UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 25, 2020 at 3:00 p.m.

1.	**19-25202-E-13** **ARF-1**	**JACQUELINE NIXON** **Allan Frumkin**	**MOTION TO CONFIRM PLAN** **1-16-20 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Jacqueline Elaine Nixon ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $500.00 plan payments for four (4) months of and then $1,922.93 plan payments from months five (5) though sixty (60) and a zero percent dividend to unsecured claims totaling $333,034.48. Amended Plan, Dckt. 55. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 10, 2020. Dckt. 64. Trustee opposes on the basis that:

1. One of the Creditors provided for in Class 1, Rushmore Loan Management, previously obtained relief from stay.

2. Debtor proposes to pay Elite Acceptance a 19.95% interest rate, while this is the contract rate, this is not required by the Bankruptcy Code.

CREDITOR'S OPPOSITION

U.S. Bank National Association ("Creditor") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 66. Creditor opposes on the basis that:

1. Creditor has obtained Relief from the Automatic Stay.

2. The Plan does not provide for the full value of Creditor's claim.

3. The proposed Plan is underfunded.

DISCUSSION

Creditor's Relief from the Automatic Stay

Creditor obtained relief from the Automatic Stay pursuant to 11 U.S.C. § 362(d)(1) of the real property commonly known as 3301 North Park Drive, #1031 Sacramento, California ("Property") on January 14, 2020. Dckt. 63.

The proposed Plan provides for current on-going payments for Creditor and arrearage. The Plan was filed a week before the court ruled on Creditor's motion for relief from the Automatic Stay. Debtor did not oppose Creditor's motion.

With respect to the court having granted relief from the stay, Movant offers no legal authority that an order granting relief from the stay causes the Debtor to forfeit the right to pursue a plan confirmation. Further, that such plan provide for the obligation of the creditor for whom there is no automatic stay.

As Creditor and Creditor's counsel is aware, the confirmation of a plan works a modification of the obligation and is binding on the creditors. See 8 COLLIER ON BANKRUPTCY, SIXTEENTH ED., ¶ 1327.02 [b], [c]. Creditor would be limited to exercising its lien rights consistent with the confirmed plan.

Creditor provides the court with no legal authority for asserting that an order granting relief from the automatic stay is the basis for opposing the confirmation of a plan or asserting that Debtor's right to confirm a plan as to Creditor's claim has been forfeited (the court inferring from the assertion that Creditor asserts such forfeiture based on a summary proceeding relief from stay order [FN. 1).]

FN. 1. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). Hamilton, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief.

As Creditor and Creditor's counsel well know, "the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Bankr. P. 9011(b)(2). The court considered at the hearing Creditor's counsel's identification on the existing or nonfivolous argument of change of existing law that such assertion that an order for relief from the stay results in the forfeiture of the right of a debtor to seek to confirm a plan addressing the claim of Creditor.

Creditor's Assertion That Plan Does Not Provide For Full Value of Creditor's Claim

Creditor asserts that the proposed plan does not properly provide for its claim in that it fails to address post-petition defaults and provides for payments of only $500 a month for the first four months of the Plan. Opposition, Section 2, commencing on page 4; Dckt. 66.

The Second Amended Plan filed on January 7, 2020 (Dckt. 55) provides, as relevant for Creditor's claim:

A. Payments for the months of September through December 2019, would be $500 per month. Plan Additional Provision § 7, 2.01; Dckt. 55 at 7.

B. Beginning with month 5 and continuing through month 60 of the Plan, Debtor's monthly plan payment shall be $1,922.93. *Id.*

C. For Creditor's claim, the monthly plan payments are to be:

1. ($14,405.53) arrearage.....$240.09 a month disbursement

a. This requires $240.09 to be paid monthly for sixty months.

2. Current Post-Petition Monthly Payment...$726.50

a. This requires $726.50 to be paid monthly for sixty months.

As Creditor asserts, there is no showing how Debtor can go back in time to adequately fund the plan to make this required $966.59 in payments just to this Creditor, Debtor only funding the plan with $500 a month for those first four months.

The failure to adequately provide for Creditor's claim is a basis for denying the Motion.

Unfair Discrimination Against Unsecured Claims

The Chapter 13 Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1325(b)(1). Debtor proposes to pay 0.00% to unsecured claims; however, Debtor proposes to pay the Class 2 secured debt in full for a vehicle at a 19.95% interest rate. Paying a higher interest than required is a violation of 11 U.S.C. § 1325(b)(1).

For some reason, Debtor appears to be self-forfeiting Debtor's right to pay Creditor the current value of its secured claim at a fair, reasonable, commercially reasonable interest rate as provided by the Supreme Court in *Till v. SCS Credit Corporation*, 541 U.S. 465 (2004). See also, *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005); *Farm Credit Bank of Spokane v. Fowler (In re Fowler*), 903 F.2d 694 (9th Cir. 1990)).

This unfair discrimination and providing 20% of interest to the creditor having a claim secured by the seven model year old car is the basis to deny confirmation.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J state she has a net disposable income of $2,236.63. Dckt. 54. This is based on Debtor having only ($980.00) in monthly expenses while having $3,216.63 in monthly income. Amended Schedule J, Dckt. 54.

To have only ($980.00) in expenses, Debtor will pay $0.00 for clothing, $0.00 for laundry and clearing, and $0.00 for personal care products and services over the five (5) years of the plan. This appears highly unlikely (not credible).

Additionally, Debtor's statement of having $3,216.63 in monthly income on Amended Schedule J is inconsistent with Amended Schedule I (which is internally inconsistent). On line 7 of Amended Schedule I (Dckt. 54 at 3) Debtor computes her monthly take home pay to be $2,832.52. No other income is shown. However, on line 8h, there is typed in "Family Assistance," but no dollar amount is shown. Debtor then lists $3,215.63 in monthly income.

In her Declaration, Debtor provides no testimony about being dependent on "Family Assistance." Further, a review of Debtor's declaration shows that while she provides some personal knowledge testimony, she also provides the court with her personal findings of fact and conclusions of law which she wants the court to adopt, rather than the court considering evidence presented and making such findings and conclusions. These personal findings and conclusions include:

A. "The Second Amended Chapter 13 Plan filed on January 7, 2020, complies with all applicable laws pertaining to relevant bankruptcy code to the best of my knowledge." Declaration ¶ 2, Dckt. 59.

B. "The subject Plan was filed in good faith." Declaration ¶ 4, *Id.*

C. "The Plan provides that all unsecured creditors will be paid at least what they would have received in the event of a Chapter 7 liquidation to the best of my knowledge." ¶ 6, *Id.*

No evidence is given for the court to make such findings and conclusions. The "fact" that Debtor would state under penalty of perjury that "The Second Amended Chapter 13 Plan filed on January 7, 2020, complies with all applicable laws pertaining to relevant bankruptcy code" indicates that she has not filed and is not prosecuting this Chapter 13 Plan in good faith. No basis has been provided for Debtor to have such legal training, education, or knowledge. Further, no basis has been given that Debtor dictating such professional opinions to the court is proper.

These statements under penalty of perjury may very well create a situation where the Debtor can never show that she has filed and is prosecuting this case in good faith.

