

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge
Sacramento, California

January 15, 2019 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 29.**

1.	<u>15-26368</u> -C-13 <u>DPC</u> -4	ERNEST/SHARON VICTORINE Robert Fong	STATUS CONFERENCE RE: MOTION TO MODIFY CONTEMPT ORDER UNDER FRBP 9024 1-30-18 [<u>157</u>]
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DEBTOR DISMISSED:
11/07/2017
JOINT DEBTOR DISMISSED:
11/07/2017

No tentative provided.

2. [18-24252](#)-C-13 SARA ALVA
 [18-2168](#) Pauldeep Bains
 RUSHING V. ALVA

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-10-18 [[1](#)]**

See Final Ruling #42

No tentative provided.

3. [18-24959](#)-C-13 AARON/JESSICA MEAUX
 [18-2161](#) Aubrey Jacobsen
 MEAUX ET AL V. CCO CALIFORNIA,
 INC.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-4-18 [[1](#)]

See Final Ruling #47

No tentative provided.

See Final Ruling #32

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

A. Debtors may not be able to make required Plan payments. Debtors listed as an expense repayments on a retirement loan. Debtors list a monthly expense of \$544.00 a month. However, upon review of the Debtors' paystubs, \$544.00 represents the repayment per pay check and the expense is actually \$1,122.81 a month. The Trustee questions whether the Debtors have sufficient disposable income to make the payments proposed in the Plan.

B. Debtors Plan relies on a Motion to Value that is also set for hearing on January 15, 2019. Dckt. 12. The court notes that no opposition the Debtors Motion to Value has been filed.

C. The Trustee continued the Meeting of Creditors to January 24, 2019 to allow debtor Jeffrey Balugo to obtain a new Social Security card in order to provide proof of his Social Security Number to the Trustee.

D. The Trustee also notes that prior to the hearing a payment of \$1,700.00 will become due.

At the hearing -----.

Absent evidence that Debtors have sufficient disposable income to make required Plan payments, 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.

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, Debtor's Attorney's, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2018. 28 days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is granted.

Jayne Wood and Heather Wood ("Debtors") seek permission to obtain a new loan to bring their first mortgage current. The new loan would encumber real property commonly known as 2915 Quinter Way, Sacramento, California, in the amount of \$32,572.30. The lender on the loan is the Secretary of Housing and Urban Development, the loan has a maturity date of January 1, 2043, and does not have any interest.

The Trustee filed a response stating that the loan appears to be in the best interest of the court. Dckt. 106. However, the response also flags inconsistencies for the court which appear to have been addressed by Debtors' Reply, clarifying that the Debtors have filed a Modified Plan and references to the prior Plan inadvertent. Dckt. 109.

At the hearing ----.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Jayme Wood and Heather Wood (“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 Jayme Wood and Heather Wood are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 96.

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

A. The Debtor is delinquent in plan payments in the total amount of \$345.00, with another scheduled payment of \$345.00 due prior to the hearing. Debtor has paid \$0.00 into the plan.

B. The Plan exceeds (60) months. Per the Trustee's calculations the Plan requires (73) months to complete.

C. The Trustee questions whether the Plan is feasible based on Debtor's stated net business income.

D. The Statement of Financial Affairs does not appear accurate. For example, the Trustee states that Debtor reported no income for the prior two years despite the Debtor's 2016 and 2017 tax returns

reflecting earned income. The Trustee states the Debtor's stated business income is not consistent between Debtor's schedules and his Form 122C-1.

E. Attorneys fees are inconsistently listed. The Plan provides for \$4,000.00 of attorneys fees while the Disclosure of Compensation of Attorney reflects attorney fees totaling \$6,000.00.

At the hearing -----.

Absent evidence that Debtors are current in plan payments, have sufficient disposable income to make required Plan payments, and addressed the stated informational inconsistencies, 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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2018. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice). That requirement was met.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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, -----

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The Motion to Sell Property is granted.
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The Bankruptcy Code permits Barbara Biggs, the Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 5510 11th Ave, Sacramento, California ("Property").

The proposed purchaser of the Property is Max Vieira, and the terms of the sale are:

- A. The sale price is \$436,000.
- B. The Real Estate Agent commission is \$21,800.00 to be paid through escrow from the proceeds of the sale.
- C. The sale will pay off liens to Wildan Financial Services for an energy lien (\$10,546.88) and El Dorado Savings Bank for their first mortgage (\$74,797.00).
- D. Closing costs of approximately \$6,404.64 will be paid through escrow.

- E. The net proceeds expected are approximately \$323,596.53.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Debtor will be able to all remaining claims in the case, with a surplus going to the Debtor after all fees are paid.

Movant has estimated that a 5% percent broker's commission from the sale of the Property will equal approximately \$21,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 5% percent commission.

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

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

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

IT IS ORDERED that Barbara Biggs, the Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Max Vieira or nominee ("Buyer"), the Property commonly known as 5510 11th Ave, Sacramento, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$436,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 23, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Debtor in Possession is authorized to pay a real estate broker's commission in an amount equal to 5% percent of the actual purchase price upon consummation of the sale. The 5% percent commission shall be paid to real estate agent, Keller Williams Realty.
- F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not

disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is XXXXX.

This Motion requests an order avoiding the judicial lien of Dale C. Webb ("Creditor") against property of Lorraine Legg ("Debtor") commonly known as 1791 Landmark Drive, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$330,000.00. An abstract of judgment was recorded with Solano County on July 21, 2015, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of **\$600,000.00** as of the petition date. Dckt. 42. The unavoidable consensual liens that total \$449,070.02 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 13. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(3) in the amount of \$175,000.00 on Schedule C. Dckt. 13.

