claims," as those terms are defined in § 506(a). The proper classification under § 506(a) obviously makes a difference even where the creditor has "a claim secured only by a security interest in real property that is the debtor's principal residence," as the bank did in *Nobelman* and as *FirstPlus* does here. And the only apparent reason why the classification could make a difference is that the special protection accorded by the antimodification provision extends to the rights of holders of "secured claims" and does not extend to the rights of holders of 'unsecured claims.'

. . .

The message, to recapitulate, is this:

> - Section 1322(b)(2) prohibits modification of the rights of a holder of a secured claim if the security consists of a lien on the debtor's principal residence;
>
> - Section 1322(b)(2) permits modification of the rights of an unsecured claimholder;
>
> - Whether a lien claimant is the holder of a 'secured claim' or an 'unsecured claim' depends, thanks to § 506(a), on whether the claimant's security interest has any actual 'value;'
>
> - If a claimant's lien on the debtor's homestead has a positive value, no matter how small in relation to the total claim, the claimant holds a 'secured claim' and the claimant's contractual rights under the loan documents are not subject to modification by the Chapter 13 plan;
>
> - If a claimant's lien on the debtor's homestead has no value at all, on the other hand, the claimant holds an 'unsecured claim' and the claimant's contractual rights are subject to modification by the plan."

E. *Pond v. Farm Specialist Realty (In re Pond)*, 252 F.3d 122, 124-125, 127 (2d Cir. 2001);

The second provision -- Section 1322(b)(2) -- permits a Chapter 13 debtor's plan to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence..."

11 U.S.C. § 1322(b)(2) (emphasis added).

. . .

The question presented here is whether defendants' lien falls within the antimodification exception of Section 1322(b)(2) for claims "secured only by a security interest in . . . the debtor's principal residence," because it is wholly "unsecured" under Section 506(a).

. . .

In sum, we hold that:

(1) defendants' lien in plaintiffs' residential property is not "secured" under Section 506(a) because there is insufficient equity in the property to cover any portion of that lien;

(2) as holders of a wholly unsecured lien under Section 506(a), defendants are not "holders of . . . a claim secured only by a security interest in . . . the plaintiffs' principal residence" and, therefore, their rights in the lien are not protected under the antimodification exception of 11 U.S.C. § 1322 (b)(2); and

(3) the Bankruptcy Court should have declared that plaintiffs' Chapter 13 plan could void defendants' lien under 11 U.S.C. § 1322(b)(2).

F. *Tanner v. FirstPlus Financial, Inc. (In re Tanner)*, 217 F.3d 1357, 1360 (11th Cir. 2000);

We agree with those courts that the only reading of both sections 506(a) and 1322(b)(2) that renders neither a nullity is one that first requires bankruptcy courts to determine the value of the homestead lender's secured claim under section 506(a) and then to protect from modification any claim that is secured by any amount of collateral in the residence. *See In re Bartee*, 212 F.3d at 290; In re McDonald, 205 F.3d at 611. Any claim that is wholly unsecured, however, would not be protected from modification under section 1322(b)(2).

G. *Bartee v. Tara Colony Homeowners Ass'n (In re Bartee)*, 212 F.3d 277, 296 (5th Cir. 2000);

For the reasons stated above, we hold that a wholly unsecured lien is not subject to the antimodification clause in § 1322(b)(2). Also, an annual real property assessment does not fall within the class of secured interests encompassed by § 1322(c)(2).

H. *McDonald v. Master Financial, Inc. (In re McDonald)*, 205 F.3d 606, 609, 615 (3d Cir. 2000);

Under § 506(a) any allowed claim that is secured by a lien on the debtor's property "is a secured claim to the extent of the value of [the] creditor's interest in the estate's interest in such property," and is deemed an unsecured claim to the extent it exceeds that value. An undersecured claim is thus treated as a secured claim only up to the value of the collateral; the excess debt becomes an unsecured claim.

For the foregoing reasons, we hold that a wholly unsecured mortgage is not subject to the antimodification clause in § 1322(b)(2). The judgment of the District Court will be reversed. The case will be remanded to the District Court for it to remand the matter to the Bankruptcy Court for further proceedings consistent with this opinion. Costs taxed against appellee.

I. *Fisette v. Keller (In re Fisette)*, 455 B.R. 177, 181, 182 (B.A.P. 8th Cir. 2011)

> A determination of whether the Bankruptcy Code allows the "strip off" of the junior liens on the Debtor's principal residence if they are wholly unsecured "involves the interaction of two provisions of the Bankruptcy Code - [§] 506(a) and [§] 1322(b)(2)." Pond v. Farm Specialist Realty (In re Pond), 252 F.3d 122, 124 (3d Cir. 2001).
>
> . .
>
> We agree with courts holding that § 1322(b)(2) does not bar a Chapter 13 debtor from stripping off a wholly unsecured lien on his principal residence, a position that has been adopted by all Circuit Courts of Appeal to address this issue. See, e.g., *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lane v. W. Interstate Bancorp (In re Lane)*, 280 F.3d 663 (6th Cir. 2002); *Pond*, 252 F.3d at 127; *Tanner v. FirstPlus Fin., Inc. (In re Tanner)*, 217 F.3d 1357 (11th Cir. 2000); *In re Bartee*, 212 F.3d 277 (5th Cir. 2000); *McDonald v. Master Fin. Inc. (In re McDonald)*, 205 F.3d 606 (3d Cir. 2000). Bankruptcy appellate panels of the Tenth and First Circuits have agreed with this conclusion. *Griffey*, 335 B.R. 166; *In re Mann*, 249 B.R. 831 (B.A.P. 1st Cir. 2000).

J. *First Mariner Bank v. Johnson (In re Johnson)*, 411 B.R. 221 (DC Md 2009)*, affrm. First Mariner Bank v. Johnson (In re Johnson)*, 2011 U.S. App. LEXIS 402 (4th Cir. 2011);

The decision discusses the proper application of 11 U.S.C. § 1322(b)(2) for secured claims for which the collateral is only the debtor's principal residence.

K. *Griffey v. U.S. Bank (In re Griffey)*, 335 B.R. 166, 167, 169, 170 (B.A.P. 10th Cir. 2005);

> We start our analysis with the language of the applicable sections of the Bankruptcy Code. Section 1322(b)(2) of the Bankruptcy Code allows Chapter 13 debtors to use a Chapter 13 plan to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims." 11 U.S.C. § 1322(b)(2).
>
> . . .
>
> We agree with those courts that Nobelman does not extend to the circumstances in this case. Our conclusion is supported by the plain language of § 1322(b)(2).
>
> . . .
>
> Based on this reasoning, we agree with the majority of courts that the antimodification clause of § 1322(b)(2) does not apply to the holder of a wholly unsecured claim. Succinctly stated, the Bank "is thus the holder of an 'unsecured claim,' pure and simple - and if the words of § 1322(b) mean what they plainly say, the rights of a creditor holding such a claim 'may' be modified by the debtors' Chapter 13 plan." *In re Lane*, 280 F.3d at 668.

