

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

March 5, 2019 at 2:00 p.m.

1.	18-27700 -C-13	REBEKAH FEAR	CONTINUED OBJECTION TO
	DPC -1	Eric Schwab	CONFIRMATION OF PLAN BY DAVID
			P. CUSICK
			1-18-19 [13]

Thru #2

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 18, 2019. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to xxxx .
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtor's Plan relies on a Motion to Value and no Motion was filed at the time the Trustee's Objection was filed. The court notes that subsequently, the Debtor filed a Motion to Value that is set for hearing on March 5, 2019. Dckt. 18.

B. The Trustee also notes that Debtor's first Plan payment of \$600.00 will become due prior to the hearing.

The court continued the hearing to allow the Debtor's Motion to Value to be resolved.

At the hearing -----.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is **xxxx**.

2. [18-27700](#)-C-13 REBEKAH FEAR
[EJS](#)-1 Eric Schwab

MOTION TO VALUE COLLATERAL OF
WELLS FARGO DEALER SERVICES
1-29-19 [[17](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Dealer Services ("Creditor") is ~~xxxxx~~, and Creditor's secured claim is determined to have a value of \$~~xxxx.xx~~.

The Motion filed by Rebekah Fear ("Debtor") to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Hyundai Elantra ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,096.00 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 Debtor does not state whether the lien on the Vehicle's title secures a purchase-money loan was incurred more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,485.00.

CHAPTER 13 TRUSTEE OPPOSITION:

On February 19, 2019, the Chapter 13 Trustee filed an opposition stating that the Debtor's Declaration does not comply with 28 U.S.C. § 1746 because it limits the testimony to statement that are to "the best of my [Debtor's] knowledge." Dckt. 19.

DISCUSSION:

At the hearing ----.

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 \$xxxx.xx, 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 **xxxx**

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

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

The Motion to Value Collateral and Secured Claim filed by Rebekah Fear ("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 **xxxx**, and the claim of Wells Fargo Dealer Services ("Creditor") secured by an asset described as 2013 Hyundai Elantra ("Vehicle") is determined to be a secured claim in the amount of \$xxxx.xx, 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 \$xxxx.xx and is encumbered by a lien securing a claim that exceeds the value of the asset.

3. [18-27800](#)-C-13 BECKY ALMEIDA
[DPC](#)-2 Peter Cianchetta

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-22-19 [[16](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2019. 28 days' notice is required. That requirement was met.

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). The defaults of the non-responding parties and other parties in interest are entered.

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

David Cusick ("the Chapter 13 Trustee") objects to Becky Renee Almeida's ("Debtor") claimed homestead exemption of \$100,000.00 in real property located at 22 Solano Drive, Dixon, California under California law because Debtor may not be entitled to claim the exemption in real property where she does not reside. The Trustee states that Debtor stated at the Meeting of Creditors held on January 17, 2019 that she resides at 1430 Austin Drive, Dixon, California. Dckt. 18, Declaration of Corey Crom. Review of Applicable California Code of Civil Procedure.

DEBTOR'S OPPOSITION:

Debtor responds that she was married at the time of the filing of the bankruptcy, that she did not live at the 22 Salano Drive residence but that her spouse and children did reside in the property. Dckts. 20; 26. Debtor argues that California Code of Civil Procedure section 704.710(c) defines the residency requirements of the California Homestead exemption to allow for the debtor's spouse' residency to permit the Debtor to claim the exemption.

DISCUSSION:

At the hearing ----.

The Chapter 13 Trustee's Objection is xxxx, and the claimed exemptions are xxxx.

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

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

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

IT IS ORDERED that Objection is **xxxx**, and the claimed homestead exemption for real property located at 22 Salano Drive, Dixon, California under California Code of Civil Procedure § 704.730 are **xxxx**.

Final Ruling: No appearance at the March 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Walter Allen Kendricks and Nellie R. Kendricks ("Debtors") have filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on February 19, 2019. Dckt. 115. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Walter Allen Kendricks and Nellie R. Kendricks ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 14, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate

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

Thru #7

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 13, 2019. 14 days' notice is required. That requirement was met.

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

- A. Debtors did not attend the First Meeting of Creditors held on February 7, 2019. The Meeting was continued to March 14, 2019.
- B. Debtors' Plan does not proposes to pay any creditors through the Plan.
- C. Debtor's list \$858,781.90 in non-exempt assets but propose a 0% dividend to the general unsecured creditors, providing them less what they would receive in a Chapter 7 liquidation.
- D. A claim filed by Honda Financial Services (Claim 2-1) for \$28,338.72 is not scheduled or provided for in the Plan.

- E. Debtor's may not have sufficient income to make all required Plan payments. Debtors state on Schedule that they receive \$17,000.00 in income. However, based on information provided to the Trustee and the Debtor's 2017 income tax return, it appears that Debtor may have less than \$6,000.00 of income a month.
- F. Debtor's Plan may not be putting all disposable income into the Plan.
- G. The Trustee questions whether all assets have been adequately scheduled because Debtors do not provide a value for several scheduled assets.

Trustee's objections are well-taken. Debtor's Plan does not provide for any payments to creditors despite there being filed claims and the Plan does not propose to pay all disposable income into the Plan. There is cause to not confirm the Plan.

At the hearing ----.

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, 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.

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

Local Rule 9014-1(f)(3) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2019. The court set the hearing for January 29, 2019. Dckt. 34.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

The Motion to Extend the Automatic Stay is ~~xxxxxx~~.

Charel Winston and Alma Winston ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtors' second bankruptcy petition pending in the past year. Debtors' prior bankruptcy case (No. 18-27722) was dismissed on December 26, 2018, after Debtors did not file all required documents. See Order, Bankr. E.D. Cal. No.18-27722, Dckt. 29. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtors thirty days after filing of the petition.

Here, Debtors' Counsel states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtors' Counsel does not regularly practice bankruptcy law and did not file a Master Address List. Dckt. 20, Counsel's Declaration. Debtors' Counsel states that Debtors filed the present case in good faith. The court notes that no declaration for either of the Debtors was submitted with this Motion.