TRUSTEE RESPONSE:

The Trustee responds that the Debtor's Schedules A/B filed on July 14, 2018 (Dckt. 13) indicate that the value of the Property is \$650,000.00. While Debtor's Amended Schedules A/B filed on December 12, 2018, the same day as this Motion to Avoid Lien, indicate the value of Property is \$600,000.00. Dckt. 42. The Trustee is concerned that the Debtor has not adequately demonstrated the \$50,000.00 reduction in

value that would, if accurate, allow the Debtor to avoid the judgment creditor's lien in its entirety.

The Trustee notes that Debtor states in his Motion that first deed of trust held by Champion Mortgage Company is in the total amount of \$449,070.02. Champion Mortgage Company filed a secured claim on September 18, 2018 (Claim No. 9-1) for \$434,357.12.

The Trustee also notes that Dale C. Webb has not filed a proof of claim to date.

Further, the court notes that Mr. Webb has not opposed the Motion or contested the value of the Property.

DEBTOR'S RESPONSE:

Debtor's attorney responds that the reduction in value of the Property is based on a recent offer Debtor received for her home. Dckt. 48. Debtor's attorney also states that the amount of the unavoidable consensual lien was provided by Debtor and support of that contention Debtor's attorney filed as Exhibit A document titled Estimated Seller's Settlement Statement. Dckt. 49.

DISCUSSION:

At the hearing ----.

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).~~

~~ISSUANCE OF A COURT-DRAFTED ORDER~~

~~An order (not a minute order) substantially in the following form shall be prepared and issued by the court:~~

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

~~———— The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Lorraine Legg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~———— **IT IS ORDERED** that the judgment lien of Dale C. Webb, California Superior Court for San Francisco County Case No. CGC-11-512495, recorded on July 21, 2015, Document No. 201500065743, with the Solano County Recorder, against the real property commonly known as 1791 Landmark Drive, Vallejo, 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.~~

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 December 1, 2018. 28 days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is denied.
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Anthony Jones and Peggy Jones ("Debtors") seek permission to purchase a 1997 KW Tractor, with a total purchase price of \$32,000.00 and monthly payments of \$1,078.21 over (36) months to Maczka, Inc. with a 13% interest rate. Debtors state that they are presently renting the vehicle with monthly rental payments of \$1,500.00.

TRUSTEE RESPONSE:

The Trustee does not oppose the Debtors Motion but flags for the court the interest rate of 13% possibly not being best financing option for Debtors. Dckt. 32. The Trustee does note that it appears that the vehicle is necessary for Debtors to maintain their plan payments because Debtor Anthony Jones is a truck driver.

DISCUSSION:

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D.

Ky. 2007).

[Best Interest of Debtor]

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—13%. While it appears that the vehicle is specific type of truck necessary for Debtor Anthony Jones to earn income, the court is trouble by the high interest rate.

At the hearing ----.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Anthony Jones and Peggy Jones (“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 Anthony Jones and Peggy Jones are not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 30.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2018. 14 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Mechanics Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$9,589.00.

The Motion filed by April Byran ("Debtor") to value the secured claim of Mechanics Bank successor by merger to California Republic Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Nissan Sentra S ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,589.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred 1,076 days prior to the filing of the petition, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,112.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$9,589.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by April Byrant (“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 Mechanics Bank successor by merger to California Republic Bank (“Creditor”) secured by an asset described as 2015 Nissan Sentra S (“Vehicle”) is determined to be a secured claim in the amount of \$9,589.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,589.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Thru #12

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 December 4, 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.
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtors' Plan relies on a Motion to Value. The court notes that the Motion to Value is also set for hearing on January 15, 2019. Dckt. 20.

At the hearing -----.

Absent evidence that Debtors prevail on their Motion to Value, 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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2018. 14 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$18,500.00.

The Motion filed by Cesar Toledo and Raquel Toledo ("Debtors") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2015 Chevrolet Traverse ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$18,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on May 1, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$25,574.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$18,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Cesar Toledo and Raquel Toledo (“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 Golden 1 Credit Union (“Creditor”) secured by an asset described as 2015 Chevrolet Traverse (“Vehicle”) is determined to be a secured claim in the amount of \$18,500.00, 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 \$18,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

A. Debtor may not be able to make required Plan payments based on Debtor's own statements at the First Meeting of Creditors.

B. Debtor is married and has not filed a Spousal Waiver for use of the Californian State Exemptions.

DEBTOR'S RESPONSE:

Counsel for Debtor states Debtor has made timely payments over the last two months and that on January 7, 2019, Debtor filed a Spousal Waiver (Dckt. 37).

At the hearing -----.

Absent evidence that Debtor is capable of making the required Plan payments, 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.

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, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2018. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is denied.

Christopher Bergeron ("Debtor") seeks confirmation of the Modified Plan because Debtor has had changes in his ability to earn income as a truck driver due to expenses related to truck maintenance. Dckt. 20 (Declaration). Debtor states that he will surrender the truck and use a truck provided by a friend that is more reliable. The Modified Plan still provides for a 100% dividend to allowed unsecured claims. Dckt. 22 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 27, 2018. Dckt. 27.

A. The modified Plan proposes to reclassify creditor Calfund, LLC from Class 2 to Class 3. The Plan does not authorize the disbursements already made by the Trustee in the amount of \$5,882.48. This the claim that relates to the surrendered truck.

B. The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Christopher Bergeron (“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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2018. 14 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of JP Morgan Chase Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$8,183.00.

