UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 12, 2019 at 2:00 p.m.

1.	**16-25438-C-13** **PGM-4**	**WESLEY LAUDERDALE** **Peter Macaluso**	**CONTINUED MOTION TO MODIFY PLAN** **10-31-18 [77]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 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.

Wesley Joe Lauderdale ("Debtor") seeks confirmation of the Modified Plan because he had unanticipated expenses caring for his now deceased father and is now anticipating to receive $20,000.00. Dckt. 79 (Declaration). The Modified Plan Debtor proposes pay the $20,000.00 into the Plan upon receipt of the funds on or before May 2019 and proposes a 100% dividend to the general unsecured creditors. Dckt. 80 (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 November 26, 2018. Dckt. 90. The Trustee opposes confirmation based on the following:

A. The Plan requires more than 60 months to complete. The Trustee states that Plan payments would need to increase to $2,230.00 over the remaining 34 months of the Plan.

B. Uncertainty concerning retirement loans taken out by Debtor against his 401(k) plan. While Debtor budgets $435.39 for loan repayments, Debtors pay stubs reflect that Debtor is repaying $660.51. This is an issue raised in the first Motion to Modify. Dckts. 66, 67, 68. Additionally, the Trustee raised the issue that Debtor appears to have paid off the original retirement loans on May 28, 2017 according to information received at the 341 Meeting of Creditors. In the prior motion Debtor stated that the loan repayment completion date was incorrect; however, in this Motion states that he did in fact take out a second 401(k) loan to assist in paying back taxes for his father. Additional details regarding the loan are not provided by the Debtor.

C. Debtors Schedules I and J are marked both amended and supplemental and include decreases in monthly expenses from $5,612.14 to $2,984.03 that the Trustee believes are not reasonable to for a family size of 6 people.

DEBTOR'S RESPONSE:

Debtor responds that he is agreeable to increasing the plan payments to $2,230.00 to allow for the Plan to complete in the required 60 months. Debtor clarifies that the Schedules I and J are supplemental not amended.

Debtor is silent as to the Trustee's concerns regarding the 401(k) loan and decrease in monthly expenses. Debtor merely offers the statement that the proposed plan provides for a 100% dividend to all creditors, that Debtor is current under the proposed plan payments, and is willing to agree to the increased monthly payments.

DECEMBER 11, 2018 HEARING:

At the December 11, 2018 hearing, the Trustee concurred with Debtor's request for a continuance to address these issues, including the $20,000.00 inheritance and how Debtor will insure it will be paid into the Plan.

DEBTOR'S SUPPLEMENTAL RESPONSE:

On January 15, 2019, Debtor submitted a declaration stating that as of November 25, 2018 he has been remitting payments of $2,230.00 per month. Debtor also states that $20,000.00 of the $22,000.00 that Debtor received from the Estate of Dorsette Lauderdale in the form of Life Insurance, has been paid to the Trustee. Debtor states that $2,000.00 of the payment from the estate was used to pay medical bills related to Debtor's father.

At the January 29, 2019 hearing the court continued the hearing to allow for additional time for the Trustee to verify that the $20,000.00 was in fact paid to the Trustee.

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 Wesley 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~~.

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2. **18-27700-C-13 EJS-1** **REBEKAH FEAR**
Eric Schwab

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

Thru #3

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

Local Rule 9014-1(f)(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 ~~granted, and Creditor's secured claim is determined to have a value of $9,096.00.~~

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 securing a debt owed to Creditor with a balance of approximately $11,485.00. While Debtor does not specify whether the debt was incurred more than 910 days prior to filing of the petition, Creditor filed the loan agreement as an attachment to Proof Of Claim, No. 6. The loan agreement was executed May 11, 2014, which is more than 910 days prior to filing of the petition.

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:

The March 5, 2019 hearing was continued to allow additional time for the Debtor to provide a supplemental declaration.

At the hearing ----.

~~Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $9,096.00, 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 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 granted, 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 $9,096.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $9,096.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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3. **18-27700-C-13** **REBEKAH FEAR**
DPC-1 **Eric Schwab**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-18-19 [13]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on 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.

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.

