

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

April 16, 2019 at 2:00 p.m.

1.	19-20401 -C-13	SCOTT SIMPSON	OBJECTION TO CONFIRMATION OF
	DPC -1	Mark Briden	PLAN BY DAVID P. CUSICK
			3-19-19 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 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 sustain the Objection.
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtor is delinquent \$100.00 with another \$100.00 due prior to this hearing. Debtor has paid \$0.00 into the Plan.

Absent evidence that Debtor has cured the delinquency, cause exists to deny confirmation because delinquency indicates that the Plan is not feasible

and is a reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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 Plan is not confirmed.

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

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

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

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

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing,
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The Motion to Incur Debt is denied.
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Juan Rodriguez and Marguerite Rodriguez ("Debtors") seek permission to purchase a 2015 Ford Edge to replace a 2011 Ford Fusion totaled in a car accident on December 27, 2018, with a total purchase price of \$22,373.61 and monthly payments of \$499.67 to New Roads Auto Loans over 60 months with a 11.95% interest rate.

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

Debtor does not address the reasonableness of incurring debt to purchase a vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor owned a 2011 Ford Fusion. When it was damaged, Debtor

received \$5,285.83 in insurance proceeds. Rather than using the proceeds to purchase an affordable vehicle, Debtor seeks to borrow an additional \$17,087.78 to purchase a \$22,373.61 vehicle.

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge— 11.95%. Moreover, it is unclear to the court how in good faith Debtor could propose to purchase this vehicle when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a “reward” for filing bankruptcy is to purchase a car and attempt to borrow money at a 11.95% interest rate.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Juan Rodriguez and Marguerite Rodriguez (“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.

3. [19-20107](#)-C-13 ANGELITA ADAMS
[FF-1](#) Gary Fraley

MOTION TO CONFIRM PLAN
2-28-19 [[22](#)]

THRU #4

Final Ruling: No appearance at the April 16, 2019 hearing required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 28, 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 deny the Motion, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Debtor filed an Amended Plan April 8, 2019. Dckt. 40. Filing a new plan is a de facto withdrawal of the pending plan. The Motion is denied, 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 Motion to the Chapter 13 Plan filed by Angelita Adams ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Insufficient 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 April 8, 2019. By the court's calculation, 8 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxx.

Angelita Adams("Debtor") seeks confirmation of the Amended Plan. Debtor's declaration does not provide a basis for why an Amended Plan was filed. Dckt. 39 (Declaration). The Amended Plan proposes monthly payments of \$3,450.46 for 60 months with a 0% dividend to general unsecured creditors. Dckt. 40 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION:

As the motion was set with (8) days notice no opposition was lodged with the court. The court notes that the Amended Plan appears to be nearly identical to the one filed on February 28, 2019 that was also set for hearing on this same date. The Trustee filed an Opposition to the prior Amended Plan based on the following:

A. Debtor's Form 122C was inconsistent with the Schedules I and J.

B. It did not appear that Debtor properly served Creditor Independence at Mather and despite being listed as a secured creditor was not listed in Debtor's Schedule D.

C. The Motion and Declaration did not state why the Plan was amended.

Discussion:

The court notes that Debtor has filed Amended Form 122C-1 and Schedule D. Dckt. 33; 35. It is not clear whether these new filings have addressed the Trustee's concerns. It does not appear that creditor Independence at Mather was properly served because it is not listed in the Proof of Service. Dckt. 42. Debtor again did not provide a reason for the Amended Plan. Dckt. 39.

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

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

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 February 26, 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 ~~xxxxx~~.

Jeffrey Eugene Clement and Rhiannon Marie Clement ("Debtors") seek confirmation of the Modified Plan because Debtors state they neglected the "set-up" payment and to account for higher than anticipated IRS priority claim. Dckt. 48 (Declaration). The Modified Plan proposes monthly payments of \$1,093.00 for the remainder of the plan to account for this deficiency. Dckt. 52 (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 April 1, 2019. Dckt. 56. The Trustee notes that the Supplemental Schedules I and J have not been filed but merely included as exhibits to this motion. Additionally, the Trustee notes that Debtors have unexplained changes on the Supplemental Schedules I and J including:

1. Increased 401K contributions;
2. Debtor 2's gross income decreased from \$5,100.00 to \$4,950.00 per month.
3. The statement regarding Debtor's sporadic bonuses is excluded.