The Motion filed by Karen Leitheiser and Craig Green ("Debtors") to value the secured claim of JP Morgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor Craig Green's declaration. Debtor Craig Green is the owner of a 2014 Chevrolet Cruze LS 4D Sedan ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$8,183.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on April 11, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,728.64. 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 \$8,183.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Karen Leitheiser and Craig Green (“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 JP Morgan Chase Bank, N.A. (“Creditor”) secured by an asset described as 2014 Chevrolet Cruze LS 4D Sedan (“Vehicle”) is determined to be a secured claim in the amount of \$8,183.00 , 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 \$8,183.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

A. Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$140,837.00 and the Debtor proposes a 0% dividend to unsecured creditors.

B. Debtor's Plan provides for paying an ongoing student loan payment of \$600.00 a month which appears to be unfair discrimination to the general unsecured creditors who are to receive 0%.

C. Debtor's Meeting of Creditors was continued to January 10, 2019 to allow for the Debtor to provide verification of her Social Security Number.

DEBTOR'S RESPONSE:

Counsel for Debtor states that Debtor will provide proof of her Social Security Number at the January 10, 2019 Meeting of Creditors. Additionally, Debtor is said to be in the process of resolving the other issues raised by the Trustee.

DISCUSSION:

The court notes that the Trustee report filed on January 11, 2019 indicates Debtor did not appear at the continued Meeting of Creditors.

At the hearing -----.

Absent evidence that Debtor has provided proof of Social Security Number and provides for all non-exempt equity to be paid into the Plan, 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.

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, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is denied.

Fernani Narvasa ("Debtor") seeks confirmation of the Amended Plan because the originally filed plan was not consistent with the filed proofs of claims for all creditors. Dckt. 31 (Declaration). The Amended Plan attempts to make the stated obligations related to U.S. Bank, N.A. and the IRS consistent with the filed Proofs of Claim Numbers 24 and 1. Dckt. 36 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 19, 2018. Dckt. 52. The Trustee's Opposition is based on the following:

A. The Trustee states that Plan requires 71 months to complete, exceeding the allowed time under 11 U.S.C. § 1332(d). The Trustee states that the monthly plan payment must increase from the proposed \$3,750.00 payment to \$4,054.74.

B. The Plan is not the Debtor's best effort. The Debtor improperly claims expenses of \$487.00 for a Nissan Altima and a \$250.00 contribution to care of household or family members that Debtor's daughter is paying, based on admissions made at the Meeting of Creditors. Additionally, Schedule D lists American Credit Acceptance for \$16,638.00 but the creditor is not provided for in Debtor's Amended Plan.

At the hearing -----.

Absent evidence that Debtor can complete the Plan in the required 60 months and that the Plan provides for all disposable income, the Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by 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 to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

See Final Ruling #46

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Plan is XXXXX.

Francisco Solorio ("Debtor") seeks confirmation of the Plan filed on November 20, 2018. Dckt. 26 (Declaration). The Plan proposes payments for \$1,225.00 for 60 months with dividend of approximately 8% to general unsecured creditors. Dckt. 28 (Plan).

CREDITOR'S LATE-FILED OPPOSITION

U.S. Bank Nation Association ("Creditor") holding a secured claim filed an Opposition on January 9, 2018. Dckt. 38. Creditor asserts that Debtor's Plan does not provide for all pre-petition arrears.

At the hearing ----.

The Amended Plan XXXX with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is XXXX confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Francisco Solorio

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

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

Thru #20

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

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, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 14, 2018. 14 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Flagship Credit Acceptance, LLC("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$6,724.00.

The Motion filed by Octavio Gonzalez Saenz and Diana Carolina Saenz ("Debtors") to value the secured claim of Flagship Credit Acceptance, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Toyota Venza ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,724.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor's Motion has be "served" by delivery to a post office box. Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Debtors state in their declaration that the lien on the Vehicle's title secures a purchase-money loan

incurred more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,682.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$6,724.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Octavio Gonzalez Saenz and Diana Carolina Saenz("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 Ally Financial ("Creditor") secured by an asset described as 2010 Toyota Venza ("Vehicle") is determined to be a secured claim in the amount of \$6,724.00, 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 \$6,724.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 14, 2018. 14 days notice is required and that requirement was met.

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

The Motion to Value Collateral and Secured Claim of Ally Financial ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$11,925.00.

The Motion filed by Octavio Gonzalez Saenz and Diana Carolina Saenz ("Debtors") to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtor's declaration. The court notes that the body of the motion appears to reference the incorrect creditor claiming that the creditor is Flagship Credit Acceptance, the same creditor identified in another motion to value filed on the same date. Dckt. 11. Debtor is the owner of a 2015 Chevy Camaro ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$11,925.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The "service" of the Motion is purported to have been made through a post office box. Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Debtors state in their declaration that the lien on the Vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$18,339.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$11,925.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Octavio Gonzalez Saenz and Diana Carolina Saenz("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 Ally Financial ("Creditor") secured by an asset described as 2015 Chevy Camaro ("Vehicle") is determined to be a secured claim in the amount of \$11,925.00, 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 \$11,925.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 27, 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 granted.

Jose Sandoval ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-25669) was dismissed on November 19, 2018, after Debtor did not file all required pre-petition tax returns or provide the Chapter 13 Trustee all required documents. *See* Order, Bankr. E.D. Cal. No. 18-25669, Dckt. 55. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the issues regarding the non-filed tax returns have been resolved. Debtor claims that the IRS Objected to the Plan because there were non-filed Forms 940. However, Debtor claims that he did not have employees and has resolved this dispute with the IRS. Additionally, Debtors states that he has retained new counsel who is able to assist him in providing all required documents to the Chapter 13 Trustee.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Jose Sandoval (“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.