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 the debtor, Jacqueline Elaine Nixon ("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.

2. **17-23305-E-13 CYB-2** **CHERRI DA ROZA** **Candace Brooks** **MOTION TO REFINANCE** **2-10-20 [72]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is xxxxx.

Cherri Mae Da Roza ("Debtor") seeks permission to refinance the mortgage on real property commonly known as 3026 Elmer Avenue, Yuba, City, California, with a total purchase price of $210,000 and monthly payments of $1,539.44 to Oaktree Funding Corporation over thirty (30) years with a 7.990% fixed interest rate.

The Motion alleges that though the exhibit filed in support of the states the loan is for $210,000, Debtor intends to only borrow $205,115.14 and prospective creditor had not provided an updated document. Under penalty of perjury, Debtor states in her declaration that the loan is for $205,000.00 Dckt. 74.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response on February 12, 2020. Dckt. 77. Trustee notes that the existing mortgage has a 3.750% interest rate and a monthly payment of $1,185.10. *Id.* Whereas, the new mortgage has an interest rate of 7.990% with a monthly principal and interest payment of $1,539.44 for a $210,000.00 loan amount. *Id.* Refinancing will give Debtor

approximately $24,238.14 which is a sufficient amount to complete the plan and pay the $17,200.00 owed to unsecured creditors. *Id.* Trustee asserts the refinancing is in the best interest of creditors and the estate but Trustee is "uncertain" if the refinancing is in the best interest of the Debtor. *Id.* Trustee brings to the court's attention that Debtor is delinquent $3,948.00, and made their last payment on August 21, 2019. *Id.* Therefore, Trustee states he has a Motion to Dismiss set for March 4, 2020. *Id.*

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).

However, there might be concerns as to whether this is in Debtor's best interest. The loan calls for an increase of the interest charge—7.990%. Debtor's current mortgage has a low fixed interest rate of 3.750% and monthly payments of $1,185.10. Motion, at ¶ 6. The new payment will be increased to $1,539.44. That is a difference of $354.34 a month. According to Debtor's Schedules I and J, filed May of 2017, Debtor had a combined monthly income of $4,703.65 and expenses of $4,045.65, leaving Debtor a total monthly net income of $658.00. Dckt. 1. No amended Schedules have been filed.

It appears that this "questionable" borrowing decision is being made to allow Debtor to fund a 100% dividend for creditors holding general unsecured claims. In looking at the Supplement to the Motion filed in connection with the Motion to Confirm the Modified Plan, creditors with general unsecured claims would receive a 0.00% dividend through a Chapter 7 liquidation. Sup. ¶ 9, Dckt. 47.

The reason for a 100% dividend appears to be stated in the Declaration filed in support of the Motion to Confirm the Modified Plan:

> c. I reviewed the concepts of the "liquidation test" with my attorney. Looking at my originally filed petition, the equity of my real and personal property totaled $183,799.91. The value of my claimed exemptions from my filed Schedule C exempted all of my assets are $183,799.91. All of my assets are exempt. Accordingly, unsecured creditors would have received around 0% distribution if I filed for Chapter 7 relief. The form B22 that my attorney filed on my behalf shows that I am above median debtor and I have positive disposable income. My disposable income as stated on line 59 of my "means test" is (+ 1,008.55).

Declaration ¶ c, Dckt. 40.

While the court applauds a debtor who desires to pay a 100% dividend, the means test calculation is not a per se, non-brain engaging computation of projected disposable income. As stated by the Supreme Court in *Hamilton v. Lanning (In re Lanning)*, 560 U.S. (2010), determination of projected disposable income is based on a forward looking, actual, reality based determination of the actual projected disposable income, not a mechanical, slavish adoption of it based on the historical amount

during the six month period preceding the filing of the bankruptcy case.

Additionally, while the applicable commitment period is computed based on Debtor's pre-petition income, the provisions of 11 U.S.C. § 1329 terms allowing for post-confirmation modification do not expressly require compliance with 11 U.S.C. § 1325(b)(4) applicable commitment period requirements.

Assuming that Debtor continues to work at Caltrans, and her income has either remained the same or increased, it seems that the increase in monthly mortgage might not negatively affect Debtor. Furthermore, Debtor's refinance accounts for the unsecured claims and pays them in full. Debtor would be providing for a sufficient amount to complete the Plan.

It may well be that Debtor's reasonable, good faith resolution of this case may well rest in a modification and not taking on more debt and doubling the interest rate on the increased debt.

At the hearing, Debtor's counsel addressed these issues, advising the court **xxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Cherri Mae Da Roza ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is ~~granted, and Cherri Mae Da Roza is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 75, except as specified by Debtor that the accurate amount of the loan is $205,115.14.~~

3. **20-20309-E-13 MS-1** **3 thru 4**

MYKOLA VARHA
Mark Shmorgon

MOTION TO VALUE COLLATERAL OF BMO HARRIS BANK, N.A.
1-20-20 [9]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 20, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of BMO Harris Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $60,000.00.

The Motion filed by Mykola Varha ("Debtor") to value the secured claim of BMO Harris Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 11. Debtor is the owner of a 2019 Great Dane Reefer Thermo King Commercial Trailer ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $60,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S OPPOSITION

On February 10, 2020, Trustee filed an Opposition to the valuation on the basis that (Dckt. 24):

1. Trustee is uncertain if the motion is valuing all of the collateral under this claim.

DEBTOR'S RESPONSE

On February 10, 2020 Debtor filed a Response to clarify which units listed on Creditor's

claim Debtor seeks to value (Dckt. 30):

1. Debtor's motion seeks to value a 2019 Great Dane Reefer Thermo King Commercial Trailer, and the 2018 Thermo King C-600 refrigeration unit attached to the trailer.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 30, 2018, to secure a debt owed to Creditor with a balance of approximately $68,433.61. Declaration, Dckt. 11. 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 $60,000.00 the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Mykola Varha ("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 BMO Harris Bank, N.A. ("Creditor") secured by an asset described as 2019 Great Dane Reefer Thermo King Commercial Trailer and the attached 2018 Thermo King C-600 refrigeration unit ("Vehicle") is determined to be a secured claim in the amount of $60,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $60,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

4. **19-21310-E-13 RJ-6** | **WANDA COLLIER-ABBOTT** **Richard Jare** | **MOTION TO VALUE COLLATERAL OF RRA CP OPPORTUNITY TRUST 2 1-24-20 [152]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on January 24, 2020. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The hearing Motion to Value Collateral and Secured Claim of RRA CP Opportunity Trust 2 ("Creditor") is continued to 3:00 p.m. on xxxxx, 2020, to allow for discovery to be conducted and supplemental pleadings filed.

On or before xxxxxxxxxx, 2020, Creditor and any other party in interest shall file supplemental Opposition Pleadings.

On or before xxxxxxxxxx, 2020, Debtor shall file, if any, Reply pleadings (which are limited to actual reply pleadings).

The Motion to Value filed by Wanda Collier-Abbott ("Debtor") to value the secured claim of RRA CP Opportunity Trust 2 ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 154. Debtor is the owner of the subject real property commonly known as 3101 Spinning Rod Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $470,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

creditor's secured claim.