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4. **19-20038-C-13 AP-1** **ALLISON DAVISON** **Michael Hays** **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 1-29-19 [25]**

Thru #5

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

Local Rule 9014-1(f)(2) 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 overruled~~.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Plan provides for Creditor in Class 4 and reflects no pre-petition arrears. Creditor asserts, as reflected in filed Claim No. 2-1, that it has a secured claim of $100,288.38 and pre-petition arrears of $977.49. The arrears consisting of principal and interest defaults in the amount of $388.24 and pre-petition escrow shortage of $589.25.

DEBTOR'S RESPONSE:

Debtor's counsel responds that on January 14, 2019, ten days after filing the petition, Debtor made a cash deposit of $550.00 to Wells Fargo for her mortgage payment which was actually $547.94. Debtor counsel further states that Debtor believed that a payment before January 15, 2019 would have avoided any late fee penalty. Additionally, Debtor contends that the payment was for a future mortgage payment and should not be classified as an arrearage.

In the alternative, Debtor is also agreeable for the order confirming the plan to provide for the

pre-petition arrears listed in the Creditor's proof of claim over a period not exceed (60) months.

RULING:

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 Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection is overruled, and Allison Davison's ("Debtor") Chapter 13 Plan filed on January 4, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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5. **19-20038-C-13 DPC-2** **ALLISON DAVISON Michael Hays** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-19-19 [34]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 19, 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 appear at the First Meeting of Creditors held on February 14, 2019. The Meeting has been continued to March 14, 2019.

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

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.

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6.	**19-20148-C-13** **DPC-1**	**TINA OLDWEILER** **Seth Hanson**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-15-19 [21]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 15, 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 appear at the First Meeting of Creditors held on February 14, 2019. The Meeting has been continued to March 28, 2019.

DEBTOR'S RESPONSE:

On February 19, 2019, Debtor's counsel responded, without a declaration from the Debtor, stating that Debtor will attend the continued Meeting of Creditors. Dckt. 25.

RULING:

Trustee's objections are well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan

while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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.

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7. **18-27549-C-13 DPC-1** **KATRINA NOPEL**
Peter Cianchetta

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-16-19 [16]

Also Final Rulings #15-#17

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 16, 2019. Fourteen days' notice is required. That requirement was met.

The Objection to Confirmation of 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 of Plan is sustained.

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

A. Debtor's Plan relies on a Motion to Value the Collateral of creditor PRA Receivables with respect to a 2008 Ford Expedition and Motions to Avoid the Liens of creditors Employment Development Department and Ocwen Servicing. As of the date of the Trustee's Objection none of the motions were pending.

B. Debtor's Schedule I appears incomplete with respect to Debtor's employment with FKC Rescue. Also, Debtor's Statement of Financial Affairs appears incomplete because no income is listed in question No. 4, no payments to the Class 4 creditors are listed in question No. 6, and absence of charitable contribution in question No. 14 is inconsistent with Debtor's Schedule J.

SUPPLEMENTAL OPPOSITION BY TRUSTEE:

On February 26, 2019 the Trustee filed a supplement to his opposition stating that the Debtor is delinquent in Plan payment in the amount of $5,046.98 and Debtor has paid $0.00 into the Plan. Dckt. 45.

RULING:

The Debtor has filed and the court has granted the Motions to Avoid Liens or Value Secured Claims. However, the inconsistency in the Schedules and the Default have not been resolved.

Absent evidence that the Debtor has addressed the inconsistencies in the Schedules, cured the delinquency, and filed the required Motion to Value and Motions to Avoid Liens, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the Plan is not confirmed.

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

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

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

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

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8. **18-24252-C-13** **SARA ALVA** **CONTINUED MOTION FOR SUMMARY JUDGMENT**
18-2168 **Pauldeep Bains** **12-11-18 [13]**

IJR-2
RUSHING V. ALVA

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

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 (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 11, 2018. 28 days' notice is required. That requirement was met.

The Motion for Summary Judgement 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 Summary Judgment is dismissed without prejudice as moot.