4. Debtors have a number of adjustments on the Schedule J.

The Trustee notes that the adjustments to Debtor's expenses, while unexplained, appear reasonable.

DEBTOR'S REPLY:

Debtors responded with explanations to the changes stating that the 401K contributions are a percentage base of Debtor's income and that the bonuses this year have been lower. Debtors argue that the reference to the Schedules I and J in this Motion are sufficient notice to creditors.

The court notes that Schedules need to be filed in the main bankruptcy proceeding.

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 Jeffrey Clement and Rhiannon Clement ("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.~~

6. [19-20119](#)-C-13 KEVIN KING
[DPC](#)-1 Pro Se

TRUSTEE'S FINAL REPORT AND
ACCOUNT
2-21-19 [[18](#)]

DEBTOR DISMISSED: 01/22/2019

No Tentative Issued

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 March 5, 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 xxxx.

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. 125 (Declaration). The Plan provides for monthly payments of \$943.00 over (11) months, the only listed creditor in the Plan is in Class 3 where Debtor states that the secured claim will be satisfied by surrender of the collateral. Dckt. 127 (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 a response on March 13, 2019. Dckt. 135. The Trustee notes that the Plan calls for the surrender of Debtor's residential property located at 11917 Corino Way, Rancho Cordova, CA. It is not clear to the Trustee whether the Debtor has already vacated the property, if Debtor has a new address, and whether the schedule of expenses is current.

DISCUSSION:

At the hearing ----.

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

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by 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 is granted, and Debtor's Amended Chapter 13 Plan filed on March 5, 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.~~

Final Ruling: No appearance at the April 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 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 Chrysler Capital ("Creditor") is \$13,102.00, and Creditor's secured claim is determined to have a value of \$13,102.00.

The Motion filed by Paul Stanley and Michelle Stanley ("Debtors") to value the secured claim of Chrysler Capital ("Creditor") is accompanied by Debtors' declaration. Debtors own a 2013 Dodge Ram 1500 ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$13,102.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See FED. R. EVID. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in May of 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$25,852.39. 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 \$13,102.00, 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 Paul Stanley and Michelle Stanley("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Chrysler Capital("Creditor") secured by an asset described as 2013 Dodge Ram 1500("Vehicle") is determined to be a secured claim in the amount of \$13,102.00, 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 \$13,102.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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.

DISCUSSION:

The hearing was continued on January 29, 2019 to allow additional time to coordinate with the IRS. The March 5, 2019 hearing was similarly continued.

On April 1, 2019 Debtor filed a supplemental response stating that the IRS has issued over a \$3,000.00 refund which Debtor asserts has been turned over to the Trustee. Additionally, Debtor states tax refunds for the years 2017 and 2018 will be filed and anticipates refunds exceeding \$4,000.00.

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 ("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.~~

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 March 7, 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 ~~xxxxx~~.

John Henry Monroe ("Debtor") seeks confirmation of the Modified Plan because his retirement for 2019 increased. Dckt. 73 (Declaration). The Modified Plan changes the monthly payments for months 18 through 60 to \$5,749.00 per month. Dckt. 76 (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 April 2, 2019. Dckt. 79. The Trustee opposes the Modified Plan because due to a mortgage payment increase filed on February 18, 2019, the Debtor's proposed payment will not be sufficient to make all required payments. The Trustee states that monthly Plan payments would need to be \$6,160.00 per month not the proposed \$5,749.00. Additionally, Debtor is delinquent \$7,998.00 under the proposed plan.

DEBTOR'S REPLY:

Debtor 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. Additionally, Debtor states that Debtor will be current by the hearing date.

DISCUSSION:

~~———— Absent the Trustee noting an opposition to addressing his concerns in the Order Confirming the Modified Plan and/or the Debtor failing to cure the delinquency, 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 John Henry Monroe ("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, incorporating the Trustee's payment increase, filed on March 7, 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.~~

11. [19-20940](#)-C-13 SEAN/AMY ROENSPIE
[GEL](#)-1 Gabriel Liberman

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
3-14-19 [[16](#)]

Final Ruling: No appearance at the April 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 14, 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 Wells Fargo Bank, N.A. ("Creditor") is \$2,771.00, and Creditor's secured claim is determined to have a value of \$2,771.00.