L. *Domestic Bank v. Mann (In re Mann)*, 249 B.R. 831, 833, 840 (B.A.P. 1st Cir. 2000);

> The issue before us arises from the interaction of two provisions of the Bankruptcy Code, §§ 506(a) and 1322(b)(2).

. .

> We agree with the Third and Fifth Circuit Courts of Appeals, the Ninth Circuit Bankruptcy Appellate Panel, and the several bankruptcy and districts courts making up the majority view. Pursuant to § 506(a) and § 1322(b)(2), and notwithstanding the antimodification provision in the latter, Chapter 13 plans may void residential real property liens that are wholly unsecured.

A review of the above cases does not appear to provide any relevant authority for Debtor's proposition that the Debtor may reduce Creditor's secured claim, below the value of the collateral, by any amounts which were not part of the purchase price of the vehicle.

Purchase Money Security Interest

Debtor then begins a discussion of what constitutes a purchase money security interest under the California Commercial Code. After the decision in *AmeriCredit Financial Services. v. Penrod (In re Penrod)*, 611 F.3d 1158, there is little debate (at least in the Ninth Circuit) over what constitutes a purchase money security interest in California. It appears that Debtor argues, without providing the court with any portion of the holding, that if a debtor's obligation is a purchase money security interest, then the Debtor determines the value of the vehicle, subtracts the original amounts of the non-purchase money portion of the obligation, and then only pay the reduced amount - well less than the actual value of the vehicle.

What Debtor first ignores is that *Penrod* was addressing the nonapplicability of 11 U.S.C. § 506(a) to a purchase money security interest in a vehicle and the prohibition of the court valuing the secured purchase money claim if the obligation was incurred ***within*** 910 days of the commencement of the bankruptcy case. As stated/admitted by Debtor, the hanging paragraph of 11 U.S.C. § 133(b) exclusion of 11 U.S.C. § 506(a) for a vehicle purchase money security interests is not applicable in this case for Creditor's claim.

Debtor appears to confuse the Ninth Circuit conclusion that "In sum, we find that a creditor does not have a purchase money security interest in the "negative equity" of a vehicle traded in during a new vehicle purchase" [Fn.1.] with the concept of a creditor having purchase money and non-purchase money security interest.

FN.1. *AmeriCredit Fin. Servs. v. Penrod (In re Penrod)*, 611 F.3d 1158, (9th Cir. 2010).

In introducing the decision, the Ninth Circuit Court of Appeals provides the following setup distinguishing between a purchase money security interest and non-purchase money security interest.

> The bankruptcy court held that AmeriCredit did not have a purchase money security interest in the portion of the loan related to the negative equity charges. However, the bankruptcy court acknowledged that AmeriCredit had a purchase money security interest in the remaining balance. **In doing so, the bankruptcy court adopted the dual status rule, which allows part of a loan to have non-purchase money status, while the remainder is covered by a purchase money security interest.**

Id. at 1160 (emphasis added). The Ninth Circuit Court of Appeals affirmed the determination that a portion of the security interest is for non-purchase money obligation, which is subject to the 11 U.S.C. § 506(a)

valuation and a portion is a purchase money security interest (for which the obligation was incurred within 910 days) and cannot be valued under 11 U.S.C. § 506(a). [Fn.2.]

FN.2. The Ninth Circuit did not rule on whether the Dual Status Rule, which was adopted by the Bankruptcy Appellate Panel, holding that there is a purchase money security interest (value for purchase) and a non-purchase money security interest (for the non-purchase money credit advanced), or the Transformation Rule holding that the entire obligation is secured by a nonpurchase money security interest was correct. *Americredit Fin. Servs. v. Penrod (In re Penrod)*, 392 B.R. 835, 857-859 (B.A.P. 9th 2008). However, it is clear that the property rights obtained by the creditor, are not defeased merely because they were a non-purchase money obligation.

California Commercial Code § 9103(b) provides that a security interest is a "purchase money security interest," "To the extent that the goods are purchase money collateral with respect to that security interest." Conversely, it is a non-purchase money security interest to the extent the obligation was not used to purchase the goods. As provided in California Commercial Code §9103(h),

> (h) The limitation of the rules in subdivisions (e), (f), and (g) to transactions other than consumer–goods transactions is intended to leave to the court the determination of the proper rules in consumer–goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer–goods transactions and may continue to apply established approaches.

See Official Commentary to California Commercial Code § 9103, which includes:

> 8. Consumer–Goods Transactions; Characterization Under Other Law. Under subsection (h), the limitation of subsections (e), (f), and (g) to transactions other than consumer–goods transactions leaves to the court the determination of the proper rules in consumer–goods transactions. Subsection (h) also instructs the court not to draw any inference from this limitation as to the proper rules for consumer–goods transactions and leaves the court free to continue to apply established approaches to those transactions.
>
> > This section addresses only whether a security interest is a "purchase–money security interest" under this Article, primarily for purposes of perfection and priority. See, e.g., Sections 9– 317, 9–324. **In particular, its adoption of the dual–status rule, allocation of payments rules, and burden of proof standards for non–consumer–goods transactions is not intended to affect or influence characterizations under other statutes.** Whether a security interest is a "purchase–money security interest" under other law is determined by that law. For example, decisions under Bankruptcy Code Section 522(f) have applied both the dual–status and the transformation rules. The Bankruptcy Code does not expressly adopt the state law definition of "purchase–money security interest." Where federal law does not defer to this Article, this Article does not, and could not, determine a question of federal law.

RULING

Here, Debtor does not contest that Creditor has a claim secured by a lien on property of the estate. Pursuant to 11 U.S.C. § 506, Creditor's claim is secured to the extent of the value of the Creditor's interest in the estate's interest in the property. The court notes that the reported value of the Vehicle on Debtor's schedules is $7,200.00. (Dckt. 1). Debtor's Declaration in support of the Motion to Value does not provide any other statement modifying the value of the Vehicle. (Dckt. 22).

The lien on the Vehicle's title secures a purchase-money loan incurred on October 28, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,059.71. See Retail Installment Contract, Exhibit 1, Dckt. 23. The provisions of 11 U.S.C. § 1322(b) limiting the scope of 11 U.S.C. § 506(a) and the ruling of *In re Penrod* are inapplicable.

With respect to the value of the collateral securing the claim, Debtor testifies that she has provided the court with the NADA commercial guide showing the value of the Vehicle to be $7,200.00. Dec. ¶ 7, Dckt. 22. Debtor offers no testimony as to any conditions of the vehicle that would reduce the $7,200.00 value.