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 4-1 filed by Real Time Solutions, Inc. appears to be the claim subject of the present Motion. The Proof of Claim asserts a secured claim perfected by a second deed of trust in the amount of $221,536.60.

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on February 10, 2020. Dckt. 168. Trustee opposes on the basis that:

1. Motion fails to state with particularity grounds for relief and failed to address issues raised by the court in the denial of the previous motion to value.

2. Declaration appears to be the same one used in the previous motion except for changes in the caption and additional changes as to needed repairs which create discrepancies and lack detail.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on February 10, 2020. Dckt. 171. Creditor objects to the valuation on the basis that:

1. Creditor's loan is not a "short-term loan."

2. The fair market value of the Property was approximately $550,000.00 on or near the date of the filing and therefore no portion of Creditor's lien can be bifurcated and/or avoided.

Additionally, Creditor requests that the Motion be denied, or, that in the alternative, Creditor be allowed to obtain an interior appraisal. *Id*. at 2.

DISCUSSION

Debtor has filed as "Reply" pleadings, additional evidence of value and a Broker's Prior Opinion. Dckts. 181, 182, 177.

In the Opposition, Creditor reasonably requests the opportunity to conduct discovery and have an interior appraisal conducted. Debtor attempting to slip in the Broker's Price Opinion as a "Reply" document clearly requires such discovery request be granted.

The court continues the hearing to allow for discovery and the filing of supplemental pleadings.

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 Wanda Collier-Abbott ("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 hearing Motion to Value Collateral and Secured Claim of RRA CP Opportunity Trust 2 ("Creditor") is continued to 3:00 p.m. on **xxxxx, 2020,** to allow for discovery to be conducted and supplemental pleadings filed.
>
> On or **before xxxxxxxxxx, 2020**, Creditor and any other party in interest shall file supplemental Opposition Pleadings.
>
> On or before **xxxxxxxxxx, 2020**, Debtor shall file, if any, Reply pleadings (which are limited to actual reply pleadings).

5. **19-20429-E-13 TJW-3** **TANYA HALL** **Timothy Walsh** **MOTION TO VACATE DISMISSAL OF CASE 2-11-20 [100]**

DEBTOR DISMISSED: 01/17/2020

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 Chapter13 Trustee and Office of the United States Trustee on February 11, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Vacate is denied.

Tanya Dorene Hall ("Debtor") filed the instant case on January 24, 2019. Dckt. 1. A Plan was never confirmed in this case.

On December 6, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to (1) Debtor was delinquent in plan payments and (2) Debtor failed to file an amended plan after the Court denied their Motion to Confirm. Dckt.83. On January 8, 2020, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 95.

On February 11, 2020, Debtor filed this instant Motion to Vacate, claiming the Court inadvertently dismissed the case, not having been focused upon the ongoing litigation and the Status Conference which had been scheduled for January 28, 2020, eleven (11) days after the case was dismissed. Debtor then provides the following time line:

January 24, 2019	Case and Plan filed
March 20, 2019	Objection to Plan

August 20, 2019	Amended Plan filed
August 26, 2019	Motion to Dismiss denied
November 5, 2019	Motion to Value Real Time Resolutions' Claim
December 27, 2019	Court ordered Status Conference on Debtor's Motion to Value Real Time Resolutions's Claim
January 17, 2020	Court ordered Dismissal
January 28, 2020	Status Conference regarding Debtor's Motion to Value against Real Time Resolutions

Debtor asserts that without the Motion to Value against Real Time Resolutions a second amended plan would have been impossible to propose. Debtor stated in her Declaration that she was depending upon the outcome of that litigation in order to propose a viable plan. Dckt. 102. Debtor then asks the court to vacate the order of dismissal so she can resolve the issues with Real Time Resolutions and "get the case moving." *Id.*

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

TRUSTEE'S OPPOSITION

Chapter 13 Trustee David Cusick filed an Opposition on February 18, 2020. Dckt. 104. Trustee asserts that the Motion to Dismiss he filed on December 6, 2019 and heard on January 8, 2020 was based upon delinquency. Notice was given pursuant to Local Bankruptcy Rules 9014-1(f)(1) which requires a written response at least 14 days prior to the hearing. Trustee states Debtor filed an Opposition on January 6, 2020 (two days before hearing) which did not address delinquency. *See* Opposition, Dckt. 92.

Trustee further asserts that Debtor does not explain why the Motion to Value remains an issue when the Petition was filed January 24, 2019 and the Motion to Value was not filed until October 2, 2019.

APPLICABLE LAW

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

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

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

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

(4) the judgment is void;

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

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

(6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

The court first notes that Debtor offers no basis under Federal Rule of Civil Procedure 60(b) for the court to vacate the prior order dismissing this case. Debtor does not even make any reference to Rule 60(b) or Federal Rule of Bankruptcy Procedure 9024. The Motion's legal basis for the relief requested is little more than "I get it because I want it." Interestingly, the Oppositions also fail to address the appropriate legal standard, with the oppositions being "No, deny it because Debtor shouldn't be granted relief."

While the court is grounded in equitable considerations when considering a Motion to Vacate, Debtor has failed to provide the court with grounds for granting their Motion. First, Debtor fails to account for the fact that even if there were issues with Real Time Solutions' secured claim, Debtor failed to make payments. The "on going litigation" had no bearing on this particular ground for dismissal. Indeed, Debtor's Opposition simply stated that a proposed plan required resolving issues with creditor's secured claim. Debtor failed to address the fact that Debtor was delinquent.

But more importantly, Debtor states the delay in the filing of the amended Plan was due to "ongoing litigation" but fails to mentation the delays in this litigation were due to Debtor's failure to have an appraisal conducted in a timely fashion. Motion to Continue, Dckt. 89. Debtor advised Real Time Resolutions on October 2, 2019 that an appraiser would be scheduled through the Debtor's attorney's office. *Id.* Real Time Resolutions contacted Debtor on November 14, 2019 through November 20, 2019 to schedule the inspection and was met with no response from Debtor. *Id.* Further, Real Time Resolutions sent an e-mail on November 26, 2019 noting the looming deadlines and asking for cooperation in the inspection but received no response. *Id.* Real Time Resolutions sent a final e-mail on December 9, 2019 asking for access to the Property but again was given no response. *Id.* Thus, if Debtor wished to file a timely amended Plan, Debtor would not have caused any significant delays in the litigation. Rather, Debtor would be diligent with this litigation and promptly respond to Real Time Resolutions. Few, if any, equitable reasons would be furthered by vacating the Order of Dismissal.

Debtor was not, and is not, without a simple, quick, remedy that did not involve waiting a month to file a motion to vacate the dismissal - simply file a new Chapter 13 case. Knowing that the new case should be assigned to the judge who had this case, Debtor knew the court's plain language interpretation of 11 U.S.C. § 362(c)(3)(A). Even so, if Debtor was prosecuting the case in good faith and it was dismissed in "error," Debtor could show grounds to extend the stay pursuant to 11 U.S.C. § 362(c)(3)(B) rather than launching this Motion to Vacate battle.

Grounds do not exist pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024 to vacate the order dismissing this case.

Therefore, in light of the foregoing, the Motion is denied.