The Motion filed by Sean Roenspie and Amy Roenspie ("Debtors") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Toyota Yaris ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$2,771.00 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 more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$10,120.00. 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 \$2,771.00, 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 Sean Roenspie and Amy Roenspie ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wells Fargo Bank, N.A. ("Creditor") secured by an asset described as 2014 Toyota Yaris ("Vehicle") is determined to be a secured claim in the amount of \$2,771.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$2,771.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

12. [19-20148](#)-C-13 TINA OLDWEILER
[DPC](#)-1 Seth Hanson

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
2-15-19 [[21](#)]

Final Ruling: No appearance at the April 16, 2019 hearing is required.

The Objection is dismissed without prejudice.

David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Objection on April 3, 2019, Dckt. 27; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Tina Oldweiler ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 27, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed
without prejudice.

13. [18-27549](#)-C-13 KATRINA NOPEL
[DPC](#)-1 Peter Cianchetta

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 16, 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 sustain the Objection.

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 not delinquent in Plan payment in the amount of \$5,046.98 and Debtor has paid \$0.00 into the Plan. Dckt. 45.

RULING:

At the March 12, 2019 hearing the court determined that inconsistencies in the Schedules and the Default have not been resolved and allowed the hearing to be continued to permit the Debtor additional time to resolve the remaining Objections.

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 sustained and the proposed Chapter 13 Plan is not confirmed.

14. [18-24252](#)-C-13 SARA ALVA
[18-2168](#) Pauldeep Bains
RUSHING V. ALVA

ORDER TO SHOW CAUSE
3-15-19 [[34](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney and other such other parties in interest as stated on the Certificate of Service on March 17, 2019.

The Order to Show Cause was issued due to the dismissal of Debtor's associated Bankruptcy Proceeding.

The Order to Show Cause is sustained, and the case is dismissed.

The court issued an Order to Show Cause in this adversary proceeding seeking a dischargeability determination because Defendant-Debtor's Bankruptcy Case No. 18-24252 was dismissed on November 19, 2019. Dckt. 40. Accordingly, there appear to be no basis for the court to adjudicate issues arising under 11 U.S.C. § 523.

The court requested a written response by April 9, 2019 if the parties wanted to argue that case should not be dismissed. No response was filed as of April 9, 2019.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

15. [19-21656](#)-C-13 LINDA WOOLEY
[EJS](#)-1 Eric Schwab

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
3-21-19 [[8](#)]

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

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2019. The court set the hearing for April 16, 2019. Dckt. 13.

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 granted.

Linda Fae Wooley ("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 Debtors' second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-28131) was dismissed on January 16, 2019, after Debtor did make all required plan payments. See Order, Bankr. E.D. Cal. No. 17-28131, Dckt. 34. 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, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor's wages were garnished for a four month period. Debtor further states that the wage garnishment is no longer in place and can make the required payments in the current proceeding.

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.

DISCUSSION:

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 Linda Fae Wooley ("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.

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 March 5, 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Vion Holdings, LLC ("Creditor") against property of Jaynie Gordon ("Debtor") commonly known as 5104 Rose Street, Sacramento, California ("Property"). Dckt. 101.

A judgment was entered against Debtor in favor of Creditor in the amount of \$25,772.14. An abstract of judgment was recorded with Sacramento County on February 22, 2012, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$171,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$401,939.00 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(b)(1) in the amount of \$0.00 on Amended Schedule C. Dckt. 87.

CHAPTER 13 TRUSTEE RESPONSE:

The Trustee notes that this is Debtor's third attempt to avoid the lien of Vion Holdings, LLC and like Debtor's prior motions makes the request without claiming the subject property as exempt. Dckt. 118.

RULING:

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. However,

because the Debtor has claimed an exemption in the amount of \$0.00 the fixing of the judicial lien does not impair Debtor's exemption of the real property.

The court notes that this is Debtor's third attempt to avoid Creditor's lien without claiming even \$1.00 of the subject property as exempt. Debtor's counsel, despite instructions to the contrary, has again sought relief without there being an amended Schedule C filed with the court. Accordingly, the motion will again be denied without prejudice.

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 Jaynie Gordon ("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 Avoid Judicial Lien denied without prejudice.