Debtor has granted a security interest for the entire obligation. *See* page 2 of Retail Installment Sales Contract attached to Proof of Claim No. 1 (Debtor did not include this page of the Contract, having provided a redacted version as Exhibit 2), which states:

> c. Security Interest
> You give us a security interest in:
> - The vehicle and all parts or good installed on it;
> - All money or goods received (proceeds) for the vehicle;
> - All insurance, maintenance, service, or other contracts that we finance for you; and
> - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.
>
> This secures payment of all you owe on this contract. It also secures your other agreements in this contract as law allows. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

In reviewing the NADA report, it actually states that the retail value is $8,650.00. Exhibit 2, Dckt. 24. As required by 11 U.S.C. § 506(a)(2), it is this retail value which is the value of the secured claim (emphasis added):

> (2) If the **debtor** is an individual in a case under **chapter** 7 or **13**, such value with respect to personal property securing an allowed claim shall be **determined based on the replacement value** of such property **as of the date of the filing of the petition without deduction for costs of sale or marketing**. With respect to property acquired for personal, family, or

> household purposes, replacement value shall mean the price a **retail merchant would charge for property** of that kind considering the age and condition of the property at the time value is determined.

Debtor having failed to provide any evidence of value, there are no adjustments to be made by the court for condition.

The lien on the Vehicle's title secures an obligation which in part was purchase-money to acquire the vehicle and in part for the various additional service and anti-theft goods and services purchased more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,059.71. 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 $8,650.00, 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.

Assertion that Silence is Consent

In closing, Debtor cites the court to the Local Bankruptcy Rules and a 1995 decision of the Ninth Circuit Court of Appeals, which is presented as follows:

> 10. Failure of the respondent and other parties in interest to file a 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 considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Points and Authorities ¶ 10, Dckt. 21.

While the reference to the Local Bankruptcy Rules is accurate, they must be read in light of recent Supreme Court authority - *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 278 and FN. 15 (2010), the trial judge is to properly apply the law and not merely grant whatever relief is requested, irrespective of the law.

Here, in light of the plain language of 11 U.S.C. § 506(a) and (b), as well as the § 1322(b) hanging paragraph, and no legal authority provided that a creditor forfeits that portion of its secured claim for the amount of the debt in excess of the purchase of the vehicle, the court cannot grant Debtor the improperly discounted value advocated for in the Motion.

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted in part.

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 Lina Yaritza Vallejo Montes ("Debtor") to 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 in part, and the claim of Westlake Financial Services ("Creditor") secured by an asset described as a 2012 Dodge Charger SE ("Vehicle") is determined to be a secured claim in the amount of $8,650.00 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 $8,650.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

****

6.	18-25016-C-13 DPC-1	PATRICIA NICHOLAS Michael Hays	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-17-18 [21]

****

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).

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 October 17, 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 attend the First Meeting of Creditors held on October 11, 2018 or the continued hearing held on November 8, 2018. The Meeting of Creditors is continued to December 13, 2018.

B. The Debtor is delinquent $811.29 in plan payments. The Debtor has paid $811.29 into the Plan.

C. The Plan exceeds 60 months because the Plan payment decreased from $837.00 to $811.29 based on the reduced ongoing mortgage payment identified in Claim 2-1.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not attended the Meeting of Creditors, filed a feasible Plan, and is not current with all required Plan payments. 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.

****

7. 18-26424-C-13 MWB-1 | WALTER/LINDA RUNYON
Mark Briden | MOTION TO VACATE DISMISSAL OF CASE
10-24-18 [11]

DEBTOR DISMISSED:
10/22/2018
JOINT DEBTOR DISMISSED:
10/22/2018

****

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

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

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 September 27, 2018. 14 days' notice is required. That requirement was met.

The Motion to Vacate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtors, 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 Vacate is xxxx, and the order dismissing the case (Dckt. 10) is xxxx.

Walter Runyon and Linda Runyon ("Debtors") filed the instant case on October 11, 2018. Dckt. 1.

On October 15, 2018, the Clerk of the Court filed a Notice of Incomplete Filing And Intent to Dismiss due to provide a Statement of Social Security Number by October 18, 2018 and file all other required documents by October 25, 2018. Dckt. 7. On October 22, 2018, Notice of Entry of Order of Dismissal was entered, as Debtors did not provide their Statement of Social Security Number by October 18, 2018. Dckt. 10.

On October 24, 2018, Debtors filed this instant Motion to Vacate in which Debtor's counsel claims that he received the Notice of Incomplete filing on October 23, 2018 and asserts that the outstanding documents would be filed simultaneously with the Motion. Dckt. 11. The court notes that the documents identified in the Notice of Incomplete Filing were filed with court on November 25, 2018. Dckts. 18 through 21.

CHAPTER 13 TRUSTEE OPPOSITION:

The Trustee responded stating that Debtors misstate the notice because Debtor stated that all documents were required by to be filed by October 18, 2018, when only the Statement of Social Security was required to be filed by that date. The Trustee flags for the court that Debtors did not indicate why the documents were filed late and why a request for additional time was not sought.

APPLICABLE LAW

While Debtor's Motion requests that the court reconsider its Order dismissing the case, the court will consider the Debtor's Motion as one seeking to vacate the Order, per Federal Rule of Civil Procedure 60(b).

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

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

The sole ground for the Motion to Dismiss was incomplete filing of documents. The court recognizes that Debtor has filed the documents identified in the Clerk's Notice, but that the documents, specifically the Statement of Social Security Number was not filed. It is not clear to the court why the deadline was missed and whether Debtors should have sought an extension of time to file the documents to prevent the dismissal of their case. .

At the hearing ------.

Therefore, in light of the foregoing, the Motion is **xxxx**, and the order Dismissing the Case (Dckt. 132) is **xxxx**.

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

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

The Motion to Vacate filed by Trisha Donnell ("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 **xxxx**, and the order dismissing the case (Dckt. 132) is **xxxx**.

****

8.	17-27425-C-13 MOH-2	NAOMI ROSS Michael Hays	OBJECTION TO CLAIM OF SANTANDER CONSUMER USA, CLAIM NUMBER 4 10-5-18 [41]

****

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

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

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 5, 2018. **However, the proof of service does not list the correct address for Santander Consumer USA, Inc. registered agent. As reflected on the California Secretary of Service's website, the registered agent for service for the Creditor is CT Corporation System who's most recent 1505 Certificate reflects a California address. Further, the attempt to serve the entity by mail by with addressing it to the proper person authorized to accept service does not satisfy the mailing requirement. *See In re Loloee,* 241 B.R. 655, 660 (B.A.P. 9th Cir. 1999).** 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition). That requirement was met.