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 September 19, 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 grant the Trustee's Objection and the Plan is not confirmed.~~

The Trustee filed an Objection to the Confirmation of Plan, it appears that the Motion filed by the Trustee corresponds to another bankruptcy proceeding but the Declaration in support of the Motion appear to correctly identify the Debtor. Dckt. 25. It appears from the Declaration that the Trustee opposes confirmation based on the fact that:

- A. Debtor did not attend the September 27, 2018 Meeting of Creditors.
- B. Debtor has not filed all required tax returns.
- C. Debtor does not provide sufficient support for the claimed business income reported on Schedule I.
- D. Debtor's Plan relies on a Motion to Value Collateral.

DEBTOR'S RESPONSE:

Debtor's counsel responds, without a declaration, that the Meeting of Creditors was continued to

October 25, 2018, the required tax returns have been filed, the business attachment was filed on October 1, 2018 (Dckt. 3), and the Motion to Value is set for October 23, 2018. (Dckt. 42). Debtor requested a continuance to permit the Meeting of Creditors set for October 25, 2018 to conclude.

At the hearing held on October 16, 2018 the court continued the hearing to November 6, 2018, to allow for additional time for the Debtor to cure the issues raised by the Trustee. The hearing was again continued to January 15, 2019 to be heard after the hearing on Debtor's Motion to Value Collateral of Santander Consumer.

TRUSTEE'S UPDATED STATUS OF THE CASE:

The Trustee states that the circumstances of the case have changed since the original Objection to Confirmation was filed. Specifically, the Debtor's Motion to Approve Loan Modification was granted on December 18, 2018. Dckt. 83. The Debtor will begin making direct mortgage payment to Ditech Financial, LLC at the reduced amount of \$1,941.03. The Plan presently provides that the Trustee will pay the mortgage in Class 1, as such the Plan will need to be amended. Further the Debtor is delinquent \$5,77.00 under the current filed plan.

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 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 granted and the Plan is not confirmed.~~

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 December 5, 2018. Fourteen days' notice is required. That requirement was met.

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

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

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

A. Debtor's Plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1326(a)(4) because Debtor proposes a 0% dividend to general unsecured creditors while Debtor's non-exempt equity totals \$70,409.00 and proposes to pay \$60,026.00 in priority tax claims.

B. Debtor may have more equity in real property identified as 2920 Princess Helen Court, El Dorado Hills, California. Debtor schedules indicate that the property's value is \$1,000,000.00 and that Debtor only has a 50% interest. However, Debtor's statements at the Meeting of Creditors indicate that Debtor may have a greater interest in the property. The other stated owner is Debtor's "ex-boyfriend" who Debtor stated did not make any contributions or payments toward the property.

C. Debtor may not have accurately listed the value of her business Omega, LLC and the real value

may be greater.

D. Debtor may not be able to make the payments proposed under the plan based on Debtor's Statement of Financial Affairs indicating there may be insufficient available income. However, the Trustee notes that there may be expenses that have not been provided. Accordingly, the Trustee also questions whether Debtor has proposed to pay all available disposable income into the Plan.

E. The Trustee also questions expenses for rent that average \$1,699.25 a month that appear to be payments to Debtor's daughter for the same address as the Debtor's residence.

At the hearing -----.

Absent evidence that Debtors have proposed to pay all disposable income and demonstrate that the Plan provides for all non-exempt equity, 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.

Thru #25

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

Local Rule 9014-1(f)(1) Motion—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 November 10, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is ~~XXXXX~~.

Betty Walker ("Debtor") seeks confirmation of the Amended Plan in order to address the Trustee's concern that the proposed sale of real property was not well defined and to provide for adequate protection payments in the interim. Dckt. 65 (Declaration). The Amended Plan provides for the sale of the property to close no later than June 2019 and for monthly plan payment of \$5,4750.00. Dckt. 67 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 18, 2018. Dckt. 78.

A. The Trustee claims the Plan payments are insufficient to pay the stated payments and the Trustee's administrative fees. Trustee asserts that Plan payments must be \$5,710.00.

B. The Trustee notes that the Solano County Tax Lien, which the Debtor proposes to pay in a lump sum from the sale of the real property, is approximately \$20,000.00 per Proof of Claim No. 14 what than listed by Debtor in Class 2 for the creditor.

C. The Trustee is unable to determine whether the Debtor can make the required Plan payments because they appear to rely on contributions from family members who have not submitted declarations in support.

CREDITOR WELLS FARGO BANK, N.A.:

Wells Fargo Bank, N.A. filed its Opposition stating that it is not opposed to Debtor selling the property so long as Debtor continues to make post-petition payments. Additionally, Creditor opposes the Plan because it does not contain an alternative treatment if the property is not sold.

DEBTOR'S RESPONSE:

To Trustee:

The Debtor counsel concedes that proposed Plan did not properly account for the Trustee's administrative fee and has proposed language to be included in an Order confirming the Plan that Debtor hopes will address the Trustee's concerns. Debtor's counsel is aware of the increased amount of the Solano County Tax and the Plan does provide for payment through the sale of real property. The Debtor's son provides a declaration in support of the family contributions.

To Wells Fargo:

Debtor's counsel notes that Wells Fargo has a pending Motion for Relief from Stay also set for hearing on January 15, 2019. Debtor's Plan provides for payments on Wells Fargo's Class 1 claim starting in January 2019 in the amount of \$441.65. The Plan also provides for pre-petition arrears on the claim in the amount of \$5,145.27, as well as the payments that have come due post-petition in the amount of \$3,092.00, to be paid with the proceeds of the sale of real property.

At the hearing -----.

The Amended Plan **xxxx** with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is **xxxx** confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by 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 Confirm the Amended Plan is **xxxx**.