Jean-Pierre Rushing d/b/a/ Interwest Judgment Recovery, Plaintiff, filed a Motion for Summary Judgment on December 11, 2018 in the above-referenced adversary proceeding. Dckt. 13. Plaintiff seeks a dischargeability determination regarding a debt owed by Sara Alva, Defendant. The adversary proceeding is associated with Defendant's Chapter 13 Bankruptcy proceeding. Case No. 18-24252. The court notes that Defendant's Chapter 13 Bankruptcy proceeding was dismissed on November 19, 2018. Case No. 18-24252, Dckt. 39. Moreover, Defendant's bankruptcy proceeding was dismissed without an entry of discharge. A review of the this court's records indicates that Defendant has not initiated another bankruptcy proceeding since the court dismissed her Chapter 13 on November 19, 2018.

Accordingly, **IT IS ORDERED** that the Plaintiffs Motion for Summary Judgement is dismissed without prejudice as moot because the parent bankruptcy case has been dismissed.

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 Summary Judgment filed by Plaintiff Jean-Pierre Rushing d/b/a/ Interwest Judgment Recovery having been presented to the court, the Defendant-

Debtor's bankruptcy case in which the debt at issue could be discharge having been dismissed, there not being an issue for the court to determine the dischargeability of debt, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Summary Judgment is dismissed without prejudice.

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9. **19-21061-C-13 JLK-1** **RONALD NEALY-SWIFT** **James Keenan** **MOTION TO EXTEND AUTOMATIC STAY** **2-26-19 [9]**

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

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

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 26, 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 denied.

Ronald Nealy-Swift ("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. 14-27492) was dismissed on February 21, 2019, after Debtor did not make all requirement Plan payments. *See* Order, Bankr. E.D. Cal. No. 14-27492, Dckt. 141. 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's counsel states, without a declaration from Debtor, that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor could not make all required Plan payments. Debtor's counsel states that Debtor has been "reemployed" implying that Debtor was unemployed during the prior proceeding. Dckt. 9. Debtor has not provided admissible testimony regarding his stated reason for the prior dismissal, whether this case has been brought in good faith, and why this case has a likelihood of success.

At the hearing -----.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions

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

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

A. Why was the previous plan filed?

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

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

Debtor has not sufficiently demonstrated the case was filed in good faith or rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has not put forth any testimony in support of this motion.

The Motion is denied, 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 Ronald Nealy-Swift ("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 extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

10. 19-20895-C-13 DESHAUNNA PAYNE — MOTION TO EXTEND AUTOMATIC STAY

MET-1 Mary Ellen Terranella — 2-21-19 [8]

Thru #11

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

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

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 21, 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.

Deshaunna Payne ("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. 18-24149) was dismissed on February 15, 2019, after Debtor was unable to file a confirmable Plan due to, among other things, unfiled tax returns. *See* Order, Bankr. E.D. Cal. No. 18-24149, Dckt. 52. 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 he had difficulty filing his tax returns. Additionally, Debtor stated that there were also difficulties funding an appraisal of Debtor's residence in order to address the Chapter 13 Trustee's contention that there was additional non-exempt equity in the property. Debtor states that the tax returns are filed and family members will contribute to plan payments.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions

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

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

A. Why was the previous plan filed?

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

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

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

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

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

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

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

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

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11. **19-20895-C-13 MET-2** **DESHAUNNA PAYNE** **Mary Ellen Terranella** **MOTION TO VALUE COLLATERAL OF GLOBAL LENDING SERVICES** **2-26-19 [16]**

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

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

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 26, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Global Lending Services ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,450.00.

The Motion filed by Deshaunna Payne ("Debtor") to value the secured claim of Global Lending Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Dodge Avenger ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,450.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on July 2, 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 $15,125.00. 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 $10,450.00, 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 Deshuanna Payne ("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 Global Lending Services ("Creditor") secured by an asset described as 2014 Dodge Avenger ("Vehicle") is determined to be a secured claim in the amount of $10,450.00, 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 $10,450.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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12. **18-22208-C-13 PGM-4** **TERRY PARKER AND TANYA TYUS-PARKER** **MOTION TO CONFIRM PLAN**
Peter Macaluso **2-3-19 [126]**

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

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 February 3, 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 denied.