TRUSTEE'S OPPOSITION:

The Trustee flags for the court that Debtors' proposed plan proposes to pay \$1,100.00 in administrative expenses, proposes no less than 0% to general unsecured creditors, and does not propose payment for any other creditor including scheduled secured creditor Peter Nguyen & The Ha Vu Le. Dckts. 1; 3. The Trustee also states that he does not believe that Debtors furnished sufficient evidence to rebut the presumption of 11 U.S.C. § 362(c)(4)(D).

SECURED CREDITOR PETER NGUYEN AND THE HA VU LE'S OPPOSITION:

Secured Creditors, Peter Nguyen and The Ha Vu Le Oppose Debtors Motion to Extend the Automatic Stay. Secured Creditor claims that Debtors' prior bankruptcy proceeding was dismissed after Debtors filed a skeletal petition and did not ultimately file all required documents. Secured Creditor disputes Debtors assertion that they have an ownership interest in the property listed as their residence on the petition. Secured Creditor claims that Debtors were merely tenants and Secured Creditor claims are using the bankruptcy proceedings to delay eviction. Dckt. 27.

The court notes that no declaration or exhibits were filed in support of Secured Creditor's Opposition.

OPPOSITION OF INTERESTED PARTY PACIFIC GAS AND ELECTRIC COMPANY:

Pacific Gas and Electric Company ("PG&E") filed an Opposition as an interested party. PG&E claims that despite Debtor's representing that PG&E is an unsecured creditor in the amount of \$21,717.72, Debtors are not PG&E customers and there is not basis to be included in Debtor's plan. PG&E asserts that Debtors reside in a home where Olga Nogues is the customer of record and Debtors may not seek to discharge the debt of another individual. Dckt. 45.

The court notes that no declaration, exhibits, or proof of service were filed in support of PG&E's Opposition.

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.

Review of Plan and Schedules

The proposed Plan provides for monthly plan payments by Debtor of \$1,100 a month for sixty months. Plan ¶¶ 2.01, 2.03, Dckt. 3.

For Creditors, no claims are listed in Class 1 (secured), Class 2 (secured), Class 3 (secured, collateral abandoned), Class 4 (secured paid directly), Class 5 (priority), and Class 6 (unsecured special treatment). *Id.* ¶¶ 3.07, 3.08, 3.09, 3.10, 3.12, 3.13. For Class 7 general unsecured claims, the Plan provides for a 0% dividend on \$63,091.47 in unsecured claims. *Id.*, ¶ 3.14.

On its face, over the sixty months of the Plan, there will be \$66,000 paid into the plan, with only the Chapter 13 Trustee's fees of \$5,280 (estimated at 8%), leaving \$61,0720 for payment of unsecured claims. The court is uncertain how the plan, in good faith, projects a 0% dividend on the \$63,091 in general unsecured claims.

On Schedule A Debtors state under penalty of perjury that Debtors own real property commonly known as 4767 Lonesome Dove Drive. Dckt. 1 at 12. Debtors further states that Debtors' interest in the property is "Fee Simple/Right of possession." *Id.* On Schedule C Debtor claims an \$100,000 homestead exemption in the Lonesome Dove Property pursuant to California Code of Civil Procedure § 704.730. *Id.* at 22. (The court notes that this section of the California Code of Civil Procedure does not provide for a homestead exemption, but merely the amount of a homestead exemption if one is qualified pursuant to another statute.)

On Schedule D Debtors state under penalty of perjury that Movant has a judgement lien against the Lonesome Dove Property to secure a judgment in the amount of (\$37,747.38), and that such judgment lien is disputed. *Id.* at 24.

Schedule D also lists the Securities and Exchange Commission having a secured claim in the amount of (\$150,000), with the collateral listed as "Bank Accounts Frozen." *Id.* at 25.

On Schedule I debtor Charell Winston states having income of \$17,000 a month in gross wages as a Trustee with the Dene Bank and Trust. Debtor Charell Winston states that there is no withholding for federal or state income taxes, Social Security taxes, unemployment, or other amounts commonly withheld from wages. *Id.* at 38-39. The income for debtor Alma Winston is stated to be \$0.00.

Debtors have not completed Schedule J to shown their net income. They do include \$3,333 a month for income taxes. (Based on the gross income of \$17,000, that would be approximately 20% for the \$204,000 in annual income. *Id.* at 41-42.

On Schedule J Debtor includes some "curious" expenses, which include the following:

A. Home Maintenance.....\$1,500 a month.....\$18,000 a year

B. Electricity, Gas, Heat.....\$2,000 a month.....\$24,000 a year

- C. Water, Sewer, Garbage.....\$ 600 a month.....\$ 7,200 a year
- D. Phone, Cell, Internet.....\$ 700 a month.....\$ 8,400 a year
- E. Other (which Debtors do not specify...\$4,000 a month...\$48,000 a year
- F. Food and Housekeeping
(2 Debtors and a dependant mother)....\$1,500 a month...\$18,000 a year

Id.

Conspicuously absent are property taxes and property insurance if the Debtors own the Lonesome Dove Property in Fee Simple.

On the Statement of Financial Affairs Debtors state that they have additional income of \$10,380 a year for "Taking care of incapacitated mother). Statement of Financial Affairs Question 5, Dckt. 1 at 46. This income is not included on Schedule I, nor is the income of the mother (such as Social Security) or her assets, though Debtors claim her as part of their household.

In response to Question 6, Debtor's state that they paid Peter Hguyen and The Ha Ve Le \$125,000 on November 15, 2018 for "house." Statement of Financial Affairs Question 6, *Id.* at 47.

Motion for Relief From Stay and Adversary Proceeding

The Motion for relief From the Automatic Stay filed by Peter Nguyen and The Ha Vu Le sheds a little light on the underlying issues of this case. Peter Nguyen and The Ha Vu Le assert that they purchased the Lonesome Dove Property at a foreclosure sale on January 9, 2017. Motion, Dckt. 31. It alleges that after the foreclosure sale, the movants entered into a one year lease with Debtors, that the lease expired, a stipulation was entered into an unlawful detainer proceeding, and that Debtors breached the stipulation. Further, that the movants entered into a contract to sell the Lonesome Dove Property to Debtors, but that the sales contract included a "forfeiture and damages" provision.