The Objection to Proof of Claim Number 4-1 of Santander Consumer USA is xxxx, and the claim is xxxx.

Naomi Ross, the Debtor, ("Objector") requests that the court treat the claim of Santander Consumer USA ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case as unsecured. The Claim is asserted to be secured in the amount of $2,297.18. Objector asserts that the vehicle financed by the Creditor, and the asset the Creditor claims secures the obligation, was abandoned in January of 2014 and disposed of in lien sale.

DISCUSSION

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

~~Based on the evidence before the court, Creditor's claim is unsecured. The Objection to the Proof of Claim is sustained.~~

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

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

The Objection to Claim of Santander Consumer USA ("Creditor"), filed in this case by Naomi Jean Ross, the Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 4-1 of Santander Consumer USA is **xxxx.**

****

9.	18-25526-C-13 DPC-1	CHARMIN SPRATT Elliott Gale	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-10-18 [17]

****

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).

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 October 10, 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 is delinquent $562.00 in plan payments.

B. Debtor may not have properly completed Schedules I and J. The Trustee questions whether the Debtor's net income is higher than reported based on pay advices provided by the Debtor. Additionally, the Debtor testified at the Meeting of Creditors that she has dependents living in her home that may not be listed on Schedule J.

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

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not made all plan payments and has not accurately describe her income and expenses. 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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10. 18-25634-C-13 AP-1 | JAY QUILTER
Scott Hughes | OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING, LLC
10-18-18 [29]

Thru #11

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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).

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 October 18, 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 Secured Creditor Ocwen Loan Servicing, LLC opposes confirmation of the Plan based on the following:

A. Debtor's Plan does not provide for Secured Creditor's claim, specifically it does not provide for the pre-petition arrearage in full.

At the hearing ------.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not attended the Meeting of Creditors or filed all required documents. 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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11. 18-25634-C-13 JAY QUILTER — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Scott Hughes — 10-17-18 [25]

****

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).

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 October 17, 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 attend the First Meeting of Creditors held on October 11, 2018. The court notes that Trustee Report reflects that Debtor did appeared on October 11, 2018 and that the Meeting of Creditors was continued and concluded on October 19, 2018. Trustee Report filed October 19, 2018.

B. The Debtor did not sign the petition, schedules, statement of financial affairs, or the Plan. A durable power of attorney was filed, however, the Trustee is uncertain if the documents provide sufficient knowledge to testify as to both Debtor's past and current financial affairs.

At the hearing ------.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because debtor has not signed the petition, schedules, statement of financial affairs, or the Plan. 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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12. 17-27037-C-13 TJW-6 | EARL MILLER, Timothy Walsh | CONTINUED MOTION TO CONFIRM PLAN, 7-25-18 [117]

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No Tentative Ruling: The Motion to Modify 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.

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 July 25, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Modify 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 xxxx the Motion to Confirm the Plan.

The Chapter 13 Trustee objects to the confirmation of the Debtor's Plan for the following reasons:

A. Debtor's Plan exceeds (60) months because it requires (68) months to complete. The Trustee claims that Plan payments should be $14,899.70, instead of the proposed payments of $11,635.00, and a monthly dividend to the IRS in Class 2 must be $1,721.05, instead of the proposed payment of $1,596.34.

DEBTOR'S RESPONSE:

Debtor's Counsel responded on September 10, 2018 that due to a recent hospitalization and continuing health concerns he has been unable to respond to the Trustee's Opposition and cannot properly attend the hearing. The Trustee filed a statement of non-opposition to the continuance.

At the September 11, 2018 hearing the court continued the hearing to allow the Debtor additional time to responds.

At the November 20, 2019 continued hearing -----.

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 **xxxx**.

****

13.	18-25337-C-13 DPC-1	MARIA ROMERO-ARCEO AND DANIEL ZINTZUN Michael Hays	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-17-18 [23]

****

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).

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 October 17, 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 may not be their best effort. The Trustee questions the Debtors' expenses for the "Husband's sister in Mexico", a $1,200.00 expense for child care, and an expense for property that the "Husband's parents reside." Eliminating these expenses would increase Debtor's monthly income to $4,317.00. The Trustee notes that the 2 children listed on Debtor's schedules live in Mexico with a relative and the parents are listed as living in a different house than the Debtors.

B. Debtor's Plan does not include tax refunds received during the life of the plan being paid into the Plan. The Trustee notes that in 2017 the Debtors received both federal and state refunds totaling $6,249.00.

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.

****

14.	18-26849-C-13 EJS-1	STEVE FLOYD AND NICOLE WILLIAMS Eric Schwab	MOTION TO EXTEND AUTOMATIC STAY 11-1-18 [8]

****

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

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

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 Debtors, Chapter13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 4, 2018. 14 days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtors, 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.

Steve Floyd and Nicole Williams ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtors' second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-27933) was dismissed on September 6, 2018. *See* Order, Bankr. E.D. Cal. No. 17-24875, Dckt. 27. 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, Debtors state that the instant case was filed in good faith. Dckt. 10, Declaration. Debtors state that the prior bankruptcy case was dismissed due to failure to make payments as a result of reduced income from a **temporary disability of Debtor Steve Floyd coupled** with unexpected car expenses. *Id.* Debtors states that Debtor Steve Floyd is not eligible for disability payments that were not available during the prior bankruptcy case. *Id.*

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.

Debtors have 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 Wayne Rosemond ("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 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.

****

15. 18-25754-C-13 JCW-1 | MASOUD ADIBMAJLESI
Patrick Riazi | OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
10-17-18 [17]

****

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).

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 October 17, 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 Secured Creditor, Bank of America, N.A., opposes confirmation of the Plan based on the following:

A. Debtor's Plan does not provide for the arrearages owed to Secured Creditor. The proposed plan provides for only $252.25 a month plan payment. Dckt. 2. No provision is made to pay arrearage on Creditor's claim. Creditor has filed Proof of Claim No. 6 in the amount of $550,871.68. A pre-petition arrearage in the amount of $3,440.74 in Proof of Claim No. 6.

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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16. 18-25755-C-13 DJD-1

CHARNEL JAMES
Charnel James

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON CREDIT CORP.
11-5-18 [33]

HARLEY-DAVIDSON CREDIT CORP.
VS.

Thru #18

****

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).

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 November 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 Secured Creditor, Harley-Davidson Credit Corporation, opposes confirmation of the Plan based on the following:

A. Debtor's Plan does not provide for the full amount of the Secured Creditor's claim. Claim No. 1-1. Secured Creditor states that the obligation is for a purchase money security interest incurred within 910 days of the filing of the petition.