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

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

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

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 December 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 overrule the Objection.~~

The Secured Creditor Umpqua Bank opposes confirmation of the Plan based on the following:

A. Debtor's Plan may not be feasible based on Debtor's stated negative income.

B. Debtor's Plan proposes to pay Secured Creditor claim through sale of its secured asset but does not provide for interest that Secured Creditor states it is entitled. Additionally, Debtor's Plan does not provide for any payments until January 2019.

C. Secured Creditor argues Debtor's Plan is speculative.

DEBTOR'S RESPONSE:

Debtor's counsel responds to Secured Creditors Objection as follows:

A. Trustee's Objection

Debtor disputes that the proposed Plan payments are not feasible. Debtor claims that the fact that "Means Test" reflects negative income does not mean that Debtor is not able to make the required Plan payments because it does not account for Social Security Income received by the Debtor.

A review of Schedules I and J provides a snapshot of the Debtor's actual current, and projected, disposable income. Debtor has gross income totaling \$7,533, which is comprised of: (1) \$1,900 net income from business, \$1,243 Social security, and \$4,390 in retirement. Schedule I, Dckt. 1 at 28-29.

For Expenses, Debtor lists (\$2,058) on Schedule J. *Id.* at 30-31. This leaves what Debtor says is \$5,475 in monthly net income. *Id.* at 31.

For the Plan before the court, Debtor pays the \$5,450.00 into the Plan, and then in Month 7 and continuing to the end of the plan 54 months later, Debtor's payments increase to \$7,421. Plan, Additional Provisions, Dckt. 67 at 8.

Court's review of Schedules

On its face, it thus appears that Debtor is short \$2,000 a month to fund the plan (even including the Social Security income). On the Schedule I form filed as an Exhibit A, Debtor adds that she is to receive an additional \$1,950 a month from unidentified family and friends to fund the Plan until the sale of the Tuolumne Street property closes. No evidence is presented as to the source of such monies and the ability to provide this \$2,000 a month income kicker.

There is a larger problem with Debtor's economics. Debtor has \$7,533 a month in income, which totals \$90,396. However, there is no withholding on Schedule I and no provision on Schedule J (filed and that form submitted as Exhibit B (Dckt. 66) in support of the Motion) that Debtor pays any Federal Income Tax, State Income Tax, or any other amounts relating to the \$90,000+ in annual income. Debtor has not provided the court with any basis for concluding that Debtor is exempt from state and federal tax laws.

B. Secured Creditor's Objection

The Debtor acknowledges that Secured Creditor's claim matured after the filing of the petition and the principal and interest due are determined. Debtor objects to additional interest sought by Secured Creditor. Debtor states that the Amended Plan provides for adequate protection payments of \$1,084.61 (the previous monthly mortgage payments) commencing in January 2019 and Debtor is also presently attempting to sell underlying asset.

At the hearing -----.

~~Debtors Plan provides Secured Creditor appropriate adequate protection payments and the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.~~

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

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

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

~~**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed. Chapter 13 Plan filed on November 10, 2018, is confirmed. Debtors' Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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 December 3, 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' First Meeting of Creditors was continued to February 14, 2019 to permit the Debtors to file their missing tax returns. The Plan cannot be confirmed without Debtors filing those returns.

B. Debtors may not have disclosed all assets. Specifically, Debtor Kim Gaeta has a personal injury claim that is not scheduled.

C. Debtors' Plan does not indicate whether attorney fees will be paid in accordance with Local Rule 2016-1(c) or whether Debtors will be filing and serving a motion for fees.

The Trustee requests that the hearing on the Objection be continued until February 14, 2019, after the continued Meeting of Creditors.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtors have not filed all required tax returns or scheduled all of their assets. 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.

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 December 3, 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 may fail that Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's nonexempt equity totals \$14,226.00. Debtor's Plan propose to pay a 20% dividend (\$4,972.00 to general unsecured and \$4,330.00 to priority claims). The Trustee asserts that Debtor has the ability to pay a 40% dividend to the general unsecured of \$10,391.00.

B. The Debtor's Plan may not provide to pay all of Debtor's disposable income.

C. Debtor's Plan relies on a Motion to Value the secured claim of Thrift Savings Plan in Class 2, but no motion has been filed. The Trustee is also concerned that this claim may be misclassified.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has provided for all of his disposable into to be paid into 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2018. 28 days' notice is required. That requirement was met.

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

The Motion for Entry of Discharge is XXXXX.

The Motion for Entry of Discharge has been filed by Cleveland Bellard ("Debtor"). With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. Debtor alleges that he has completed all required Plan payments. David Cusick's ("the Chapter 13 Trustee") final report was has not been filed. The order approving final report and discharging the Chapter 13 Trustee has not been entered. The entry of an order approving the final report is evidence that the estate has not yet been administered.

Debtor's Declaration (Dckt. 238) certifies that Debtor:

- A. has completed the plan payments;
- B. does not have any delinquent domestic support obligations;
- C. has completed a financial management course and filed the certificate with the court;
- D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;
- E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and

F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

TRUSTEE'S RESPONSE:

The Trustee is not certain that all Plan payments have been made. The Trustee notes that \$200,572.00 has been paid to date and all allowed claims have been paid in full except whatever attorney fees may be owing pursuant to amended Claim No. 6. The Trustee has a balance of \$155.51 on hand, had not filed the Notice to Debtor of Completed Plan Payments, the Trustee's Final Report and Account, or the Order Approving the Final Report and Discharging the Trustee. The Trustee also notes that no objection to Claim No. 6 is pending.