On January 2, 2019, Debtors filed an Adversary Proceeding against Peter Nguyen, The Ha Vu Le, and Bank of New York Mellon, asserting ten causes of action, which include setting aside the foreclosure sale and to quiet title. Adv. Proc. 19-2002. In it Debtors asserting having obtained a lease-option for the Lonesome Dove Property and having a stipulation with the movant.

Denial of Motion

Debtors have not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay by virtue of their pleadings. Debtors' did not submit a declaration testifying to the necessary facts. While Debtors' Counsel can testify to the facts he has personal knowledge, instances where he states he did not properly prosecute Debtors' prior case, Debtors' Counsel does not appear to have the necessary personal knowledge to attest to Debtors' good faith filing in the present case.

At the hearing January 29, 2019 hearing, the court addressed with the Parties the significant issues relating hereto, the need for Debtor to have experienced bankruptcy counsel (notwithstanding Debtor's current counsel being experienced in other areas of the law for which the Debtor is pursuing). It was determined that the hearing would be continued to allow the parties and their

respective counsel to address how the underlying issues would be determined, the forums used, and the adequate protection (which was discussed to include Debtor making the current mortgage payment, arrearage payment, HOA fees, and other amounts which do or could encumber the property at issue).

At the hearing ----.

The Motion is ~~xxxx~~, 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 Charel Winston and Alma Winston ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED that the Motion is denied, and the automatic stay is not extended.~~

7. [19-20002](#)-C-13 CHAREL/ALMA WINSTON
[NW-1](#) David Barrett

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
1-21-19 [[31](#)]

THE HA VU LE, PETER NGUYEN,
VS.

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

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

Local Rule 9014-1(f) (3) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 21, 2019. The court set the hearing for January 29, 2019 on January 28, 2019.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

The Motion for Relief from the Automatic Stay is granted.

Peter Nguyen and The Ha Vu Le ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4767 Lonesome Dove Drive, Shingle Springs, California ("Property"). The moving party has provided the Declaration of Peter Nguyen and The Ha Vu Le to introduce evidence as a basis for Movant's contention that Charel Winston and Alma Wintson's ("Debtors") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on October 19, 2016. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant states that the hearing on Claim of Right to Possession was set for December 14, 2018 but was continued due to the bankruptcy proceeding.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dckt. 35, Exhibit A. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d) (2).

The court shall issue an order terminating and vacating the automatic stay to allow Peter Nguyen and The Ha Vu Le , and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4767 Lonesome Dove Drive, Shingle Springs, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

[Federal Rule of Bankruptcy Procedure 4001(a)(3)]
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

JANUARY 29, 2019 HEARING:

At the January 29, 2019 hearing the court continued the hearing to allow Oppositions to be filed and served by February 5, 2018 and Replies, if any may be presented orally at the hearing.

DEBTOR'S OPPOSITION:

On February 5, 2019, Debtors filed an Opposition. Dckt. 60. Debtors assert that the Movant's deed is void because Debtor claims Movant does not have a judgment for possession against the Debtors. Debtors also not that they have filed an adversary complaint disputing the Movant's ownership of the property. Case No. 19-2002.

Debtors state that subsequent to the unlawful detainer case filed in 2017, the parties reached a settlement in May of 2018 permitting the Debtors a time period to purchase the house or judgment would entered against them. The Debtors did not purchase the house and a judgment was entered against them in June of 2018. However, Debtors state that parties entered into an Amended Stipulation to purchase the property in November 2018. Debtors argue that the Amended Stipulation created a buyer-seller relationship rather than a landlord-tenant relationship granting the Debtors possessory rights in the property.

The Debtors further argue that they have equity in the property of \$125,000.00, the amount the Debtors put toward the purchase price of the property, and claim the payment was not for rent. Or in the alternative the \$125,000.00 should be turned over to the bankruptcy estate.

INTERIM ORDER EXTENDING STAY

The court has entered an Interim Order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Dckt. 64. The court did so, conditioned upon the Debtor having delivered \$2,700.00 to the Chapter 13 Trustee so that an adequate protection payment could be made to Movant. The Trustee confirmed

that the payment was made and the court issued the Interim Order.

In addressing the issues with the parties, the court noted:

"At the hearing the court addressed with the Parties the significant issues relating hereto, the need for the Debtor to have experienced bankruptcy counsel (notwithstanding Debtor's current counsel being experienced in other areas of the law for matters which Debtor is pursuing). It was determined that the hearing would be continued to allow the parties and their respective counsel to address how the underlying issues would be determined, the forums used, and the adequate protection (which was discussed to include Debtor making the current mortgage payment, arrearage payment, HOA fees, and other amounts which do or could encumber the property at issue)."

Civil Minutes, Dckt. 57 at 6.

February 12, 2019 Hearing:

At the hearing Debtor agreed to pay \$3,600 payment, with \$2,500 going to Movant as adequate protection. The court continued the contested matter to March 5, 2019, for a final hearing.

DECISION:

The court shall consider, in addition to other grounds and factors: (1) the Chapter 13 Plan being prosecuted and how it provides for litigation of the underlying dispute and providing adequate protection for the other party to such dispute, and (2) how actively and diligently Debtor is prosecuting the necessary action(s) to adjudicate the asserted rights of the bankruptcy estate.

At the hearing ----.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Peter Nguyen and The Ha Vu Le ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Peter Nguyen and The Ha Vu Le and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4767 Lonesome Dove Drive, Shingle Springs, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

Final Ruling: No appearance at the March 5, 2019 hearing is required.

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

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

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 is overruled as moot.
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Angelita Adams ("Debtor") filed an Amended Plan and Motion to Confirm on February 28, 2019. Dckts. 22; 25. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirm the Amended Plan is overruled as moot, 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 Confirm the Amended Chapter 13 Plan filed by The Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

9. [18-27708](#)-C-13 VIRGIL EVANS
[TGM](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
1-21-19 [[23](#)]

Final Ruling: No appearance at the March 5, 2019 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 Automatic Stay having
been presented to the court, the case having been
previously dismissed, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion is dismissed
as moot, the case having been dismissed.