The amount of the Claim stated in the Plan is $15,016.00. In the objection Creditor asserts that the Claim is $15,779.82. Proof of Claim No. 1 states the $15,779.82. The amount stated in the Proof of

Claim, unless the court determines the claim to be in a different amount, controls over any amount stated in the Plan.

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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17. 18-25755-C-13 DPC-1 | CHARNEL JAMES
Charnel James | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-17-18 [23]

****

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).

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 October 17, 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 attend the October 11, 2018 Meeting of Creditors. The Meeting was continued to November 29, 2018.

B. Debtor's Plan may not be proposed in good faith. Debtor appears to be over the median income but has only proposed a 36 month plan instead of a 60 month plan.

C. Debtor's Plan may not be feasible. Debtor proposes a 36 month plan but per the Trustee's calculations the plan will require 82 months to complete.

D. Debtor may not be able to make required Plan payments, as Debtor's Schedule J projects negative $355.00 income and the Plan proposes a monthly payment of $3,500.00.

E. Debtor's Plan may unfairly discriminate against general unsecured creditors in favor of owning

6 vehicles. Debtor's Schedule D lists secured claims against 6 different vehicles and proposes to retain and pay for all of them while only proposing a 5% dividend to the general unsecured claims.

F. Debtor claims exemptions under C.C.P. § 703.140(b) and appears to be married. Debtor has not filed the required Spousal Waiver for use of these exemptions.

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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18.	18-25755-C-13 TJS-1	CHARNEL JAMES Charnel James	OBJECTION TO CONFIRMATION OF PLAN BY USE CREDIT UNION 10-11-18 [18]

****

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).

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 October 11, 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 Secured Creditor, USE Credit Union, opposes confirmation of the Plan based on the following:

A. Debtors' Plan does not provide for the full amount of the Secured Creditor's claim, specifically full payment of the interest rate. Secured Creditor states that the obligation is for a purchase money security interest incurred within 910 days of the filing of the petition and the Debtors should provide for the "prime-plus" interest rate of 6.25% not the proposed 0.03% in the Plan.

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.

****

19.	18-26062-C-13 AF-1	FERNANI NARVASA Arasto Farsad	MOTION TO VALUE COLLATERAL TO AVOID LIEN OF JPMORGAN CHASE BANK, N.A. 10-10-18 [12]

****

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2018. 28 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of JPMorgan Chase Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Fernani Narvasa ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 29 Beaucanon Court, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $425,000.00 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).

Debtor offers the Declaration of Ramon Gil, a licensed real estate appraiser with 25 years' experience, who opines that the value of the Property is $425,000.00. However, the court notes that the Declaration also includes a statement from Ramon Gil that he "would expect at least $425,000 million offer if not a little more." Dckt. 15, ¶ 3.

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. The Trustee filed an opposition stating that it appears Debtors are seeking a joinder of remedies in one contested motion, contrary to this court's local rules. The Trustee also points out the discrepancy in the declaration of Ramon Gil, stating that property is worth both $425,000.00 and $425,000,000.00. Dckt. 27.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $442,372.00. Creditor's second deed of trust secures a claim with a balance of approximately $95,000.00. 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 Fernani Narvasa ("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 JPMorgan Chase Bank, N.A. ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 29 Beaucanon Court, Elk Grove, 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 $425,000.00 and is encumbered by a senior lien securing a claim in the amount of $442,372.00, which exceeds the value of the Property that is subject to Creditor's lien.

****

20.	17-28363-C-13 DNL-7	CHESTER JIMERSON AND SUNITA RANI Stephen Murphy	CONTINUED MOTION TO RECONVERT CASE TO CHAPTER 7 8-21-18 [154]

Thru #21 (Confirmation Motion)

****

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2018. 28 days' notice is required. That requirement was met.

The Motion to Reconvert 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 Reconvert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is xxxxx.

This Motion to Reconvert the Chapter 13 bankruptcy case of Chester Jimerson and Sunita Rani ("Debtors") has been filed by J. Michael Hopper ("Movant"), the former Chapter 7 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtors provided materially incorrect information on their Statement of Financial Affairs by not disclosing their interest in real property jointly owned with their parents located at 369 Danbury Circle, Vacaville, CA and the transfer of approximately $66,000.00 to the parents over a 30 month period.

The Former Chapter 7 Trustee's Motion also listed several other issues relating to Debtor's 2017 Tax Return, Unpaid Wages, and uncertainty about Debtor's attorney's fees. However, it appears that those issues have been resolved since Movant filed this Motion.

CHAPTER 13 TRUSTEE'S RESPONSE:

The Chapter 13 Trustee responds that cause exists to reconvert the case if the pending Motion to Confirm Plan is not granted.

DEBTOR'S OPPOSITION:

Debtors filed an Opposition on August 31, 2018. Dckt. 158. Debtor states that given the pending Motion to Confirm, this Motion to Reconvert is premature.

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

At the September 18, 2018 hearing, the court continued the hearing to determine whether Debtors will be able to confirm a Chapter 13 Plan.

At the hearing ------.

~~Cause exists to reconvert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted / denied, and the case is reconverted 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 J. Michael Hooper ("the Former Chapter 7 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 Motion to Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.~~

****

21.	17-28363-C-13 SNM-3	CHESTER JIMERSON AND SUNITA RANI Stephen Murphy	MOTION TO CONFIRM PLAN 10-2-18 [180]

****

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.

Local Rule 9014-1(f)(1) Motion - 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 October 2, 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 xxxx.

Chapter 13 Trustee's Opposition:

The Chapter 13 Trustee opposes confirmation of the Plan based on the following:

A. Debtors' Plan may not be proposed in good faith based on the failure to preserve avoidable transfers to Debtor's parents, which may total as much as $66,000.00. The Trustee notes that the prior waiver of the statute of limitations (Dckt. 174), has not been formally rescinded or withdrawn, although may be subject to attack on the part of the parents. However, the court notes that Debtor's counsel indicates in his declaration that the waiver evidenced by Dckt. 174 will be withdrawn.

Former Chapter 7 Trustee's Opposition:

The former Chapter 7 Trustee, J. Michael Hooper, opposes confirmation of the Plan based on the following:

A. Debtors' Plan does not properly preserve the estate's avoiding powers relating to the transfer of approximately $66,000.00 to Debtors' parents which has a statute of limitations that runs on December 28, 2019.

The form Chapter 7 Trustee, flags for the court that two prior Plans proposed by Debtors did not adequately address the preservation of claims with respect the transfer of approximately $66,000.00 to Debtors' parents and a potential conflict of interest of by Stephen Murphy by representing the Debtors and the parents in both parent bankruptcy case and a related adversary proceeding.

Debtor's Counsel's Response:

Debtor's counsel responds that the waiver previously entered into by the parents is withdrawn. Dckt. 198.