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

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

6. **19-25536-E-13 PGM-2** **DEBORAH WATSON** **Peter Macaluso** **MOTION TO VALUE COLLATERAL OF RENOVATE AMERICA FINANCING 1-14-20 [36]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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 Renovate America Financing ("Creditor") is denied without prejudice.

The Motion to Value filed by Deborah Joyce Watson ("Debtor") to value the secured claim of Renovate America Financing ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 39. Debtor is the owner of the subject personal property commonly known as windows and doors installed at real property located at 1800 59th Avenue, Sacramento, California 95822 ("Property"). Debtor seeks to value the Property at a fair market value of $3,500.00 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 valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 6-1 filed by Renovate American Financing on October 30, 2019 appears to be the claim that may be the subject of the present Motion. Creditor's claim is for $14,275.25. Proof Claim 6-1. Creditor's Proof of Claim asserts under penalty of perjury that this is an unsecured claim. *Id.* at Question 9.

DISCUSSION

Debtor seeks to value Creditor's claim which Creditor asserts is unsecured. Creditor appears to agree that whatever lien could be asserted has not value in any collateral to secure it.

Debtor does not provide the court with any documents showing that Creditor has a lien. Debtor does not provide the court with any evidence that Creditor asserts a secured claim.

Without such evidence, the court cannot "give" Creditor a secured claim and a possible bonus payment of $3,500.

The Motion is denied without prejudice.

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

The Motion to Value Collateral and Secured Claim of Renovate America Financing filed by Deborah J. Watshon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

7. **19-25536-E-13 PGM-3** **DEBORAH WATSON** **Peter Macaluso** **MOTION TO VALUE COLLATERAL OF TOWD POINT MORTGAGE TRUST 2018-6 1-14-20 [41]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Towd Mortgage Trust ("Creditor") is denied.

The Motion to Value filed by Deborah Joyce Watson ("Debtor") to value the secured claim of Towd Point Mortgage Trust ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 44. Debtor is the owner of the subject real property commonly known as 1800 59th Avenue, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $280,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 8-1 filed by Towd Point Mortgage Trust appears to be the claim subject of the present Motion.

OPPOSITION

Creditor has filed an Opposition on February 11, 2020. Dckt. 56. Creditor argues that Debtor cannot avoid Creditor's claim as it is not wholly unsecured. Creditor presents the Declaration of Peter Sousa, a licensed appraiser, who under penalty of perjury testified that the fair market value of the Property is $300,000.00 as of September 3, 2019. Declaration, 58. Thus, Creditor argues that its claim should be bifurcated between secured to the extend of the value ($15,164.81) and unsecured as to the rest.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $284,835.19. Proof of Claim 9-1. Creditor's second deed of trust secures a claim with a balance of approximately $50,692.17. Proof of Claim 8-1.

Debtor's evidence of value is Debtor's opinion, stated to be $280,000. Declaration, Dckt. 44.

Creditor has provided the Declaration of Peter Sousa and his appraisal as to the value of the Property. Dckts. 58, 57. He testifies that the value is $300,000. The Appraisal Report (Dckt. 57) provides several comparable properties, makes adjustments for specific items, and states the basis for having an opinion of $300,000 for the value of the Property.

The court determines that the value of the Property is $300,000. When taking into account

the ($284,835.19) obligation secured by the senior lien, there is approximately $15,000 in value for Creditor's claim secured by the junior lien.

While technically there being "value" to block the valuation for this obligation secured by the Debtor's residence, it is not the end of the story.

Here, even with a value of $300,000, there is no economically recoverable value for Creditor. If Debtor tells Creditor to "Stick It," as in stick a memo on this account file to proceed with foreclosure, here are the adverse consequences facing Creditor:

A. No payments will be made on the senior obligation causing interest to accrue, there being no escrow for taxes, and the insurance lapsing and the senior creditor putting in place expensive forced place insurance.

B. If Creditor goes to foreclose, it will have to pay all of the senior obligations, including property taxes and insurance, and then costs of sale, estimated to be ($24,000) for a $300,000 sale.

C. Thus, for its lien that has been protected against valuation, Creditor will lose likely around ($20,000). ($300,000 sales price - ($284,835) current debt - ($5,650) additional interest - ($750) insurance - ($3,000) property taxes - ($24,000) costs of sale = ($18,235).)

If Debtor does not want to lose the house and Creditor does not want to end up with, at best, a $0.00 recovery, it would appear likely that Debtor and Creditor could agree to a very modest agreed secured claim to be paid over the plan. As an example, $3,000 paid over 60 months would require a $50 a month payment.

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 Value Collateral and Secured Claim filed by Deborah Joyce Watson ("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) to value the secured claim of Towd Point Mortgage Trust ("Creditor") is denied, the court determining that there is value in the Property for Creditor's secured claim, which results in the prohibition of modifying the rights of Creditor's claim as provided in 11 U.S.C. § 1322(b)(2)

8. **19-25536-E-13** **DEBORAH WATSON** **MOTION TO CONFIRM PLAN**
PGM-1 **Peter Macaluso** **1-14-20 [31]**
7 thru 9

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Deborah Joyce Watson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $250.00 commencing January 25, 2020 for 33 months and a 0.0% percent dividend to unsecured claims totaling $101,646.96. Amended Plan, Dckt. 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 6, 2020. Dckt. 48. Trustee opposes on the basis that:

1. The Plan relies on two pending Motions to Value Secured Claims and the Plan will not have sufficient monies to pay the claims in full if these Motions are denied.

2. Debtor has failed to provide documents in support of son paying "half of all costs."

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company ("Creditor Deutsche") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 51. Creditor Deutsche opposes on the basis that:

1. The Plan does not provide for the full value of Creditor Deutsche's claim.

2. The Plan Does not promptly cure Creditor Deutsche's pre-petition arrears.

3. The Plan makes no provision for the ongoing post-petition payments.

CREDITOR'S OPPOSITION

Towd Point Mortgage Trust ("Creditor Towd") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 53. Creditor Towd opposes on the basis that:

1. The Plan cannot value Creditor Towd's lien at zero and treat it as unsecured because the lien is not wholly unsecured.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided the court with any extrinsic evidence of their son's payments of $950.00, $1,130.00, or $1,150.00, whichever amount is the correct amount. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In her Response, Debtor asserts that she will provide a declaration regarding her son's income contribution prior to the hearing on this motion. On February 19, 2020, Debtor filed Declaration of Michael Bradford in support of the Plan stating that he willing and able to make monthly contributions in the sum of $1,130.00 and said contribution is a gift and does not expect to be repaid. Dckt. 67.

Failure to Cure Arrearage of Creditor Deutsche

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,991.44 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Debtor contends that she is current on her mortgage payments. Response, at 2. Debtor alleges that she is not past due in the amount of $1,991.44 as payments was processed shortly after September 1, 2019, and will provide such evidence prior to the hearing. *Id*. Finally, Debtor contends that she inadvertently failed to include Creditor Deutsche as a Class 4 which is proper on the basis that Debtor is current with pre-petition mortgage payments. Id. Debtor requests the court Creditor as a Class 4 to the

order confirming the Plan. *Id*.