10. [19-20615](#)-C-13 WILLIE MAE BLAKELY
Pro Se

MOTION TO EXTEND AUTOMATIC STAY
2-11-19 [[11](#)]

CASE DISMISSED: 02/19/2019

Final Ruling: No appearance at the March 5, 2019 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 25, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.
--

Garry Gonzales and Michelle Gonzales ("Debtors") seek confirmation of the Modified Plan because unanticipated expenses caused Debtors to fall behind two mortgage payments and the modified Plan seeks to cure that delinquency through increased Plan payments. Dckt. 76 (Declaration). The Modified Plan changes the monthly payments for months 13 through 60 to \$3,418.00 per month. Dckt. 79 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION:

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 19, 2019. Dckt. 83. The Trustee opposes the Modified Plan because due to a mortgage payment increase effective in March of 2019, the Debtors' proposed payment will not be sufficient to pay all required payments. The Trustee states that monthly Plan payments for the remaining 47 months of the Plan would need to be \$3,455.00 which is \$37.00 more than what is proposed.

DEBTOR'S REPLY:

Debtors replied to the Trustee's Opposition by stating that the Notice of Mortgage Payment Change was filed after the Debtors' Motion to Confirm the

Modified Plan. The Debtors request that the Order Confirming the Plan provide for the increased payment proposed by the Trustee.

DISCUSSION:

Absent the Trustee noting an opposition to addressing his concerns in the Order Confirming the Modified Plan, the Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Garry Gonzales and Michelle Gonzales ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan, incorporating the Trustee's payment increase, filed on January 25, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Thru #13

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Plan is denied.
--

Jeffrey Macilraith ("Debtor") seeks confirmation of the Plan which Debtor state provides for all of his disposable income and pays a 100% dividend, plus interest to his general unsecured creditors. Dckt. 113 (Declaration). The Plan provides for monthly payments of \$943.00 over (60) months, the only listed creditor in the Plan is in Class 4 where Debtor states that his mortgage creditor will be paid outside the Plan by his non-filing spouse. Dckt. 97 (Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 7, 2019. Dckt. 120. The Trustee opposes confirmation based on the following:

A. Debtor is not current under the proposed Plan.

B. Debtor does not appear able to make all required Plan payments. Debtor lists his mortgage in Class 4 and provides for monthly payments of \$2,082.00 by his non-filing spouse. However, the non-filing spouse is not

listed as having any income on Schedule I. Additionally, Safe Credit Union, the mortgage creditor, filed Claim No. 1-1 for \$201,757.67 with \$36,523.02 in arrears and a monthly payment of \$1,858.76. The Trustee notes that the Debtor is only party appearing on the note attached the Claim. The Trustee notes that this Creditor should be provided for in Class 1.

C. Debtor does not have sufficient income to make required payments if the mortgage creditor is properly provided for in Class 1.

D. Debtor has not filed Form 122C-1 as required by the court on November 28, 2018. Dckt. 67.

E. The Debtor has not provided the Trustee with all required employer pay advices.

DISCUSSION:

The Debtor has not properly provided for the mortgage creditor and based on the stated disposable income, have not proposed a feasible Plan. The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court also notes that pending before the court is a Motion by the Chapter 13 Trustee to Dismiss or Reconvert the case which the court continued to March 20, 2019. The court continued the Motion to Dismiss based on Debtor's Counsel's representation that Debtor would be actively prosecuting this case and seeking to properly pay all creditors.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2019. 14 days' notice is required. That requirement was met.

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.
--

Safe Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor is improperly listed in Class 4. Creditor asserts that it should be provided for in Class 1 because there are \$20,875.58 in pre-petition arrears. The Plan does not provide for payment of the arrears.
- B. Debtor's Plan is not feasible. Debtor does not have sufficient income to properly provide for Creditor's claim (including arrears). Debtor's Plan presently states that his non-filing spouse would be making the monthly mortgage payments, however, no income is listed for this individual on Debtor's Schedule I.

Creditor's objections are well-taken. Debtor has not provided for Creditor's arrears and Debtor's Scheduled income is insufficient to provide for all required Plan payments.

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

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

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

The Objection to the Chapter 13 Plan filed by Safe Credit Union ("Creditor") holding a secured claim] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Thru #17

Final Ruling: No appearance at the March 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2019. 28 days' notice is required. That requirement was met.

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 to the extent the claim for exemption exceeds \$100,000.00.

David Cusick ("the Chapter 13 Trustee") objects to Scott Ned Brown and Melinda Niclole Brown's ("Debtors") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140 does not allow claiming 100% of fair market value and requires the claimant to list actual values.

A review of the docket shows that Debtors amended their Schedule C on February 19, 2019 and Debtor's Amended Schedule C shows that real dollar amounts have been claimed. Dckt. 53. The court notes that Debtors' counsel does not list the applicable statutory limit, in addition to the dollar amount claimed and should be more specific going forward.

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 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 to the extent the amount exceeds \$100,000.00.

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2019. 14 days' notice is required. That requirement was met.

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. Debtors cannot make Plan payments based on statements made at the Meeting of Creditors. Debtors have not provided for expenses related to property insurance, taxes, and expenses related to certain vehicles.
- B. The Trustee is not able to determine whether the Debtors have elected to pay a flat fee to their Attorney.

Trustee's objections are well-taken. Absent evidence to demonstrate that Debtors can make all required Plan payments and have properly disclosed how they elect to pay Attorney fees, the Plan is not confirmable.

At the hearing ----.

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

Objection is sustained, and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, 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.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 31, 2018. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to ~~xxxx~~ the Objection.

Secured Creditor, David C. Meyers, opposes confirmation of the Plan based on the following:

A. Debtors' Plan does not provide for all of the pre-petition arrears and does not provide for any interest on the arrears.

B. Debtors' Plan is not feasible.

C. Debtors' Plan is not proposed in good faith because it was only filed to delay a foreclosure sale.

DEBTORS' RESPONSE:

Debtors' response alleges that Secured Creditor's Proof of Claim No. 1-1 omits key information that does not allow the Debtors to determine what payments have been incurred. However, the court notes that no Objection to Secured Creditor's Claim has been filed. Debtors state that the Plan payments already incorporate interest on Secured Creditor's arrears and Secured Creditor is not entitled to additional interest. Debtor disputes that the proposed Plan

is not feasible.