Discussion:

As addressed at the previous hearing to confirm the Debtors Second Amended Plan, preserving the estate's ability to avoid the subject transfers was a valid objection by the parties. Further, the court noted at that hearing the Form Chapter 7 Trustee's Motion to Reconvert to a Chapter 7 is likely to be granted if the present Plan is not confirmed.

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.~~

****

22.	18-25065-C-13 DPC-1	MICHAEL LUCERO AND MARIA MARTINEZ Chad Johnson	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-26-18 [18]

See also Final Ruling #34 (Valuing Secured Claim)

****

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.

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 26, 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 overrule the Objection and the Plan is confirmed.

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. The court notes that the Motion to Value is set for hearing on November 18, 2018, (Dckt. 24) and has been granted.

B. The Debtors did not provide sufficient information to determine his business income and it is not clear whether the business income is joint income or attributable to one of the Debtors.

C. Debtor's petition did not list their prior bankruptcy case. Case No. 11-45180.

DEBTORS' RESPONSE:

The Debtors respond that on October 18, 2018 they: (1) filed a Motion to Value that is set for hearing on November 20, 2018; (2) amended their schedules to add business information and income statements; and (3) amended their petition to reflect they filed a prior bankruptcy case.

The court continued the hearing until November 20, 2018 to permit the court to resolve their Motion to Value and the Trustee's Objection to Confirmation at the same time.

Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The court notes that Motion to Value set for the same hearing date has a final ruling granting Debtors' Motion to Value.

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 the Objection is overruled, Debtors' Chapter 13 Plan filed on October 8, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying 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.

****

23.	18-25469-C-13 DPC-1	JAMES HAMMON Mohammad Mokarram	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-10-18 [23]

****

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.

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 October 8, 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 overrule the Objection.

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

A. Debtor may not be able to make all required Plan payments as two judgment creditor's secured claims are not provided for in the Plan. The court notes that both of the secured creditors' judgment liens were subsequently avoided. Dckts. 35; 36.

At the hearing ----.

RULING:

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 the Objection is overruled, Debtors' Chapter 13 Plan filed on October 8, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying 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.

****

24.	17-24770-C-13 PGM-5	DEANDRA JACKSON Peter Macaluso	MOTION TO CONFIRM PLAN 10-8-18 [122]

****

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.

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 October 8, 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 overrule the Objection.**~~

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

A. Debtor is delinquent $330.00 in plan payments. Debtor has another scheduled payment of $330.00 on November 25, 2018. Debtor has paid $2,676.00 into the plan.

B. Debtor's Statement of Income may be inaccurate. The Trustee is uncertain about whether Debtor is employed by both I Cook Café and the Dublin School District, and if so, what is Debtor's actual income.

DEBTOR'S RESPONSE:

Debtor's counsel responds that Debtor is current with all plan payments as of November 9, 2018. Dckt. 133. Debtor clarifies that she is no longer employed by Dublin School District and is only employed by I Cook Café. Dckt. 134, Declaration.

At the hearing ----.

~~**RULING:**~~

~~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 the Objection is overruled, Debtors' Chapter 13 Plan filed on October 8, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying 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.

****

25.	18-25882-C-13 DPC-1	PAUL NICKSON Susan Turner	OBJECTION TO CONFIRMATION OF PLAN 10-24-18 [16]

****

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).

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 October 24, 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 overrule the Objection.

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

A. Debtor's Plan may not be the best effort. Debtor's Form 122-C2 and Schedule J do not consistently list Debtor's non-filing spouses debt payments.

B. Debtor's Plan may unfairly discriminate against the general unsecured creditors. Debtor's Plan proposes to pay the unsecured claims of Debtor's non-filing spouse directly, presumably in full, while proposing to pay no less than 30% to the general unsecured creditors in the plan.

DEBTOR'S RESPONSE:

Debtor responds that the inconsistency between Form 122-C2 and Schedule was an error and filed an amended Form 122-C2. Dckt. 20. This correction increased Debtor's disposable income allowing for increased payments to the general unsecured creditors and a distribution of approximately 41% over the life

of the plan. Debtor proposes that these changes be incorporated through the order confirming the Plan. Dckt. 21.

TRUSTEE'S REPLY:

The Trustee states that the corrections proposed by the Debtor address the initial concerns raised by the Trustee. Additionally, the Trustee requests that any order confirming the Plan reflect that Debtor is willing to surrender any net tax refund over $2,000.00 for each year during the life of the Plan. Dckt. 25.

DEBTOR'S SUPPLEMENTAL RESPONSE:

Debtor states that he is agreeable to surrendering any net tax refund over $2,000.00 for each year during the life of the Plan. Dckt. 27.

RULING:

The Plan, as modified by the proposed language, 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 the Objection is overruled, Debtors' Chapter 13 Plan filed on September 18, 2018, as incorporating the agreed upon additional language, is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying 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.

****

FINAL RULINGS

26.	18-23485-C-13 MET-2	BETTY WALKER Mary Ellen Terranella	MOTION TO EMPLOY CIRIMELE AND ASSOCIATES AS REALTOR(S) 10-27-18 [50]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion— No 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 October 27, 2018. 28 days' notice is required. That requirement was met.

The Motion to Employ 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 Employ is granted.

Betty Walker ("Debtor") seeks to employ Gerri Kalk, with Cirimele Associates ("Real Estate Agent") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of the Real Estate Agent to sell property of the estate commonly known as 747 Tuolumne Street, Vallejo, CA.

The Debtor argues that the Real Estate Agent's appointment and retention is necessary to market and sell the property. The Real Estate Agent agrees to take a commission of 5% upon sale of the Property.

Gerri Kalk, a real estate agent employed by Cirimele Associates, testifies that she is a licensed real estate agent for the state of California and is familiar with the area where the subject property is located. Gerri Kalk testifies she and Cirimele Associates do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

TRUSTEE'S RESPONSE:

The Chapter 13 Trustee filed a response stating that he does not oppose the Motion. (Dckt. 55).

DISCUSSION:

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to

engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of the Real Estate Agent, considering the declaration demonstrating that the Real Estate Agent does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Cirimele Associates as the Real Estate Agent for the Debtor on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 53.

Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Betty 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 Motion to Employ is granted, and Debtor is authorized to employ Gerri Kalk as Real Estate Agent for the Debtor on the terms and conditions as set forth in the Listing Agreement as Exhibit A, Dckt. 53.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

****

27. 18-24314-C-13 LORRAINE LEGG MOTION TO CONFIRM PLAN
BLG-2 Chad Johnson 10-3-18 [28]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

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 October 3, 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.

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 July 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.

****

28.	18-25214-C-13 DPC-2	ALLISON DAVISON Michael Hays	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-17-18 [24]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

The Motion to Confirmation Plan is deemed moot due to the case being dismissed on November 14, 2018, 2018. (Dckt. 34)

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.
>
> **IT IS ORDERED** that the Motion is dismissed as moot.