CREDITOR RESPONSE:

On January 2, 2018 (13 days prior to the hearing), Creditor Carole Rominger responded to Debtor's Motion. Creditor claims that Debtor is improperly seeking to Object to its claim of attorneys fees and/or seeking to value collateral. Creditor asserts that the relief sought by Debtor requires 35 days notice and they were only provided 28 days.

DEBTOR RESPONSE:

Debtor's counsel responds that Debtor will file an Objection to Claim No. 6 to be set for hearing on March 26, 2019. Debtor requests that this motion also be heard on the same date. Debtor also requests that the Creditor's Response be stricken claiming it was filed late.

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 for Entry of Discharge filed by Cleveland Bellard ("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**.

FINAL RULINGS

29. [18-25699](#)-C-13
[DPC-1](#)

SUSAN LOWERY
Michael Hays

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
11-14-18 [[29](#)]

Final Ruling: No appearance at the January 15, 2019 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Objection on December 18, 2018, Dckt. 36; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Susan Lowery (“Debtor”); **the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on September 13, 2018, is confirmed.**

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

Thru #33

Final Ruling: No appearance at the January 15, 2019 hearing is required.

<p>The Objection to Confirmation is dismissed without prejudice.</p>

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Objection on December 20, 2018, Dckt. 35; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Susan Lowery (“Debtor”); **the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on October 9, 2018, is confirmed.**

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

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). 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)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Plan is granted.</p>
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David Ronald Selick and Caroline Rohini Selick ("Debtors") have filed evidence in support of their Motion to Confirm their Plan. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. David Cusick ("the Chapter 13 Trustee") filed a Response indicating that he does not oppose the proposed modified plan and that Debtors are current under the proposed Plan. Dckt. 40. The Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by David Ronald Selick and Caroline Rohini Selick ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtors' Chapter 13

Plan filed on October 9, 2018, is confirmed. Debtors' Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

See Also Item #4

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral of Toyota Financial Services, and Creditor's secured claim is determined to have a value of \$20,875.00.

The Motion filed by Jeffrey Balugo and Jessica Balugo ("Debtors") to value the secured claim of Toyota Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtors are the owner of a 2015 Toyota Sienna LE (the "Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$20,875.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in March of 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$27,394.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$20,875.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Jeffrey Balugo and Jessica Balugo (“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 Toyota Financial Services (“Creditor”) secured by an asset described as a 2015 Toyota Sienna LE (“Vehicle”) is determined to be a secured claim in the amount of \$20,875.00, 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 \$20,875.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2018. 28 days' notice is required. That requirement was met.

The Motion to Incur Debt 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.

<p>The Motion to Incur Debt is granted.</p>
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Greg Allen Duley ("Debtor") seeks permission to purchase real property commonly known as 8919 Red River Court, Bakersfield, California, with a total purchase price of \$255,000.00 and monthly payments of \$1,966.29 to Castle & Cook Mortgage, LLC over 30 years with a 5.75% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted. The court notes that the Trustee did file a response stating the Trustee did not oppose Debtor's Motion, the response did flag for the court that Debtor's motion stated that his Plan was complete and reflects and increase in stated income. The court notes that the Plan is not completed and notes the Trustee's request for updated income statement from the Debtor.

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 Incur Debt filed by Greg Allen Duley (“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 Greg Allen Duley is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 32.

Thru #37

Final Ruling: No appearance at the January 15, 2019 hearing is required.

The Motion to Incur Debt is dismissed without prejudice.

Garry Chester and Michelle Gonzales (“Debtors”) having filed a Reply that requests that Motion be Dismissed, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on January 7, 2019, Dckt. 66; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Chapter 13 Trustee; the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Incur Debt filed by Garry Chester and Michelle Gonzales (“ the Debtors”) having been presented to the court, Debtors having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 66, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Incur Debt is dismissed without prejudice.

Final Ruling: No appearance at the January 15, 2019 hearing is required.

The Motion to Modify Plan is dismissed without prejudice.

Garry Chester and Michelle Gonzales (“Debtors”) having filed a Reply that requests that Motion be Dismissed, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on January 7, 2019, Dckt. 67; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Chapter 13 Trustee; the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Plan filed by Garry Chester and Michelle Gonzales(“ the Debtors”) having been presented to the court, Debtors having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 66, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Incur Debt is dismissed without prejudice.

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). 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)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Second Amended Plan is granted.

Kathleen Pignataro ("Debtor") has filed evidence in support of their Motion to Confirm their Second Amended Plan. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. David Cusick ("the Chapter 13 Trustee") filed a Response indicating that he does not oppose the proposed amended plan and that Debtors are current under the proposed Plan. Dckt. 46. The Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on November 14, 2018, is confirmed. Debtors' Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 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.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. (“Creditor”) against property of Mohammad Mahoud and Nejmah Mahmoud (“Debtors”) commonly known as 4411 Standrich Street, Sacramento, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,076.44. An abstract of judgment was recorded with Sacramento County on November 1, 2018, that encumbers the Property.

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$283,465.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$175,312.46 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor also claims that there is a Utility Lien with priority over Creditor that totals \$163.35. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Mohammad Mahoud and Nejmah Mahmoud (“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 Capital One Bank (USA), N.A., California Superior Court for Sacramento County Case No. 34-2018-00233834, recorded on November 1, 2018, Document No. 201811011124, with the Sacramento County Recorder, against the real property commonly known as 4411 Standrich Street, Sacramento, 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.

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2018. 28 days' notice is required. That requirement was met.

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

Kassi Martinez ("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. 15-26984) was dismissed on November 13, 2018, after Debtor did not make all required plan payments. *See* Order, Bankr. E.D. Cal. No. 15-26984, Dckt. 65. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor's father was very ill and Debtor had unanticipated expenses in connection with his care. Debtor's father died, accordingly those expenses will no longer be required.