A review of Proof of Claim No. 1 filed by Creditor states a pre-petition arrearage of \$13,964.92. The Plan, Dckt. 10, does not compute the Class 1 cure payment using the amount stated in Proof of Claim No. 1, but a lower amount of \$9,416.00 (\$184.63 a month payment for sixty months). For a \$13,964.92 arrearage, the monthly cure amount over sixty months would be \$232.75 a month.

With a monthly plan payment of.....	\$1,155.00
and the following payments	
Chapter 13 Trustee fees (estimated 8%).....	(\$ 92.40)
Debtor's Counsel Fees (amort. 60 months).....	(\$ 25.00)
Class 1 Current Mtg Payment.....	(\$ 854.00)
Class 1 Cure (per POC).....	<u>(\$ 232.75)</u>
Surplus/(Under Funded)	(\$49.15)

At the hearing -----.

The Plan **XXXX** with 11 U.S.C. §§ 1322 and 1325(a). The objection is **XXXX** and the Plan is **XXXX**.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is **XXXX** and the proposed Chapter 13 Plan is **XXXX**.

17. [18-27728](#)-C-13 SCOTT/MELINDA BROWN
[FF-1](#) Gary Fraley

OBJECTION TO CLAIM OF DAVID C.
MEYERS, CLAIM NUMBER 1
1-30-19 [[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.

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, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2019. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition). That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 1-1 of David C. Meyers is xxxx.
--

Scott Brown and Melinda Brown, the Debtors, ("Objectors") request that the court disallow the claim of David C. Meyers ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$144,314.00. Objector asserts that the claim has insufficient documentation. Debtor attaches the Motion the first three pages of Claim 1-1. Dckt. 44, Exhibit. However, the court notes that Claim 1-1 is actually (32) pages long including a recorded deed of trust. Additionally, Debtors also schedule a secured claim on their Schedule D for this same creditor for approximately \$139,000.00.

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).

Debtors' objection alleges that Claim No. 1-1 has insufficient documentation but not specifically address why. The attached exhibit does not represent all pages that were filed in support of the claim. Debtors do not indicate whether Debtors object to the claim in full or in part. The court notes that Debtors acknowledge the existence of a secured claim on their bankruptcy petition.

At the hearing —.

Based on the evidence before the court, Creditor's claim is **xxxx**. The Objection to the Proof of Claim is **xxxx**.

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

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

The Objection to Claim of David C. Meyers ("Creditor"), filed in this case by Debtors ("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 1-1 of David C. Meyers is **xxxx**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is xxxxx.

Leonard Lopez ("Debtor") seeks confirmation of the Modified Plan because his child support obligation has decreased and his employer is paying additional medical expenses on his behalf. Dckt. 49 (Declaration). Accordingly, Debtor proposes to increase Plan payments from \$800.00 to \$1,800.00 per month. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 14, 2019. Dckt. 53. The Trustee opposes confirmation based on the following:

A. The Plan exceeds the maximum time allowed under 11 U.S.C. § 1322(d) because the Trustee calculates the Plan required (67) months to complete. The Trustee notes that this is because the IRS amended its claim on December 6, 2018 (Claim No. 1-1), increasing the priority taxes. Debtor's Plan as modified proposes to pay all Priority Claims in full and as such would require minimum monthly payments of \$2,353.00 pre month.

DEBTOR'S RESPONSE:

Debtor's Counsel responds that Debtor was waiting for the IRS sign a stipulation, however, the lapse in government appropriations has delayed this negotiation. Dckt. 56.

The hearing was continued on January 29, 2019 to allow additional time to coordinate with the IRS.

At the hearing -----.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Leonard Lopez y Joe Lauderdale ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 31, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Final Ruling: No appearance at the March 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 23, 2019. 28 days' notice is required. That requirement was met.

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

The Objection to Discharge is sustained.

The Chapter 13 Trustee ("Objector") objects to Wallace Lundry'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 February 20, 2018. Case No. 18-20933. Debtor received a discharge on June 4, 2018. Dckt. 53.

The case was converted to one under Chapter 13 on November 29, 2018. Dckt. 58.

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 June 4, 2018, which is less than four years preceding the date of the filing of the instant case. Dckt. 53. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-20933), 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. 18-20933, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the March 5, 2019 hearing is required.

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

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

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 overruled as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Jose De Leon ("Debtor") filed an Amended Plan. Dckt. 35. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to the Plan is denied as moot, 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 Confirm the Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

21. [18-27635](#)-C-13 STEPHANIE BIG-EAGLE
[DPC](#)-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
1-29-19 [[21](#)]

Thru #22

Final Ruling: No appearance at the March 5, 2019 hearing is required.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed a Ex Parte Motion to Dismiss, pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar.** The Chapter 13 Trustee's Objection now moot due to Debtor filing an Amended Plan and Motion to Confirm. Dckts. 30; 32.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2019. 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 USAA Federal Savings Bank ("Creditor") is \$18,000.00, and Creditor's secured claim is determined to have a value of \$18,000.00.

The Motion filed by Stephanie Anne Big-Eagle ("Debtor") to value the secured claim of USAA Federal Savings Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Infinity Q-50 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$18,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in January 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$29,144.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$18,000.00, 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 Stephanie Anne Big-Eagle ("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 USAA Federal Savings Bank("Creditor") secured by an asset described as 2014 Infinity Q-50 ("Vehicle") is determined to be a secured claim in the amount of \$18,000.00, 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 \$18,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2019. 28 days' notice is required. That requirement was met.

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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is xxxx.

David Cusick ("the Chapter 13 Trustee") objects to Kenneth Alberts and Monica Alberts ("Debtors") claimed exemptions. The Trustee states that Debtors filed Amended Schedules A through C after the case was completed and after Debtors received their discharge. Dckts. 151; 161; 162. Debtors did not provide declarations in support of the amended filings. The Amended Schedules now show a Class Action product liability settlement in the amount of \$78,979.02, with \$26,800.00 claimed as exempt.