Terry Parker and Tanya Tyus-Parker ("Debtors") seek confirmation of the Amended Plan. Dckt. 129 (Declaration). The Amended Plan relies on Debtors ability to obtain refinancing by month 23 of the Plan, while remitting monthly payments of $2,000.00 in the interim. Dckt. 130 (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 25, 2019. Dckt. 140. The Trustee's Opposition if based on the following:

A. Debtors' Plan relies on a refinance agreement and if denied would not be feasible.

B. Debtors' Plan does not appear to correctly classify the claim of Capital One Auto Finance. Debtors list the creditor in Class 4; however, the creditor in a Motion for Relief from Stay indicates Debtors are delinquent. Dckt. 110. The Trustee asserts that the creditor should be provided for in Class 3 and

Debtors are not entitled to claim the car payment as an expense.

U.S. BANK NATIONAL ASSOCIATION OPPOSITION:

U.S. Bank National Association ("Creditor") opposes Debtors' Motion to Confirm for the following reasons:

A. Debtors' Plan relies on a potential refinancing agreement and does not provide for payments to Creditor until month 23.

B. Debtors' Plan appears to rely on family contributions that are not supported by declarations from the family members.

DEBTORS' RESPONSE:

Debtors' Counsel responds that Debtors are working to obtain refinancing and believe they will be able to do so by August 2020, the 23rd month of the Plan.

Debtors state that they are not opposed to adding to the Plan a provision that if by the 23rd month they do not obtain refinancing that the property will be sold.

Debtors' Counsel states that while Capital One Auto Finance obtained a relief from stay on February 12, 2019, Debtors have paid all past due payments. Accordingly, Debtors assert that the creditor is properly listed in Class 4.

DISCUSSION:

Debtors have a prior recent Chapter 13 case in which they were represented by the same counsel as in this case. Bankr. E.D. Cal. 17-22875 ("2017 Chapter 13 Case"). The 2017 Chapter 13 Case was filed on April 28, 2017 and dismissed on January 1, 2018. Debtors were unable to confirm a Plan in the 2017 case. The 2017 Chapter 13 Case was dismissed due to defaults in plan payments, with only $5,600 paid into the case by the Debtor, with Debtor's various proposed plans requiring Debtor to make the current and arrearage payments through the Plan.

The proposed Second Amended Plan, though listing Creditor's claim in Class 1 of the Plan, which requires the Debtor to make the current monthly mortgage payment and monthly payments necessary to cure the arrearage during the life of the Plan, it does not so provide. Rather, there is $0.00 to be paid on the arrearage monthly, and only the current monthly mortgage payment remains. This is not proper Class 1 treatment.

In the additional provisions, Debtors grant themselves a two year moratorium on addressing Creditor's arrearage, stating that as Chapter 13 Debtors they will refinance the obligation owed on Creditor's claim by the 23rd month of the Plan. Plan, Additional Provisions, Dckt. 130. The Plan provides no benchmarks for the diligent seeking of such new financing as Chapter 13 Debtors, and no consequences to Debtor if after the 2 year hiatus on addressing the arrearage, no such refinancing is obtained by Debtors.

In the Declaration in support of the Motion to Confirm, Debtors offer no testimony as to how they will be able to refinance the obligation - whether within two years or some other

commercially/bankruptcy reasonable time. Dckt. 129. In the Reply to Creditor's Opposition, Debtors' Counsel merely argues that there will be some effort to obtain new financing, but no evidence is presented by Debtors. Debtors' Counsel also offers to modify what is proposed, and that the property will either be sold or refinanced within the twenty-four months.

An Amended and Supplemental Schedule J is filed by Debtors, which purports to amend the amount of Debtors' expenses all the way back to the filing of this case, but also make such changes effective only since September 14, 2018, five months after the case was filed. It cannot be both. Given the number of times that the court has addressed such improper filings trying to designate a change to the schedules as being a Janus pleading that is inconsistent and purports to state two different sets of facts under penalty of perjury, the court concludes that Debtors are intentionally providing such inconsistent statements under penalty of perjury.

On Schedule I, Debtors state under penalty of perjury having monthly income of $4,153.68. Dckt. 1 at 29-30. Of this, $1,488.00 is a contribution from Debtors' son, for which no evidence is provided that such is and can continue to be made by the son. This support from the son is conflicted by Debtors stating that Debtors' son and family are dependents of Debtors on Schedule J. *Id.* at 31.