Valuation of Creditor Towd's Secured Claim

Creditor Towd argues that Debtor improperly seeks to value Creditor's total secured claim at $0.00 despite there being equity in the Property. Creditor filed Proof of Claim 8-1 on November 11, 2019. The Proof of Claims asserts a secured claim in the amount of $50,692.17. The claim is secured by a second deed of trust over Debtor's residence. Debtor filed a Motion to Value Creditor's Secured Claim to be heard on February 25, 2020.

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 the debtor, Deborah Joyce Watson ("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.

9. **19-27940-E-13 DPC-1** **JORGE MARTINEZ Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 2-4-20 [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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on February 4, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. An additional provision in the plan calls for a lump sum from the sale of real property to be used to pay creditors, but the property was foreclosed on prior to filing this bankruptcy case.

DISCUSSION

Trustee's objection is well-taken.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan depends on a lump sum that may not come to pass.

On February 11, 2020, this court granted Creditor RNM Investment, Inc.'s Motion for Relief from the Automatic Stay. Dckt. 34. In that Motion, Creditor requested relief to allow Creditor with moving forward with unlawful detainer proceedings arguing that Creditor was the actual owner of the property purchased at a trustee's sale. The court granted this relief as to Debtor and as to Co-Debtor.

Even if Debtor was to commence an adversary proceeding his potential rights related to the Property, Debtor should not rely on such a lump sum at this time in order to provide for his plan payments.

Thus, without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

10. **18-22747-E-13 PGM-2** **DAVID/CHRISTINA CASTILLO** **Peter Macaluso** **MOTION TO USE CREDIT NUN PRO TUNC** **1-21-20 [54]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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.

David Castillo and Christina Akiko Castillo ("Debtor") seeks **retroactive permission** to purchase a 2017 Hyundai Santa Fe, with a total purchase price of $19,826.73 and monthly payments of $421.30 to Future Nissan over 72 months with a 14.95% 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).

Debtor does not address the reasonableness of incurring debt with the substantial interest charge—14.95%. This appears to be a statement by the lender that it anticipates a default and seeks to extract as much interest as possible before default and having to repossess the vehicle.

In Debtor's Reply, Debtor argues that it can be difficult to qualify for low-interest rate financing due to a number of factors including credit score. Debtor adds that they are current under the

Plan.

The Motion clearly states that Debtor has been approved for the purchase. Even though the Purchase and Sale Agreement is dated in January 2020 and the first payment due January 13, 2020, it appears that the denial of this Motion will afford the Debtor the opportunity to go back to the lender and negotiate commercially reasonable interest terms.

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 David Castillo and Christina Akiko Castillo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

11. **19-25658-E-13 RPH-1 13 thru 14** | **JAY SMITH Robert Huckaby** | **MOTION TO CONFIRM PLAN 12-21-19 [40]**

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 21, 2019. By the court's calculation, 66 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Jay Andrew Smith ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $95 for the first three (3) months, then monthly payments of $150.00 for the remainder of the Plan for a total of 60 months, with a 100 percent dividend to unsecured claims totaling $1,367.00. Amended Plan, Dckt. 43. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 27, 2020. Dckt. 50. Trustee opposes on the basis that:

1. Debtor may not be able to comply with the Additional Provisions related to Creditor TIAA.

2. Debtor failed to show that he applied for a loan modification.

3. Debtor has failed to show he has made all payments required under the plan.

4. Debtor's budget does not support the plan payments.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan may not be feasible because on the basis that Debtor has not paid his mortgage for 21 months, has not explained why, and now files a Plan which proposes Debtor to pay directly to the Creditor.

Trustee argues that Debtor cannot be "trusted" to make the payments to Creditor directly.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Loan Modification

Debtor's Plan states he will apply for a loan modification. However, Debtor has failed to show that such application has indeed been submitted or approved. Indeed, the Motion states:

> The primary purpose of this Chapter 13 is to pay off the Internal revenue Service, which is being done, and **to give debtor time to complete a loan modification** or refinance on his home to cure the arrears.

Motion, at ¶ 3. (Emphasis added.)

Thus, Debtor is depending on a loan modification that has yet to be completed and approved. This is not the first time that the court has dealt with this issue. On October 30, 2019, Creditor objected to Debtor's prior Plan on the grounds that such modification was speculative. Dckt. 24. This loan modification remains speculative. Finally, Debtor fails to address what would happen if said modification is not approved by Creditor.

Various creditor and debtor counsels have worked out an additional provision, commonly called the "Ensminger Provision" providing for adequate protection payments and a good faith prosecution of a loan modification by a debtor. This provision is necessary from having a plan that would appear to improperly modifying a secured claim in violation of 11 U.S.C. § 1322(b)(2).

This proposed plan improperly seeks to modify Creditor TIAA's claim to have it sit in limbo, with only "post-petition payments" in unstated amount to be paid by Debtor for as long as Debtor is "seeking" a loan modification. Thus, the Plan would modify out all of Creditor's rights to enforce the obligation for five years notwithstanding the substantial pre-petition defaults.

Creditor on this secured claim is seeking relief from the automatic stay, asserting both pre-petition defaults of $8,384.55 in post-petition current monthly payments on the secured claim. Motion, ¶ 8, Dckt. 53.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's proposed plan calls for monthly payments of $150.00. Debtor's Schedule J indicates that he has a monthly net income of $107.00. Debtor's Declaration states that he decreased his discretionary spending by $55.00 in order to make his plan payments but fails to explain which expenses were reduced. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 the debtor, Jay Andrew Smith ("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.

12. **19-25658-E-13 RPH-2** **JAY SMITH** **Robert Huckaby** **OBJECTION TO CLAIM OF LVNV FUNDING LLC, CLAIM NUMBER 3 12-21-19 [45]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 21, 2020. By the court's calculation, 66 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 3-1 of LVNV Funding, LLC is sustained, and the claim is disallowed in its entirety.

Jay Andrew Smith, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,302.34. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the account was last paid June 10, 2008. The date of last payment on the Statement of Account Information attached to the Proof of Claim states June 10, 2008.

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 California Legislature made a substantive amendment to California Code of Civil Procedure § 337 in 2018, which became effective January 1, 2019, that moves the expiration of the statute of limitations on a contract action from an affirmative defense to affirmative bar on a creditor seeking to enforce the obligation.

> (d) When the period in which an action must be commenced under this section [contract, instrument, book account, account stated, open account, rescission of a written contract] has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360.

Cal. C.C.P. § 337(d).

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. 3-1 lists the charge off date as January 13, 2009. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after June 10, 2008. Thus, the four-year statute of limitations expired on June 10, 2012.

This bankruptcy case was filed on September 9, 2019—2,647 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of LVNV Funding, LLC ("Creditor") filed in this case by Jay Andrew Smith Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 3-1 of Jay Andrew Smith is sustained, and the claim is disallowed in its entirety.
>
> Attorneys' fees and costs, if any, shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

13. **19-27862-E-13 RJ-2** | **SHAVINA/DONALD THOMAS** **Richard Jare** | **CONTINUED MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL (SANTANDER)** **1-21-20 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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 Chrysler Capital (Santander) ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $2,800.00.

The Motion filed by Shavina Denise Thomas and Donald Wayne Thomas ("Debtor") to value the secured claim of Chrysler Capital (Santander) ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 29. Debtor is the owner of a 2014 Dodge Dart ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $2,800.00 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).