DEBTORS' RESPONSE:

Debtors' counsel filed a response stating that Debtors are represented by the firm Blizzard & Nabers, LLP in a confidential settlement agreement. Debtor's counsel stated that he has notified the firm that several motions will be required including a motion to employ, motion to settle, and motion for attorneys fees.

DISCUSSION:

At the hearing -----.

The Chapter 13 Trustee's Objection is xxxx.

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

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

Minutes for the hearing.

The 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 **xxxx**.

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) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 23, 2019. Fourteen days' notice is required. That requirement was met.

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

The Objection to Confirmation is sustained.
--

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

A. Debtor did not appear at the First Meeting of Creditors held on January 17, 2019 and meeting was continued to February 7, 2019. The Trustee noted that the Debtor notified the Trustee by telephone on the day of the First Meeting of Creditors that she had a flat tire.

The Trustee also notes that the first Plan payment of \$1,430.00 will be due prior to the hearing.

DEBTOR'S RESPONSE:

The Debtor's counsel responded that Debtor and counsel will be at the continued Meeting of Creditors on February 7, 2019.

DISCUSSION:

Both the Trustee and the Debtor requested a continuance until March 5, 2019 which the court will allow to permit the parties to complete the First Meeting of Creditors.

CHAPTER 13 TRUSTEE STATUS REPORT:

On February 19, 2019 the Trustee filed a status report stating that Debtor appeared at the February 7, 2019 Meeting of Creditors. However, the Meeting was held open to allow Debtor additional time to file required her required 2016 tax return. The Trustee also noted that Debtor made the first required Plan payment.

At the hearing -----.

Absent evidence that the Debtor filed all required tax returns, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 8, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted

Ernest Jackson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 15-29598) was dismissed on November 15, 2018, after Debtor did not cure plan payment delinquencies. See Order, Bankr. E.D. Cal. No. 15-29598, Dckt. 46. 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 he fell behind on Plan payments due the sudden death of his wife coupled with Debtor's claim that his prior counsel did not file a response to the Trustee's Motion to Dismiss, despite being told a response would be filed.

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 demonstrated the case was filed in good faith and 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 Joseph Raquiza ("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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2019. 14 days' notice is required. That requirement was met.

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's Plan relies on unresolved Motion to Value Collateral.
- B. Debtor has not provided the Trustee with required documents including tax returns, bank statements, proof of licence, or a written statement that no such document exists.

Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court valuing secured claims. Debtor has failed to file Motions to Value the Secured Claims. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor has also not provided the Chapter 13 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).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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.

Thru #28

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*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2019. 14 days' notice is required. That requirement was met.

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 did not attend the Meeting of Creditors held on January 24, 2019.
- B. Debtor's Plan does not provide a commitment period.
- C. Debtor's Plan does not provide for a treatment of the general unsecured creditors.
- D. Debtor's proposed payment appears insufficient to fund the Plan. Because it requires the Trustee to make ongoing mortgage payments of \$1,000.00 but only provides for \$100.00 monthly payments. Additionally, the mortgage creditor filed a claim stating arrear in the amount of \$12,769.84 which are not provided for in the Plan.

- E. Debtor may not be putting forth all disposable income because the Plan provides for \$100.00 plan payments while Debtor's disposable income appears to be \$236.00 per month.
- F. Debtor may not have disclosed all debts because only the mortgage is scheduled.
- G. Debtor is delinquent in Plan payments.
- H. Debtor's Plan may fail the Chapter 7 liquidation analysis because Debtor's non-exempt equity totals \$10,500.00 and provides no dividend to the general unsecured creditors.
- I. Debtor does not disclose prior bankruptcy proceeding filed on September 19, 2014 and dismissed on February 18, 2018. Case No. 14-29406.

Trustee's objections are well-taken. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because it does not provide for all filed claims, the Plan omits required information, and the Debtor has not attended the Meeting of Creditors. 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.

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), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2019. 14 days' notice is required. That requirement was met.

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 xxxx.

U.S. Bank National Association, as Trustee for structured asset securities corporation mortgage pass-through certificates, Series 2007-BC3 by and through its authorized loan servicing agent, Ocwen Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan does not properly provide for pre-petition arrears and instead proposes a loan modification that has not yet been agreed upon.

At the hearing -----.

The Plan xxxx comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is xxxx, and the Plan is xxxx.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

IT IS ORDERED that the Objection to Confirmation of the Plan is **xxxx**.

Final Ruling: No appearance at the March 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.
--

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Christopher Louis Riccardi and Teresa Yvonne Riccardi ("Debtors") have filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on February 19, 2019. Dckt. 39. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Christopher Louis Riccardi and Teresa Yvonne Riccardi ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 16, 2019, is

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

30. [18-26458](#)-C-13 KAREN LEITHEISER AND
[DPC](#)-2 CRAIG GREEN
Michael Hays

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
1-16-19 [[38](#)]

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2019. 14 days' notice is required. That requirement was met.

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 overruled.
--

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

- A. The Trustee is uncertain what the total attorneys fees charged should be. Additionally, the Trustee is uncertain the amount paid prior to filing the petition and what is to be paid through the Plan.
- B. Debtors have not provided the Trustee with required documentation in relation to their most recent pre-petition Federal Income Tax Return.
- C. Debtors do not appear to have filed state tax returns for the tax years 2016 and 2017 despite an apparent requirement to do so.

DEBTOR'S RESPONSE:

Debtors' Counsel filed a response stating that an Amended Rights and Responsibilities was filed to clarify the attorney fees. Debtors' Counsel states, without supporting evidence, that all required tax returns have been filed and copies furnished to the Trustee.

DISCUSSION:

Trustee's objections are well-taken and appear to be addressed, in Debtors' response.

At the hearing-----.

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, 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 is overruled, and Karen Leitheiser and Craig Green ("Debtors") Chapter 13 Plan filed on October 17, 2018, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is xxxxxx.

Michael Maxey and Tracy Maxey ("Debtors") seek confirmation of the Amended Plan. Dckt. 40 (Declaration). The Amended Plan provides for a 4% distribution to the general unsecured creditors. Dckt. 36 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 7, 2019. Dckt. 44. The Trustee opposes confirmation for the following reasons:

A. Debtors' Plan does not appear feasible. Debtors proposed Plan payment may be insufficient to pay the ongoing mortgage payment.