The Janus Supplemental/Amended Schedule J again confirms that Debtors' son and Debtors' family are dependents of the Debtors. Dckt. 93 at 4. The Janus Schedule J purports to state that Debtors, after providing for themselves and their dependents (son and son's family of an unstated number), will provide $2,000 a month to fund the Plan. Looking at the Janus Schedule J, some of Debtors' expenses for themselves and the dependents appear questionable, including: ($9.93) for monthly medical expense; ($600) for food and housekeeping supplies; ($0.00) for entertainment and recreation; and ($250) for transportation expenses, including repairs, maintenance, registration, and the like for a 2015 Nissan Sentra.

At the hearing Debtor's counsel presented to the court xxxxxxxxxxxxxxx.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Terry Parker and Tanya Tyus-Parker ("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 to Confirm the Amended Plan is denied and the Second Amended Chapter 13 Plan is not confirmed..

****

13. **16-26411-C-13** **LANNIS/JAMIE POPE** **MOTION TO SELL**
TJW-2 **Timothy Walsh** **2-26-19 [98]**

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

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

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 26, 2019. **By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).**

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

The Motion to Sell Property is xxxxx.

The Bankruptcy Code permits Lannis Pope and Jamie Pope, the Chapter 13 Debtors, ("Movant") to sell property of the estate under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 762 Lakeshore Court, Fairfield, California ("Property").

The proposed purchaser of the Property is Meghan E. Britton, and the terms of the sale are:

A. The proposed purchase price is $700,000.00.

B. Wells Fargo Home Mortgage, the current mortgage holder, has agreed to accept $660,382.94 as payment in full. A reduction from the current amount due which is approximately $749,858.00.

C. Wells Fargo Home Mortgage previously obtained relief from the stay (Dckt. 95). Debtors contend that neither the bankruptcy estate or the trustee have any interest in the outcome of the short sale. Debtors also state they will not receive any proceeds from the sale.

DISCUSSION

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

Reason for the Short Sale

At the hearing, the court requested that Debtor address the rationale between conducting a short-sale in which there was no economic advantage to the Debtor or the bankruptcy estate/plan estate. Debtor appears to be acting as the agent for the Creditor, Wells Fargo Bank, N.A., exercising a very valuable ability to sell property, and giving/throwing away this very valuable ability to sell property. Using this very valuable power to sell the property, Debtor is saving Wells Fargo Bank, N.A. the cost and expense of a foreclosure, obtaining possession of the Property, insuring the Property, protecting the Property, paying real property taxes, hiring a real estate broker, and then paying all of the costs of reselling the property.

In Debtor's Declaration, Debtor states that Debtor will have the benefit of not having a foreclosure sale on their credit history. Debtor does not state how having a foreclosure sale on a credit history with other defaults and filing bankruptcy will have any significant impact on the evaluation of Debtor's future ability to obtain credit.

Under the confirmed Chapter 13 Plan Debtor is discharging substantially all of their stated $123,872 in general unsecured claims (providing for only a 9% dividend). Dckt. 5. No basis is given for how a foreclosure will be substantially worse than not paying the unsecured claims.

No basis is shown for the fiduciary Chapter 13 Plan Administrator, the two debtors, exercising the power to sell property to do so for the plan estate. Rather, it appears that Wells Fargo Bank, N.A. has co-opted the fiduciary plan administrators to work for Wells Fargo Bank, N.A.

At the hearing, Debtor's counsel explained that the Plan Administrators under the Chapter 13 Plan were properly utilizing a power to sell property, stating **xxxxxxxxxxxxxxxxxxxxxxx**

Based on the evidence before the court, the court determines that the estate has no interest in the outcome of sale.

Movant has estimated that a 6% broker's commission from the sale of the Property will equal approximately $42,000.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 6% commission.

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

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

~~The Motion to Sell Property filed by Lannis Pope and Jamie Pope, the Chapter 13 Debtors, ("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 Lannis Pope and Jamie Pope, Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Meghan E. Britton or nominee ("Buyer"), the Property commonly known as 762 Lakeshore Court, Fairfield, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $700,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 101, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Debtors are authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Chapter 13 Debtors are authorized to pay a real estate broker's commission in an amount equal to 6% of the actual purchase price upon consummation of the sale. The 6% commission shall be paid to the broker.