On February 4, 2020, the court continued the hearing on the basis that Debtor had been dismissed. Dckt. 47. Debtor's dismissal was vacated on February 11, 2020. Dckt. 51. Per the continuance, Debtor was to re-notice the motion. *See* Dckt. 47. Debtor filed a proof of service for this Motion on February 11, 2020. Dckt. 49. No oppositions have been filed as of February 22, 2020.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on August 19, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,642.00. Declaration, Dckt. 29. 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 $2,800.00, 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 Shavina Denise Thomas and Donald Wayne Thomas ("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 Chrysler Capital (Santander) ("Creditor") secured by an asset described as 2014 Dodge Dart ("Vehicle") is determined to be a secured claim in the amount of $2,800.00, 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 $2,800.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

14. **19-27862-E-13 RJ-3** | **SHAVINA/DONALD THOMAS** **Richard Jare** | **CONTINUED MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE COMPANY** **1-21-20 [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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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 Regional Acceptance Company ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $9,500.00.

The Motion filed by Shavina Denise Thomas and Donald Wayne Thomas ("Debtor") to value the secured claim of Regional Acceptance Company ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 33. Debtor is the owner of a 2017 Dodge Journey ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $9,500.00 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).

On February 4, 2020, the court continued the hearing on the basis that Debtor had been dismissed. Dckt. 48. Debtor's dismissal was vacated on February 11, 2020. Dckt. 51. Per the continuance, Debtor was to re-notice the motion. *See* Dckt. 48. Debtor filed a proof of service for this Motion on February 11, 2020. Dckt. 50. No oppositions have been filed as of February 22, 2020.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 5, 2017 to secure a debt owed to Creditor with a balance of approximately $20,339.98. Proof of Claim, No. 5-1. 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 $9,500.00, 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 Shavina Denise Thomas and Donald Wayne Thomas ("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 Regional Acceptance Company ("Creditor") secured by an asset described as 2017 Dodge Journey ("Vehicle") is determined to be a secured claim in the amount of $9,500.00, 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 $9,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

15. **19-27664-E-13 DPC-2** **ANTHONY HEMENES** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-4-20 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on February 4, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the Meeting of Creditors.

B. Debtor is delinquent in plan payments.

C. Debtor failed to properly complete plan provisions or provided incomplete information regarding certain creditors.

D. Debtor's Plan may be depending on a yet-to-be filed Motion to Value Secured Claim.

E. Debtor fails the Chapter 7 liquidation analysis.

F. The Plan is not Debtor's best effort.

G. Debtor failed to provide business documents.

H. Debtor failed to provide his full name on the Petition.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Delinquency

Debtor is $1,000.00 delinquent in plan payments, which represents one month of the $1,000.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan is not feasible as Debtor failed to properly complete the Plan form. Debtor failed to state duration of payments. Debtor identifies Class 1 Creditors "Nevada Tittle Loan" and "Shell Point Morgay" with arrearage but fails to provide for the arrearage dividend for either creditor. Additionally, Debtor identifies the same creditors as Class 2 claims but fails to identify the interest rates for each claim.

Debtor's proposed Plan provides for $1,000.00 and a 25% dividend to unsecured claims totaling $100.00. According to Trustee's calculations, Debtor would have to increase plan payments to $5,508.63 in order to pay both Creditors under Class 1 and Class 2, and unsecured creditors receiving a 25% dividend within the presumed 60 month plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Liquidation

Debtor's Plan fails the Chapter 7 liquidation analysis under § 11 U.S.C. 1325(a)(4). Trustee states that:

A. While Debtor has reported non-exempt equity in the amount of $91,200.00, and Debtor is proposing a 25 percent dividend to unsecured claims, additional equity/assets might exist. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a 25 percent dividend when there may be additional funds in assets that Debtor failed to exempt such as a residence and car listed in his Schedules. *See* Schedule C, Dckt. 11.

B. Debtor has supplied insufficient information relating to the assets to assist the Chapter 13 Trustee in determining the value of the assets. Debtor fails to report information regarding an inheritance from Debtor's mother that is also not claimed as exempt under Schedule C.

C. A look at Debtor's Schedule J seems unrealistic. Debtor lists $30.00 for electricity, no expenses under food or personal care products, even though he lists 3 young children as dependents.

Not Best Effort

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor fails to provide an accurate picture of his financial situation. There are discrepancies on his income between Form 122C-1, Schedule I, and his Statement of Financial Affairs.

Failure to File Documents Related to Business

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

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

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

First Name Not Identified

On page 1 of Debtor's Petition, Debtor indicates his first name to be Anthony and his last name/Suffix to be Hemenes III. Under question 2, for all other names Debtor has used in the last 8 years, Debtor writes Anthony as his middle name Anthony with a last name of Hemenes Jr or Hemenes. The court is uncertain as to whether Debtor's first name is Anthony or if it is actually his middle name. Lack of Debtor's actual name may prevent creditors from identifying this Debtor.

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

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

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

16.	**19-27471-E-13 DPC-1**	**CAROLINE/KINGSLEY OBASEKI Peter Macaluso**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-16-20 [29]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 16, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to provide social security number at the First Meeting of Creditors.

B. Debtors failed to provide business documents.

C. Debtors failed to provide payment advices.

February 4, 2020 Hearing

The hearing on the Objection to Confirmation of Plan was continued to February 25, 2020 at 3:00p.m. so that Debtor could provide the remaining missing information, and if it resolved Trustee's questions, Trustee was to dismiss the objection.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exists. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

At the February 4, 2020 hearing, Trustee reported that the social security number had been provided.

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

At the February 4, 2020 hearing, Trustee reported that pay advices had been provided, but are not easily reconciled with the Schedules.

Failure to File Documents Related to Business

Debtor failed to timely provide Trustee with business documents including:

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

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

As of February 24, 2020, Trustee had not filed supplemental briefing regarding these documents nor has Trustee filed an Ex-Parte Motion withdrawing the Objection.

The Objection to Confirmation of Plan is sustained.

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

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

hearing.

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

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

17. 20-20474-E-13 PGM-1 — CHRISTOPHER MODELLAS — Peter Macaluso — MOTION TO EXTEND AUTOMATIC STAY — 2-11-20 [13]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

Christopher Michael Modellas ("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. 18-20711) was dismissed on January 21, 2020, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 18-20711, Dckt. 36, January 21, 2020. 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 employer did not have work for him. Dckt. 16. Since his previous dismissal, there has been a change in circumstance. Debtor's employer has an employment opportunity pending which would last for five (5) years of the plan. *Id.* This job would require his carpentry skills for the entirety of the job. *Id.* Further, Debtor asserts he has not acquired any new debt since his previous case was dismissed. *Id.*

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

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

A. Why was the previous plan filed?

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

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

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 Christopher Michael Modellas ("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.

18. **19-27175-E-13 RAS-1** **ADAM/SHERRI NEWLAND** **Peter Macaluso** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY**
12-23-19 [14]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 23, 2019. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

Deutsche Bank National Trust Company, as Trustee For Harborview Mortgage Loan

Trust, Mortgage Loan Pass-Through Certificates, Series 2007-5 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtors' Chapter 13 Plan does not promptly cure creditor's pre-petition arrearage.