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

case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Kassi Martinez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

39. [18-23885](#)-C-13
WW-[3](#)

JASPAL DEOL
Mark Wolff

MOTION TO CONFIRM PLAN
12-7-18 [[88](#)]

No Appearance is required at the January 15, 2019 hearing. The court ordered the hearing be continued to January 29, 2019, at 2:00 p.m. Dckt. 106.

40. [18-27148](#)-C-13
[MOH-1](#)

WADE NIELSEN
Michael Hays

CONTINUED MOTION TO VALUE
COLLATERAL OF MEADOW RIVER
INVESTMENTS, LLC
11-20-18 [\[13\]](#)

Thru #43

Final Ruling: No appearance at the January 15, 2019 hearing is required.

Wade Nielsen (“Debtor”)] having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Value Collateral of Meadow River Investments, LLC was dismissed without prejudice, and the matter is removed from the calendar.**

41. [18-27148](#)-C-13
[MOH-2](#)

WADE NIELSEN
Michael Hays

MOTION TO VALUE COLLATERAL OF
TRAVIS CREDIT UNION
12-31-18 [\[31\]](#)

Final Ruling: No appearance at the January 15, 2019 hearing is required.

Wade Nielsen (“Debtor”)] having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Value Collateral of Travis Credit Union was dismissed without prejudice, and the matter is removed from the calendar.**

42. [18-24252](#)-C-13
[18-2168](#)
IJR-2

SARA ALVA
Pauldeep Bains

MOTION FOR SUMMARY JUDGMENT
12-11-18 [[13](#)]

RUSHING V. ALVA

See Also Item # 2

No appearance at the January 15, 2019 hearing is required. The hearing will be continued to March 12, 2019 at 2:00 p.m.

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Jay Quilter ("Debtor") has provided evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick ("the Chapter 13 Trustee") or by creditors. David Cusick ("the Chapter 13 Trustee") filed a Response indicating nonopposition on December 21, 2018. Dckt. 44. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on November 27, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the January 15, 2019 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 November 27, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Brian Kenneth Sanchez ("Debtor") have filed evidence in support of confirmation. The Trustee filed an Opposition on November 20, 2018 indicating that insufficient notice was provided; however, Debtor filed an Amended Notice of Hearing curing the problem on November 27, 2018. No other basis for opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

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

Final Ruling: No appearance at the January 15, 2019 hearing 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 November 13, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

<p>The Motion to Confirm the Modified Plan is confirmed.</p>

Maria Enriqueta Valencia De Lopez ("Debtor") seeks confirmation of the Modified Plan (Dckt. 27) and filed a declaration in support of her motion (Dckt. 26).

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 27, 2018. Dckt. 32. The Chapter 13 Trustee objects that the Motion was not set on the proper amount of notice. Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1) require forty-two days' notice for a motion to confirm. Debtor provided 28 days' notice.

The court continued the December 11, 2018 hearing to permit Debtor to cure the notice deficiency. Debtor filed an Amended Notice of Hearing on November 27, 2018. The Amended Notice cures the notice deficiency. There has been no other stated opposition to the Modified Plan.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Maria Enriqueta Valencia De Lopez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on November 13, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

See Tentative #18

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 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 Capital One Bank (USA), N.A. ("Creditor") against property of Francisco Solorio ("Debtor") commonly known as 2968 Tourbrook Way, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,160.93. An abstract of judgment was recorded with Sacramento County on October 11, 2018, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$308,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$252,447.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Francisco Solorio (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Sacramento County Case No. 34-2018-00229383 , recorded on October 11, 2018, Document No. 201810110639, with the Sacramento County Recorder, against the real property commonly known as 2968 Tourbrook Way, Sacramento, 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.

MEAUX ET AL V. CCO CALIFORNIA,
INC.
TAG-1

See Also Item #3

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor and Defendant, on December 5, 2018. 28 days' notice is required. That requirement was met.

The Motion for Entry of Default Judgment 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 for Entry of Default Judgment is granted.

Aaron Meaux and Jessica Meaux ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on December 5, 2018. Dckt. 15. Plaintiff-Debtor seeks an entry of default judgment against CCO California, Inc. ("Defendant") in the instant Adversary Proceeding No. 18-2161.

The instant Adversary Proceeding was commenced on October 4, 2018. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on October 4, 2018. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 10.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 19, 2018. Dckt. 12.

REVIEW OF COMPLAINT

Plaintiff-Debtor filed a complaint to determine the validity of Defendant's Proof of Claim

Number 10. The Complaint contains the following general allegations as summarized by the court:

A. On September 26, 2018, Defendant filed Proof of Claim Number 10 for an unsecured debt in the amount of \$315.00. Defendant in support of its claim attached the loan originating documents dated October 22, 2013. Exhibit A, Proof of Claim No. 10-1.

B. Defendant did not attach any document or evidence regarding transactions on the account more recent than October 22, 2013.

First Claim for Relief- Objection to Proof of Claim 11 U.S.C. § 502(b)

Plaintiff alleges that Defendant's Proof of Claim is unenforceable because it is time barred under California Law (C.C.P. § 337) and that the underlying contract contains an attorney's fee provision for which Plaintiff is entitled to attorney's fees pursuant to California Civil Code § 1717.

Second Claim for Relief- Failure to Provide Required Information F.R.B.P. 9011(a) and L.B.R. 9004-1(c)(2)

Plaintiff alleges that Defendant failed to provide the address, phone number, or title of the person who signed the Claim in violation of F.R.B.P. 9011(a) and L.B.R. 9004-1(c)(2).