****

29. 17-26720-C-13 WW-4 | MELISSA REGALA
Mark Wolff | CONTINUED MOTION TO MODIFY PLAN
8-22-18 [91]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

The Motion to Confirmation Plan is deemed moot due to the case being dismissed on November 14, 2018, 2018. (Dckt. 118)

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.
>
> **IT IS ORDERED** that the Motion is dismissed as moot.

****

30.	11-46134-C-13 PGM-1	DENNIS/DEBRA LAPOINTE Peter Macaluso	MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A. 10-23-18 [74]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors , Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2018. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Dennis and Debra Lapointe ("Debtors") commonly known as 158 Bayline Circle, Folsom, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $17,312.60. An abstract of judgment was recorded with Sacramento County on August 24, 2011, that encumbers the Property.

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of $335,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $472,526.30 as of the commencement of this case are stated on Debtors' Schedule D. Dckt. 1. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $2,487.99 on Amended Schedule C. Dckt. 71.

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 Dennis and Debra Lapointe ("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 judgment lien of Citibank (South Dakota), N.A., California Superior Court for Sacramento County, recorded on August 24, 2011, Book 20110824, Page 0594, with the Sacramento County Recorder, against the real property commonly known as 158 Bayline Circle, Folsom, 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.

****

31.	18-25359-C-13 BLG-2	JOSEPH VENEGAS Chad Johnson	MOTION TO CONFIRM PLAN 10-3-18 [24]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

The Motion to Confirmation Plan is deemed moot due to the case being dismissed on November 14, 2018, 2018. (Dckt. 48)

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.
>
> **IT IS ORDERED** that the Motion is dismissed as moot.

****

32.	18-24560-C-13 ALF-3	MICHAEL/JUANITA CHOCHLA Ashley Amerio	MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC. 10-19-18 [54]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2018. The 28 days' notice is required. That requirement was met.

The Motion to Value Collateral and Secured Claim of Consumer Americredit Financial Services ("Creditor") is granted, and the Creditor's secured claim is determined to have a value of $21,000.00.

The Motion filed by Michael and Juanita Chochla ("Debtors") to value the secured claim of Americredit Financial Services Inc. ("Creditor") has been resolved through a stipulation entered into on October 29, 2018. Dckt. 66. Debtors are the owners of a 2015 Chevrolet Traverse. Debtor and the Creditor have agreed that the replacement value is $21,000.00. Debtors argued in their Motion to Value that the Vehicle was worth $19,123.00.

Debtor and the Creditor agree that the lien on the Vehicle's title secures a purchase-money loan incurred more than 910 days before the filing of the petition. Dckt. 66. The debt secured by the vehicle owed to Creditor with a balance of approximately $26,123.51. 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 $21,000.00, 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 $21,000.00.

The Trustee filed a non-opposition on November 2, 2018. Dckt. 70.

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 Michael and Juanita Chochla ("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 Americredit Financial Services Inc. ("Creditor") secured by an asset described as 2015 Chevrolet Traverse ("Vehicle") is determined to be a secured claim in the amount of $21,000.00, 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 $21,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

****

33.	18-20964-C-13 PGM-1	BRADLEY GILBREATH Peter Macaluso	MOTION TO CONFIRM PLAN 10-7-18 [48]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

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 October 3, 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.

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 October 7, 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.

****

34.	18-25065-C-13 BLG-1	MICHAEL LUCERO AND MARIA MARTINEZ Chad Johnson	MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES, INC. 10-18-18 [24]

See also Ruling #22

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 4, 2018. The 28 days' notice is required. That requirement was met.

The Motion to Value Collateral and Secured Claim of Consumer Portfolio Services, Inc. ("Creditor") is granted, and the Creditor's secured claim is determined to have a value of $12,249.00.

The Motion filed by Michael Lucero and Maria Martinez ("Debtors") to value the secured claim of Consumer Portfolio Services, Inc. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2013 Toyota Camry. Debtor seeks to value the Vehicle at a replacement value of $12,249.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor states that the lien on the Vehicle's title secures a purchase-money loan incurred more than 910 days before the filing of the petition. Dckt. 26, Declaration. The debt secured by the vehicle owed to Creditor with a balance of approximately $17,950.27. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $12,249.00, 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 $12,249.00.

The Trustee filed a non-opposition on November 2, 2018. Dckt. 35. The Trustee also notes that the Creditor filed Claim No. 3-1 asserting that the secured claim was $12,249.00.

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 Michael Lucero and Maria Martinez ("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 Consumer Portfolio Services, Inc. ("Creditor") secured by an asset described

as 2013 Toyota Camry ("Vehicle") is determined to be a secured claim in the amount of $12,249.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $12,249.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

****

35. 15-27166-C-13 VALERIE IVY MOTION TO MODIFY PLAN
EJS-4 Eric Schwab 10-9-18 [97]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

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 October 39 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Modify 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 Modified 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.

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 Modify 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 Modified Plan filed on October 9, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Modified 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.

****

36. 18-24967-C-13 PLC-3 | MARTIN CEBALLOS
Peter Cianchetta | MOTION TO CONFIRM PLAN
9-25-18 [32]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

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 September 25, 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.

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 September 6 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.

****

37. 18-24079-C-13 KWS-4 — VALAREE ST. MARY, Kyle Schumacher — TRUSTEE'S RESPONSE TO DEBTOR'S EX PARTE MOTION TO VACATE ORDER DISMISSING CASE
10-24-18 [55]

DEBTOR DISMISSED: 10/11/2018

****

No appearance at the November 20, 2018 hearing is necessary. The court granted Debtor's Motion to Vacate Order Dismissing Case on November 14, 2018. Dckt. 64.

****

38.	18-25622-C-13 DPC-1	YESENIA CONTRERAS Mario Blanco	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-17-18 [14]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation being consistent with the opposition filed to the Motion, filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 9014 and 7041 permits the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Confirmation of Plan**.

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.
>
> An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed a notice of dismissal of the objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Objection being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

****

39.	18-25178-C-13 PGM-1	FRANK DAVIS Peter Macaluso	CONTINUED MOTION TO EXTEND AUTOMATIC STAY 8-28-18 [12]

****

Final Ruling: No appearance at the November 20, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 28, 2018. Fourteen days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Motion to Extend the Automatic Stay is continued to December 4, 2018 at 2:00 p.m.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-25641, "First Case") was filed on July 15, 2015 and dismissed without discharge on February 28, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id*. at § 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, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

Elliot-Cook, 357 B.R. at 814-815.

Debtor's Basis for Extension of the Stay:

Here, the Debtor claims that he was unable to make the required payments in their previous bankruptcy due to an inability to refinance a mortgage. However, Debtor's statement is not wholly accurate.