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14.	**19-20038-C-13 DPC-1**	**ALLISON DAVISON Michael Hays**	**MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A) 2-7-19 [29]**

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Final Ruling: No appearance at the March 12, 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 February 7, 2019. 28 days' notice is required. That requirement was met.

The Motion for Denial of 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 Motion for Denial of Discharge is granted.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Allison Davison'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 September 1, 2017. Case No. 17-25895. Debtor received a discharge on January 17, 2018. Case No. 17-25895, Dckt. 28.

The instant case was filed under Chapter 13 on January 4, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on January 17, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 17-25895, Dckt. 28. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 19-20038), 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 Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 19-20038, the case shall be closed without the entry of a discharge.

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15. **18-27549-C-13 PLC-1** **KATRINA NOPEL**
Peter Cianchetta

MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT
2-12-19 [26]

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Final Ruling: No appearance at the March 12, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of the State of California Employment Development Department ("Creditor") against property of Katrina Nopel ("Debtor") commonly known as 6408 Trajan Drive, Orangevale, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,000.00. An abstract of judgment was recorded with Sacramento County on July 19, 2006, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $238,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $320,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §703.140(b0(1) in the amount of $100.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of the State of California Employment Development Department, California Superior Court for Sacramento County Case No. 06ED25136, recorded on July 19, 2006, Book 20060719 and Page 1549, with the Sacramento County Recorder, against the real property commonly known as 6408 Trajan Drive, Orangevale, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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16. **18-27549-C-13 PLC-2** **KATRINA NOPEL**
Peter Cianchetta

MOTION TO VALUE COLLATERAL OF PRA RECEIVABLES MANAGEMENT, LLC
2-12-19 [21]

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Final Ruling: No appearance at the March 12, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of PRA Receivables Management, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,995.00.

The Motion filed by Katrina Nopel ("Debtor") to value the secured claim of PRA Receivable Management, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Ford Expedition ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $8,995.00 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).

CHAPTER 13 TRUSTEE RESPONSE:

On February 25, 2019, the Chapter 13 Trustee filed a response stating that Creditor Portfolio Recovery Associates, LLC filed a claim in the amount of $20,441.72 for a 2008 Ford Expedition with a secured amount of $8,995.00.

DISCUSSION:

The lien on the Vehicle's title secures a purchase-money loan incurred in 2014, which is more than 910

days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,441.72. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $8,995.00, 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 Katrina Nopel ("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 PRA Receivables Management, LLC ("Creditor") secured by an asset described as 2008 Ford Expedition ("Vehicle") is determined to be a secured claim in the amount of $8,995.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,995.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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17. **18-27549-C-13 PLC-3** **KATRINA NOPEL**
Peter Cianchetta

MOTION TO VALUE COLLATERAL OF HSBC BANK USA, N.A.
2-12-19 [31]

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Final Ruling: No appearance at the March 12, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of HSBC Bank USA, National Association ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Katrina Nopel ("Debtor") to value the secured claim of HSBC Bank USA, National Association ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6408 Trajan Drive, Orangevale, California ("Property"). Debtor seeks to value the Property at a fair market value of $238,000.00 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.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $289,707.63. Creditor's second deed of trust secures a claim with a balance of approximately $31,286.65. 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 Katrina Nopel ("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 HSBC Bank USA, National Association ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 6408 Trajan Drive, Orangevale, 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 $238,000.00 and is encumbered by a senior lien securing a claim in the amount of $289,707.63, which exceeds the value of the Property that is subject to Creditor's lien.

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18. **18-24959-C-13** **AARON/JESSICA MEAUX** **MOTION TO MODIFY PLAN**
TAG-3 **Aubrey Jacobsen** **1-22-19 [43]**

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Final Ruling: No appearance at the March 12, 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 22, 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. Aaron Meaux and Jessica Meaux ("Debtors") have filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on February 25, 2019. Dckt. 54. 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 Aaron Meaux and Jessica Meaux ("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 22, 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.

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