DISCUSSION

Creditor's objection is well-taken.

The objecting creditor holds a deed of trust secured by Debtors' residence. Creditor has filed a timely proof of claim in which it asserts $37,801.02 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Opposition was stated at the January 28, 2020 hearing, and the court set the briefing schedule for filing the opposition and reply pleadings, and continued the hearing. Dckt. 20.

On February 10, 2020, Debtors filed a Reply. Dckt. 23. Debtors assert that in order to account for Creditor pre-petition arrearage, they will increase the monthly dividend paid to Creditor to $631.00. Further, taking into consideration this increase in dividend, Debtors will increase the Chapter 13 Plan payment to $6,200.00 per month beginning February 25, 2020. *Id*. at 2.

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 Deutsche Bank National Trust Company, As Trustee For Harborview Mortgage Loan Trust, Mortgage Loan Pass-Through Certificates, Series 2007-5 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Adam Scott Newland and Sherri Ann Newland's ("Debtors") Chapter 13 Plan filed on November 18, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan with the increase in dividend to Creditor Deutsche Bank National Trust and the increase in plan payment of $6,200.00 beginning in February 2020, 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.

19. 19-21278-E-13 ALBERT GIL MOTION TO MODIFY PLAN
WW-1 Mark Wolff 1-15-20 [22]

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

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 January 15, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Albert Arellano Gil ("Debtor") seeks confirmation of the Modified Plan because Debtor's income has been reduced. Declaration, Dckt. 24. Additionally, Debtor expects approximately $1,000,000 from an inheritance. *Id.*

The Modified Plan provides payments of $930.00 for nine (9) months, then payments of $500.00 for eighteen (18) months, plus a lump sum payment of an amount to be less than $40,000.00 by June 25, 2021. Modified Plan, Dckt. 25. The lump sum payment shall be the amount necessary to complete the Plan with a payment of 100% to general unsecured creditors. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 7, 2020. Dckt. 28. Trustee opposes on the basis that:

1. Debtor might not be able to make a lump sum payment on or before June 25, 2021.

2. Debtor has not had his family file any declarations stating they have been paying him $1,500.00 per month for his assistance with his father's estate.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan requires him to make a lump sum payment in an amount less than $40,000.00 on or before June 25, 2021. Debtor has not provided the court with any information about the property he stands to inherit.

The Court does not have: an address of the property, a description of the property, the realtor selling the property, or any evidence that the property is being actively sold. The sole information provided to the court is the Debtor's Declaration stating the value of his share of the property should be in excess of a million dollars and that the property will be sold within half a year to a year. Without the most basic information of the property, the court is not able to determine if sale of this property would allow the Debtor to comply with Plan payments.

The Debtor and Debtor's counsel are very cryptic about the $1,000,000 inheritance. No pending probate proceeding is disclosed. No possible trust is disclosed. No information about the source of the $1,000,000 is provided. Rather, Debtor testifies that he is "informed" by some unknown person, in some unknown matter, that there is $1,000,000 that will drop into the Debtor's pocket.

Further, Debtor must submit additional evidence of the assistance provided by Debtor's family for his work on his father's estate to determine if this additional income can help facilitate Plan payments. Dckt. 24.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 the debtor, Albert Arellano Gil ("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.

20. **20-20486-E-13 SDH-1** **CHARLIE BALANGUE** **Scott Hughes** **MOTION TO EXTEND AUTOMATIC STAY** **1-31-20 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 31, 2020. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied.

Charlie Marzan Balangue ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-28053) was dismissed on September 7, 2019, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 17-28053, Dckt. 55, September 7, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because becoming confused and falling behind in payments when the Chapter 13 Trustee, Jan Johnson, retired and the Plan payments were too high. Declaration, Dckt. 10.

CREDITOR'S OPPOSITION

On February 3, 2020, U.S. Bank, National Association ("Creditor") filed an Opposition. Dckt. 15. Creditor opposes on the basis that:

A. Debtor increased his expenses in order to not include arrearage payments to Creditor; and thus, unfairly discriminating against Creditor.

B. Debtor has not provided any credible evidence that the Property will be sold within one year.

C. Debtor's financial circumstances do not support a finding by clear and convincing evidence that he can propose, confirm and consummate a Chapter 13 Plan.

D. Debtor's plan impermissibly modifies Creditor's claim.

E. Plan has not been filed in good faith.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

Debtor has not sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

Debtor makes the assertion this case is filed in good faith because in Debtor's previous case Debtor became confused and fell behind in Plan payments when Chapter 13 Trustee Jay Johnson, ("Trustee Johnson") retired. The court notes, Trustee retired on October 1, 2019.

Debtor's testimony in this case to provide evidence of good faith, notwithstanding the dismissal of the prior case and filing of this case, includes:

> 3. I defaulted on my plan payments in the last case because I got confused when Jan Johnson, the chapter 13 trustee, retired. The case got transferred to another trustee and I fell behind my payments. By the time I figured out what had happened, I was too far behind in the payments to catch up. The plan payments in the last case were simply too high. I have put together a plan with lower payments this time that I believe will work.

Declaration ¶ 3, Dckt. 10. Other than saying that Debtor was "confused" when the Trustee retired, no testimony is given as to how Debtor, represented by counsel, could not continue to make the plan payments.

It appears that, at best, Debtor was "confused" and held the money in his bank account rather than paying the trustee. If so, the Debtor would have had those monies in hand to "catch up" once his attorney cleared the confusion.

Debtor further testifies that he now will sell the house.

In the prior bankruptcy case, on January 26, 2018 Trustee filed a Motion to Dismiss for a $3,400 delinquency (one monthly payment) in Plan payments. 17-28053; Motion, Dckt. 29. This 2018 default was not due to "confusion" over the Trustee's October 2019 retirement.

The Trustee in the prior case again filed a Motion to Dismiss on October 31, 2018 for two months of delinquent Plan payments. *Id.*; Dckt. 46. This $6,800 default in plan payments was not due to "confusion" over the Trustee's retirement that would occur one year later in October 2019.

The Trustee in the prior case filed a third Notice of Default and Application to Dismiss on July 31, 2019 for over two months of delinquent Plan payments. *Id.*; Dckt. 52. This was for a $7,000 default in plan payments.

Pursuant to the July 2019 Notice of Default the court ordered the dismissal of Debtor's prior bankruptcy case on September 7, 2019. *Id.*; Order, Dckt. 55. This dismissal was a month before the Trustee in the prior case retired and all of the defaults upon which the dismissal was based occurred for the months of July and June 2019 - three months before the Trustee retired.

Thus, Debtor's current testimony under penalty of perjury that the defaults occurred for the stated reason that:

> 3. I defaulted on my plan payments in the last case because I got confused when Jan Johnson, the chapter 13 trustee, retired. The case got transferred."

is false. Debtor's defaults occurred well in advance of that time.

In response to Creditor's Opposition, Debtor filed a Purchase and Sale Agreement for the Property. Exhibit C, Dckt. 27. The sales price is stated to be $470,000.00. The Agreement appears to be dated February 1, 2020 - almost four weeks before the hearing on this Motion.