The court notes that in Debtor's previous bankruptcy, the Debtor's initial Plan, filed on July 29, 2015 and confirmed on November 9, 2015, included a provision that Debtor would pay the mortgage claim within (18) months by either refinancing the mortgage or selling the property. First Case Dckts. 13; 28. On February 3, 2017, the Trustee sought to dismiss the case because after (18) months the Debtor had not refinanced the mortgage or sold the house. First Case Dckt. 41. The Trustee noted in his motion to dismiss that, absent the sale or refinanced, Debtor's Plan required 131 months to finish because the Plan only provided for monthly payments of $700.00.

On February 28, 2017, the court converted the case to a Chapter 7 instead of being dismissed. First Case Dckt. 49.

Shortly thereafter, on May 21, 2017, Debtor sought to reconvert the case back to a Chapter 13 with the stated purpose of paying off the mortgage in order to keep his home. First Case Dckt. 64. As part of his motion to reconvert, Debtor's brother and niece submitted declarations stating that they were able to contribute a combined $1,300.00 a month to Debtor's monthly payments. First Case Dckts. 67; 68. The court granted Debtor's Motion to Reconvert. First Case Dckt. 77. Upon reconversion, Debtor submitted a proposed Plan to payoff the mortgage over (60) months at 0% interest, with monthly payments of $1,522.00. First Case Dckt. 83. The court was unpersuaded that Debtor could propose a (60) month plan after reconversion and that Debtor should be allowed to pay 0% interest. First Case Dckt. 110. As such, on September 19, 2017, the court sustained the Trustee's and the Creditor's Objections to Debtor's Plan. Shortly thereafter, Debtor obtain present counsel and voluntarily dismissed his case in February 2018. First Case Dckts. 120; 123; 125.

In support of the success of the present bankruptcy, the Debtor claims that he and his brother are in a better position to refinance the mortgage and/or assist with plan payments. Debtor also claims that his niece may also be able to assist with plan payments. Debtor's motion does not contain declarations from either his brother or daughter attesting to their ability and/or willingness to assist Debtor. Moreover, Debtor's declaration does not provide the specific dollar amounts that Debtor's family members purportedly anticipate contributing to the Plan. Debtor's Plan proposes monthly payments of $1,550.00 and proposes to pay the Creditor 4% over the life of the Plan. Dckt. 20. While not objections to the Plan are currently filed, the court notes that the deadline to object is October 4, 2018. Dckt. 28.

Trustee's Opposition:

The Chapter 13 Trustee filed an opposition to the Debtor's Motion for Stay Relief, Trustee states that the previous case was dismissed on motion of the Trustee due to Debtor's failure to refinance or sell his residence within 18 months of Plan confirmation. The Trustee also noted that Debtor's filing was incomplete at the time of the filing of the Opposition and the Trustee was not able to determine whether the Plan was confirmable. The court notes that the Debtor filed a Plan on August 31, 2018 but has not yet filed a motion to confirm. (Dckt. 20).

Creditor David Mecurio's Opposition:

Creditor, David Mecurio, objects the Debtor's request to extend the automatic stay. Creditor claims that Debtor's current bankruptcy was not filed in good faith and suggests it is merely an attempt to

thwart the Creditor's foreclosure sale of Debtor's residence. Creditor claims that because Debtor's motion does not address how he proposes to make the necessary payments to his creditors, including various taxing authorities, the stay should not be extended.

RULING

Debtor's current Schedule I lists $1,218 of income from Social Security, plus an additional $1,200 from "Friends and Family." Dckt. 19. On Schedule J, Debtor lists having monthly expenses of only $868.00 (which does not include any mortgage payments). *Id.* This includes $100 for property taxes, but nothing for: insurance or repairs and maintenance for the residence.

Creditor Mecurio has filed Proof of Claim No. 1 for a secured claim in the amount of $80,051.61. The treatment for this claim is to pay it with 4% interest, amortized over 60 months. Using the Microsoft Excel Loan Calculator, the monthly payment this creditor's claim would be $1,474.27. If the interest rate was increased to 5.5%, the monthly payment amount increases to $1,529.98.

The court considers the proposed Chapter 13 Plan, Dckt. 20, in considering whether this case and Plan are being proposed in good faith. The Plan provides for following the following claims:

Class 2 Secured Claim, Mecurio, $80,051.61.....($1,474.27) [at proposed interest rate]

Class 2 Secured Claim, IRS, $1,500.00.....($ 30.00) [at proposed interest rate]

Debtor Attorney's Fees, $3,000.....($ 50.00)

Chapter 13 Trustee Fees.....($ 100.00)

General Unsecured Claim Dividend, $7,641.21.....($ -0-) [0.00% Dividend]

The above Plan requires a monthly plan payment of $1,654.27 (if the court accepts the proposed 4% interest rate). Because there are no general unsecured claims to be paid, counsel for Debtor will have too amortize his fees at $50 a month over the Plan, otherwise Debtor could not make the required proposed Class 2 payments.

Debtor would have to find an additional $105.00 a month to fund the above proposed plan. In Debtor's declaration he states that his brother, who has to assist funding the plan, makes only $3,500 a month. No declarations are provided of the people who will "contribute" the monthly plan payment amount.

At the hearing, Creditor reported that Debtor had failed to pay property taxes, which now are in excess of $20,000, and the County has a tax sale (which is stayed by the automatic stay) for February 2019. Opposition, p.3:11-18, Dckt. 22.

At the hearing Debtor's counsel acknowledged these increasing financial challenges and the need for the Debtor to address some of the growing financial realities. Debtor reported that he is working on an amended plan addressing these realities and working to protect Debtor's equity in the property. Debtor and Creditor agreed to an interim extension of the stay to allow Debtor to focus on the new plan and not be distracted by the effect of 11 U.S.C. § 362(c)(3)(A) with respect to the automatic stay "terminating as to the Debtor."

The motion was granted on an interim basis and the automatic stay is extended for all purposes through and including December 11, 2018, unless terminated or extended by further order of this court and the court continued the hearing to November 20, 2018. Dckt. 35.

The court notes that Creditor Mecurio has filed a Motion for Relief from Stay set for hearing on December 4, 2018 and has a pending Objection to Debtor's Motion to Confirm Plan filed on October 23, 2018. Dckts. 61; 66.

On November 16, 2018, Debtor and the responding Creditor filed a Stipulation requesting that eh court continued the hearing to December 4, 2018 to allow for the resolution of the pending motion to Confirm the Chapter 13 Plan prior to ruling on the present Motion. Dckt. 78.

At the hearing ----.

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 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 and the automatic stay is continued to December 4, 2018 at 2:00 p.m.

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