B. Debtors are delinquent under the proposed plan.

C. The Debtors Plan may not propose to pay all disposable income. The Declaration indicates that Debtors' son contributes \$500.00 toward household income but the income is not reflected on their Schedule I.

DISCUSSION:

At the hearing -----.

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

xxxxxx 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 Michael Maxey and Tracy Maxey ("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
xxxxxx.

Final Ruling: No appearance at the March 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2019. 14 days' notice is required. That requirement was met.

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 is overruled as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Eufemio and Liza Seguban ("Debtors") filed an Amended Plan on February 18, 2019. Dckts. 20. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirm the Amended Plan is overruled as moot, 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 Confirm the Amended Chapter 13 Plan filed by The Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. The proposed Plan requires 69 months to complete.
- B. The Plan relied on a Motion to Value, which the court notes was granted on February 12, 2019. Dckt. 73.
- C. The Trustee states that the Plan requires Motions to Avoid Liens of Sacramento Credit Union and Capital One Bank which the court notes were granted on February 12, 2019. Dckts. 73; 75.
- D. The Plan relies on family contributions; however, the Trustee has insufficient information to determine if those contributions are feasible.
- E. Debtor is not current in Plan payments.

F. The Meeting of Creditors has not been concluded with respect to Debtor. Debtor has not provided proof of his Social Security Numbers to the Trustee.

Trustee's objections are well-taken. Absent information that Debtor's Plan can be completed in the required 60 months; has provided sufficient evidence to demonstrate plan payments are feasible; and provided all required information to the Trustee, cause exists to deny confirmation of the Plan.

At the hearing----.

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, 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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted

Joseph Raquiza ("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. 18-22926) was dismissed on July 16, 2018, after Debtor was not able to put forth a confirmable Plan. See Order, Bankr. E.D. Cal. No. 18-22926, Dckt. 31. 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 filed to save his residence but the creditor prevailed in a Motion for Relief from Stay and ultimately foreclosed upon the house. Debtor has since purchased a different property with the assistance of family members and states that he will be able to prosecute this case with family member assistance.

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 demonstrated the case was filed in good faith and 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 Joseph Raquiza ("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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted

Therese Weathers-Reyes ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-20143) was dismissed on February 8, 2019, after Debtor did not timely file documents. See Order, Bankr. E.D. Cal. No. 19-20143, Dckt. 20, February 8, 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 Debtor did not obtain counsel when she filed her prior case but has since retained counsel to represent her this proceeding.

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 demonstrated the case was filed in good faith and 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 Therse Weathers-Reyes ("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.

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

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

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

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

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 may not be able to make all play payments. Debtor's stated income is through a contracting businesses; however, at the First Meeting of Creditors Debtor stated that his licence was not yet reinstated. Debtor has not provided the Trustee with sufficient information to determine that there is a source of income to fund the Plan.
- B. Debtor listed business expenses including a \$1,600.00 lease payment. At the Meeting of Creditors Debtor stated that his business is located at his residence.
- C. Debtor has not provided the Trustee with information pertaining to his most recent pre-petition tax return.

Trustee's objections are well-taken. Debtor has not demonstrated that his play payments are feasible based on the fact that he may not have a license

to continue earning income. Debtor may not be entitled to all of the claimed business expenses. Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

At the hearing -.

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

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

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

The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

JANUARY 15, 2019 HEARING:

At the January 15, 2019 hearing the court continued the hearing and ordered supplemental briefing requiring that the Trustee file and serve Supplemental Objection Pleadings on or before January 25, 2019; supplemental Opposition Pleadings shall be filed and served on or before February 8, 2019; and Replies, if any, on or before February 15, 2019.

TRUSTEE'S SUPPLEMENTAL RESPONSE:

The Trustee continues to Oppose Confirmation of the proposed Plan for the following reasons:

A. The Plan does not appear to be brought in good faith. Debtor's Plan proposes to pay mortgage payments to Wells Fargo (Claim No. 10) directly in Class 4 but appears to be inflating the amount required to be paid by \$1,873.41.

B. The Plan proposes to pay an obligation to Craig McIntosh in Class 4 for \$500.00 a month, however, the Trustee is not certain this claim exists or is enforceable.

C. The Trustee is not certain about Debtor's claimed 50% interest in the real property located in El Dorado County. The Trustee questions whether Debtor's interest is greater than 50%. The court also notes that the Co-Owner George Kretas filed a claim asserting an interest in the property and also filed a letter with the court that may indicate there are other claims against Debtor. Dckt. 28.

D. The Trustee is not certain about family contributions that may or may not be made toward the plan and still requests that the Debtor provide additional evidence regarding this.

E. The Debtor may not be providing all disposable income toward Plan payments.

At the hearing -----.

Absent evidence that Debtors have proposed to pay all disposable income and demonstrate that the Plan provides for all non-exempt equity, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2019. 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, -----.

<p>The Motion to Value Collateral and Secured Claim of Franklin Credit Management Corporation ("Creditor") is \$0.00, and Creditor's secured claim is determined to have a value of \$0.00.</p>
--

The Motion to Value filed by Patricia Sittinger ("Debtor") to value the secured claim of Franklin Credit Management Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3917 Clay Bank Road, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of \$465,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a) (1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject

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

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

NO PROOF OF CLAIM FILED

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

OPPOSITION

Creditor has not filed an Opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$482,364.00. Creditor's second deed of trust secures a claim with a balance of approximately \$242,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Patricia Sittinger ("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 Franklin Credit Management Corporation ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 3917 Clay Bank Road, Fairfield, California, is determined to be a

secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$465,000.00 and is encumbered by a senior lien securing a claim in the amount of \$482,364.00, which exceeds the value of the Property that is subject to Creditor's lien.

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

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

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

The Motion for Waiver of the Certification Requirements for Entry of Discharge 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, -----
-----.

<p>The Motion for Waiver of the Certification Requirements Of Entry of Discharge is xxxxxx.</p>

The Motion for Waiver of the Certification Requirements for Entry of Discharge has been filed by Sean Conrad ("Debtor"). On May 31, 2018, Joint-Debtor, Ann Conrad died. Dckt. 98, Death Certificate. With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. Here, Debtor Sean Conrad states that he is able to continue with the administration of the case and requests that court permit him to do so pursuant to Fed. R. Bankr. P. 1016. Debtor asserts that all required Plan payments have been made and cause exists to allow him to complete his plan and obtain his discharge. Dckt. 97.