Prayer

Plaintiff-Debtor requests the following relief in the Complaint's prayer:

- A. Declaratory relief that Defendant Proof of Claim No. 10 is unenforceable;
- B. Injunctive relief requiring Defendant to withdraw their Proof of Claim No. 10;
- C. Award attorney's fees pursuant to Defendant's contract with Plaintiff and California Civil Code § 1717, as well as costs; and
- D. For such other relief as the court deems just and proper.

Plaintiff-Debtors' Declaration Filed In Support of Complaint:

On October 9, 2018, Plaintiff-Debtors filed a Declaration stating that it have been more than four years since they had any transaction on the account in connection with Defendant's Proof of Claim No. 10. Dckt. 8.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE’S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

- (1) the possibility of prejudice to the plaintiff,
- (2) the merits of plaintiff’s substantive claim,
- (3) the sufficiency of the complaint,
- (4) the sum of money at stake in the action,
- (5) the possibility of a dispute concerning material facts,
- (6) whether the default was due to excusable neglect, and
- (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE’S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor’s claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

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

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

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

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

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 10 indicates that the only documentation provided was the original loan document dated October 22, 2013 and does not provide any documentation reflecting any other transactions related to the loan. Plaintiff filed a declaration in support of their complaint stating that no transactions have occurred in the last four years. Dckt. 8.

No payment or other transaction occurred after October 22, 2013. Thus, the four-year statute of limitations expired on October 22, 2017.

This bankruptcy case was filed on August 7, 2018 after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety.

CONCLUSION

Applying these factors, the court finds that Plaintiff-Debtor will be prejudiced if the Proof of Claim No. 10 is not withdrawn, or if the court does not enter judgment determining that the Proof of Claim No. 10 is not unenforceable.

The court finds that the Complaint is sufficient, and the requests for relief requested therein are meritorious. The court has not been shown that there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding. The court finds it necessary and proper for the entry of a default judgment against Defendant.

ATTORNEY'S FEES

Plaintiff-Debtor seeks attorney's fees pursuant to California Civil Code § 1717(a), which provides for attorney fees if the contract specifically provides attorney's fees, which are incurred to enforce the contract, to the prevailing party.

The prevailing party must establish that a contractual provision exists for attorney's fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956).

California Civil Code § 1717 provides for application of contractual attorney's fees provisions to any prevailing party to the contract and that the reasonable attorney's fees shall be determined by the court.

California Civil Code § 1717(a) provides:

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Here, Plaintiff-Debtor provides evidence of the relevant provision in Exhibit A to the Complaint at page 7, included in the original loan document stating that reasonable attorney's fees are included in Plaintiff-Debtor's rights.

Plaintiff-Debtor provides evidence of the hours spent on this adversary through undersigned counsel's declaration in support of the Motion for Default Judgment. Dckt. 17. Counsel states that a total of 3.3 hours were spend on this proceeding and at the stated billing rate of \$250.00, counsel seeks \$825.00 in compensation and \$15 for non-attorney staff work.

RULING

The court grants the default judgment in favor of Plaintiff-Debtor and against Defendant and holds that Proof of Claim Number 10 is unenforceable. Attorney's fees of \$825.00 and costs of \$17.00 are awarded.

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

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

The Motion for Entry of Default Judgment filed by Aaron Meaux and Jessica Meaux ("Plaintiff-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 for Entry of Default Judgment is granted. The court shall enter judgment determining that CCO California, Inc.'s ("Defendant") Proof of Claim No. 10 is unenforceable.

IT IS FURTHER ORDERED that Plaintiff-Debtor is awarded \$825.00 in attorney's fees and \$17.00 in costs.

Counsel for Plaintiff-Debtor shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall provide that attorney's fees and costs allowed by the court shall be enforced as part of the judgment.

Final Ruling: No appearance at the January 15, 2019 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Objection on January 14, 2019; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Susan Lowery (“Debtor”); **the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on November 6, 2018, is confirmed.**

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

Final Ruling: No appearance at the January 15, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2018. 28 days' notice is required. That requirement was met.

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is continued to February 12, 2019 at 2 p.m.

This Motion to Convert the Chapter 13 bankruptcy case of Peter Rooney and Juanita Rooney ("Debtors") has been filed by the United States on behalf of the IRS ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Movant asserts that it was not notified about Debtors' bankruptcy until August 28, 2018, when Debtors informed the IRS during a field call. This caused Movant to withdraw its Notice of Federal Tax Lien filed on August 24, 2018, reverse an assessment, and file Proof of Claim No. 4 on September 24, 2018.
- B. Movant claims that Debtors under reported their taxable income based on information received from third-parties on Form 1099. Movant asserts that the proposed additional tax due on their 2012 federal income tax return is \$192,889.00. Movant asserts this was based on Debtor's willful failure to disclose their pre-petition tax debts.

DEBTORS' OPPOSITION

Debtors filed an Opposition on December 27, 2018. Dckt. 75. Debtors states that while they may be in material default to confirm a plan, no bad faith exists. Debtors claim that the tax assessment is based on an error in the 1099 issued to Debtors. The Debtors appear to contest the amount of the liability and appear to concede that they do owe for the 2012 tax year. Debtors dispute that they had sufficient funds to pay the tax liability when it was due. Debtors' counsel states that an objection to claim is forthcoming.

UNITED STATES REQUEST FOR STAY:

On January 14, 2019 the United States filed an Ex Parte request to stay the hearing in light of the lapse of government appropriations and requested the hearing be continued to February 12, 2019.

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

Debtors appear to argue that the substantial tax liability asserted by Movant is attributable to an error by the company issuing a Form 1099.

The court will grant the United States request to continue 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 Convert the Chapter 13 case filed by the United States (“a creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is continued to February 12, 2019 at 2 p.m.