Though having a "Contract in hand," no motion for an order authorizing the sale has been filed. Though having a real estate professional "hired" to market and sell the property, exercising the powers of a trustee under 11 U.S.C. § 363, no authorization has been obtained to hire the real estate broker. It appears that the broker is working for free. *See* 11 U.S.C. §§ 327, 330.

This creates further questions as to Debtor's good faith.

Debtor has failed to rebut the presumption of bad faith arising under 11 U.S.C. § 362(c)(2)(B). Of significant weight is Debtor's clearly false testimony under penalty of perjury that the defaults in the prior case occurred when the prior trustee retired and the case was transferred to the new trustee. The case was dismissed a month prior to the trustee retiring for defaults that occurred three to four months before the trustee retired.

The court denies the Motion to Extend the Stay. However, this denial only results in the stay terminating as to the Debtor, not as to property of the bankruptcy estate.

As discussed above, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. Congress had defined the term Debtor in 11 U.S.C. § 101(13). A debtor is not a "bankruptcy estate." 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. *See Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 225 (5th Cir. 2019), one of the most recent court holding this interpretation of 11 U.S.C. § 362(c)(3)(A), in line with a majority of other courts.

Thus, while the court does not "reward" the loose use of testimony under penalty of perjury, Congress has left in place the automatic stay protecting the Property from foreclosure while Debtor diligently works to get the Property sold or otherwise confirm a plan to provide for Creditor's claim.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Charlie Marzan Balangue ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

21. **19-24493-E-13** **TEMA ROBINSON** **MOTION TO CONFIRM PLAN**
PGM-1 **Peter Macaluso** **1-14-20 [34]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Tema Kay Robinson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 56 monthly payments of $2,850.00 commencing December 2019 and a 0% dividend for unsecured claims totaling $3,299.25. Amended Plan, Dckt. 36. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 4, 2020. Dckt. 44. Trustee opposes on the basis that:

1. Debtor is delinquent in plan payments.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $4,000.00 delinquent in plan payments, which represents a portion of the $5,855.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Unfortunately for Debtor a promise to pay does not resolve the issue at hand.

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 the debtor, Tema Kay Robinson ("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.

FINAL RULINGS

22.	**19-24893-E-13** **PGM-2**	**RHIANNON NICHOLS** **Peter Macaluso**	**MOTION TO VALUE COLLATERAL OF CARFINANCE CAPITAL, LLC** **1-20-20 [53]**

Final Ruling: No appearance at the February 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 20, 2020. By the court's calculation, 36F days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Carfinance Capital, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,500.00.

The Motion filed by Rhiannon Winnoma Nichols ("Debtor") to value the secured claim of Carfinance Capital, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 55. Debtor is the owner of a 2012 Hyundai Sonata ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,500.00 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).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on February 6, 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 $16,137.10. Proof of Claim, No. 3-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $7,500.00, 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 Rhiannon Winnoma Nichols ("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 Carfinance Capital, LLC ("Creditor") secured by an asset described as 2012 Hyundai Sonata ("Vehicle") is determined to be a secured claim in the amount of $7,500.00, 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 $7,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

23. **20-20309-E-13 MS-2** **MYKOLA VARHA** **Mark Shmorgon** **AMENDED MOTION TO VALUE COLLATERAL OF MERCEDES-BENZ FINANCIAL SERVICES USA LLC** **2-3-20 [21]**

Final Ruling: No appearance at the February 25, 2020 hearing is required.

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

Sufficient Notice is Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 20, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Mercedes-Benz Financial Services USA LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $25,000.00.

The Motion filed by Mykola Varha ("Debtor") to value the secured claim of Mercedes-Benz Financial Services USA LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 22. Debtor is the owner of a 2016 Volvo VNL64T670 Commercial Truck, VIN # ending 0589 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $25,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

On February 10, 2020, Trustee filed a Response stating he did not oppose Debtor's Motion.

NOTICE PROVIDED

This Motion was originally filed on January 20, 2020. Dckt. 13. Notice was given to all the

parties and the Motion was served on January 20, 2020. Dckt. 16. Debtor then filed an Amended Motion on February 3, 2020. Dckt. 21. The Amended Motion changes the VIN number for the subject vehicle, making this a clerical error. However, Debtor filed this as an Amended Motion which would reset the clock for sufficient notice.

Though filed as an "Amended" Motion, in reality it is merely an "errata," a correction pleading to fix a clerical error. This is not a substantive change and the notice given from January 20, 2020 provided adequate notice. [FN. 1.]

FN. 1. Black's Law Dictionary.

The court is confident that in the future counsel will properly use an errata when correcting such a clerical error and not file an "amended motion," Counsel should not count on the court construing an "amended motion" as merely an errata.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 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 $51,432.12. Proof of Claim, No. 5-1. 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 $25,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Mykola Varha ("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 Mercedes-Benz Financial Services USA LLC ("Creditor") secured by an asset described as 2016 Volvo VNL64T670 Commercial Truck, VIN # ending 0589 ("Vehicle") is determined to be a secured claim in the amount of $25,000.00 and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $25,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

24. **20-20139-E-13 PLC-1** **TINA ANDRADE** **Peter Cianchetta** **MOTION TO VALUE COLLATERAL OF MOUNTAIN AMERICA CREDIT UNION 1-14-20 [9]**

Final Ruling: No appearance at the February 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Mountain America Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $15,625.00.

The Motion filed by Tina Louise Andrade ("Debtor") to value the secured claim of Mountain America Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 11. Debtor is the owner of a 2016 Mercedes-Benz CLA ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $15,625.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Response

On February 10, 2020, Trustee filed a Response, he does not oppose this Motion but notes a street address was not served. Debtor filed an amended certificate of service addressing this issue on February 13, 2020. Dckt. 23.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 15, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $27,000.00. Schedule D, Dckt. 1. 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 $15,625.00 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 Tina Louise Andrade ("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 Mountain America Credit Union ("Creditor") secured by an asset described as 2016 Mercedes-Benz CLA ("Vehicle") is determined to be a secured claim in the amount of $15,625.00, 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 $15,625.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

25. **19-27761-E-13 DPC-1** **WILLIAM ANDERSON** **Peter Cianchetta** **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **1-28-20 [19]**

Final Ruling: No appearance at the February 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 28, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to William Rodderick Anderson's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on March 14, 2017. Case No. 17-21647. Debtor received a discharge on March 5, 2018. Case No. 17-21647, Dckt. 52.

The instant case was filed under Chapter 13 on December 17, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on March 5, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 17-21647, Dckt. 52.

Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case, Case No. 19-27761, the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained and upon successful completion of the instant case, Case No. 19-27761, the case shall be closed without the entry of a discharge.

26. **19-27761-E-13 DPC-2** **WILLIAM ANDERSON** **Peter Cianchetta** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-28-20 [23]**

Final Ruling: No appearance at the February 25, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on January 28, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Saythamma Sayamnath's ("Debtor") use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140. California Code of Civil Procedure § 703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if **both** of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for three vehicles (one 2019 Kia Sportage and two 2016 Ram 1500), household goods, three televisions, clothing, and a Bank of America checking account under California Code of Civil Procedure § 703.140(b) are disallowed in their entirety.