TRUSTEE'S RESPONSE:

The Trustee notes that the plan completed with the payment received on November 20, 2018. The Trustee states that there is insufficient information provided to inform how the surviving Debtor was able to afford the plan payments for the final 6 months of the plan without the income and SSI contributions totaling \$2,008.00 per month prior to her death. The Trustee responds by claiming that Debtor's Motion does not provide information

regarding any life insurance that may have been received due to the death of Debtor Lisa Conrad.

The Trustee notes that the Final Report and Account has not been filed as not all disbursement checks have cleared the Trustee's records. The Trustee also flags for the court that the names of non-debtors appear to be improperly included in documents 95 and 97. The Trustee states that this appears to be inadvertent.

The January 29, 2019 hearing was continued and supplemental pleading were required to be filed and served by February 19, 2019. Upon the court's review of the docket on February 28, 2019, no supplemental pleadings were filed with the court.

At the hearing -----.

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

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

The Motion for Waiver of the Certification Requirements for Entry of Discharge filed by Sean Conrad ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxx**.

Thru #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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f) (2) (C) .

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 1, 2019. 14 days' notice is required. That requirement was met.

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.

Stewart Title Guaranty Company ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Plan does not provide for Creditor's claim as a secured claim in the Plan.

B. Creditor also alleges that Debtor is only entitled to an exemption of \$87,500.00 with respect to the real property securing the subject debt.

Creditor's objections are well-taken and the Plan does not provide for Creditor's secured claim.

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 Stewart Title Guaranty Company ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.
--

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

A. The Plan is not feasible. The Plan purports to rely on Debtor's non-filing spouse's retirement income; however, Debtor admitted at the First Meeting of Creditors that he cannot count on the non-filing spouses income during the life of the Plan.

B. The Debtor does not provide for Secured Creditor, Stewart Title Guaranty Company in the Plan. The Debtor lists the Secured Creditor on Schedule F, the Secured Creditor has filed Claim No. 1-1, and the Secured Creditor has also Objected to the Plan.

C. The Trustee states it is not clear what Attorneys fees have been charged and what fees were paid prior to the filing the case.

Trustee's objections are well-taken. Debtor cannot make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) based on Debtor's

statements that he cannot rely on his non-filing spouses income. Debtor's Plan does not provide for all filed claims.

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.

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 29, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.
--

Peter Cianchetta, the Attorney("Applicant") for Emanuel and Silvia Ungureanu, the Chapter 13 Debtors("Client"), makes an initial application for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 3, 2016, through January 25, 2019. Applicant requests fees in the amount of \$6,125.00 and costs in the amount of \$429.82.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958-59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include 14.5 hours of pre-petition billable work and 3.0 post-petition billable work. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Pre-Petition Services: Applicant spent 14.5 hours in this category. Applicant assisted the Debtors in preparing their petition, a motion to value, a motions to avoid liens, attending meeting of Creditors, and preparing an order confirming Plan.

Post-Petition Services: Applicant spent 3.0 hours in this category. Applicant reviewed filed claims, notices of mortgage payments changes, and prepared motion for fees.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Applicant	17.5	\$350.00	\$6,125.00
			<u>\$0.00</u>
Total Fees for Period of Application			\$6,125.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$429.82 pursuant to this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

[Hourly Fees]

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of \$6,125.000 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee under the confirmed plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan].

Costs & Expenses

Costs in the amount of \$429.82 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee under the confirmed plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$6,125.00
Costs and Expenses	\$ 429.82

pursuant to this Application in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Cianchetta ("Applicant"), Attorney for the Debtors ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following fees and expenses as a professional of the Estate:

Peter Cianchetta , Professional employed by the Debtors]

Fees in the amount of \$6,125.00

Expenses in the amount of \$429.82,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtors.

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 28, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

Kristie Allensworth("Debtor") seeks confirmation of the Modified Plan because Debtor encountered approximately \$2,000.00 in unanticipated vehicle expenses. Dckt. 51 (Declaration). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION:

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 19, 2019. Dckt. 58. The Trustee requested clarification regarding Attorney's Fees and the interest rate payments on Cashcall, Inc.'s claim.

DEBTOR'S RESPONSE:

Debtor's counsel responded that the Debtor paid \$0.00 prior to the filing, that the Trustee has paid \$2,575 through the Plan, and the regaining \$1,425.00 was paid by Debtor's legal insurance after the filing of the petition. Debtor's attorney also stated that he estimate an additional \$2,500.00 in fees for extraordinary work in this case, which will be sought by motion.

Additionally, the Trustee responds that the Plan proposes to pay Cashcall, Inc. \$363.63 for months 1 through 38 with a 6.25% interest payment

and \$352.63 for months 43 through 60 with a 4.25% interest rate.

DISCUSSION:

Absent the Trustee being unsatisfied with the Debtor's clarifications, the Modified Plan complies 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 Kristie Allensworth ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 28, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

44. [12-41094](#)-C-13 ALFREDO/GUADALUPE
[HLG](#)-4 GONZALEZ
Kristy Hernandez

MOTION TO AVOID LIEN OF
CALIFORNIA SERVICE BUREAU, INC.
2-5-19 [[129](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of California Service Bureau, Inc. ("Creditor") against property of Alfredo Gonzalez and Guadalupe Gonzalez ("Debtors") commonly known as 221 Needles Way, Folsom, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$11,026.76. An abstract of judgment was recorded with Sacramento County on November 9, 2012, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$134,570.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$267,499.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 127. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b) (5) in the amount of \$1.00 on Amended Schedule C. Dckt. 126.

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

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Alfredo Gonzalez and Guadalupe Gonzalez ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of California Service Bureau, Inc. , California Superior Court for Sacramento County Case No. 34-2010-00087227, recorded on November 9, 2012, with the Sacramento County Recorder, against the real property commonly known as 221 Needles Way, Folsom, California , is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.