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 March 26, 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 FCI Lender Services, Inc. ("Creditor") is \$0.00, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Leonid Banar and Lyudila Banar ("Debtors") to value the secured claim of FCI Lender Services, Inc. ("Creditor") is accompanied by Debtor's amended declaration. Debtor is the owner of the subject real property commonly known as 8219 Villaview Drive, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of \$255,000.00 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.

TRUSTEE OPPOSITION

The Trustee filed an Opposition on April 1, 2019 taking issue with Debtors' initial declaration filed on March 26, 2019 (Dckt. 10). Dckt. 12. Debtors filed supplemental declarations on April 1, 2019 and April 9, 2019. Dckts. 15; 23. Debtors appear to have now signed declarations that make statements under penalty of perjury.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$258,803.15. Creditor's second deed of trust secures a claim with a balance of approximately \$98,406.73. 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 Leonid Banar and Lyudila Banar ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C.

§ 506(a) is granted, and the claim of FCI Lender Services, Inc. ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 8219 Villaview Drive, Citrus Heights, 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 \$255,000.00 and is encumbered by a senior lien securing a claim in the amount of \$258,803.15, which exceeds the value of the Property that is subject to Creditor's lien.

18. [18-27268](#)-C-13 ALAINA BOSOLD
[DPC](#)-1 Brad Clark

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-19-19 [[34](#)]

Thru #19

Final Ruling: No appearance at the April 16, 2019 hearing required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 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 sustain the Objection, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan March 22, 2019. Dckt. 45. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, 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 sustained, and the proposed Chapter 13 Plan is not confirmed.

19. [18-27268](#)-C-13 ALAINA BOSOLD
[RAS](#)-1 Brad Clark

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
3-19-19 [[38](#)]

Final Ruling: No appearance at the April 16, 2019 hearing required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 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 sustain the Objection, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan March 22, 2019. Dckt. 45. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the U.S. Bank National Association ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the April 16, 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 March 2, 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.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Moises Crisanto Campos ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on April 1, 2019. Dckt. 60. 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 Moises Crisanto Campos ("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 March 2, 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 #22

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.

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.

Insufficient 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 April 2, 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 ~~xxxxxx~~.

The Bankruptcy Code permits Michael and Denise Barron, the Debtors, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2203 Jenamar Court, Rocklin, California ("Property").

The proposed purchaser of the Property is Jeremiah Harvey, and the terms of the sale are:

- A. Purchase Price: \$685,000.00
- B. Commission of 5.5% (\$37,675.00)
- C. Estimated net proceeds to estate of \$187,954.83

CHAPTER 13 TRUSTEE RESPONSE:

The Chapter 13 Trustee filed a response on April 9, 2019 stating that

he did not oppose the sale. Dckt. 28. However, the Trustee notes that despite Debtors assertion that the proceeds of the sale will be sufficient to pay all claims, the claims bar date for creditors, including governmental units, is not until August 12, 2019. Debtor's calculation also does not appear to include the priority claims listed in the Plan or the current Trustee fees.

NON-OPPOSITION OF SECURED CREDITOR WELLS FARGO BANK, N.A.:

Secured Creditor Wells Fargo Bank, N.A. filed a statement of Non-Opposition on April 11, 2019. Dckt. 31. Secured Creditor requested that specific language be included in any order granted Debtor's Motion:

"The loan secured by a lien on real property located at 2203 Jenamar Court, Rocklin, CA 95765 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a non-expired contractual payoff statement received directly from Wells Fargo Bank, N.A."

Dckt. 31.

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: xxxxxxxxxxxxxxxx.

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.~~

~~————— Movant has estimated that a 5.5% percent broker's commission from the sale of the Property will equal approximately \$37,675.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 5.5% percent commission.~~

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

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

~~————— The Motion to Sell Property filed by Michael and Denise Barron, the 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 Michael and Denise Barron, the Debtors, ("Movant"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jeremiah Harvey or nominee ("Buyer"), the Property commonly known as 2203 Jenamar Court, Rocklin, California ("Property"), on the following terms:~~

~~————— A. The Property shall be sold to Buyer for \$685,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 23, and as further provided in this Order.~~

~~————— B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property~~

~~taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~

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

~~D. The Debtors are authorized to pay a real estate broker's commission in an amount equal to 5.5% percent of the actual purchase price upon consummation of the sale.~~

~~E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

No Tentative Ruling: 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 February 25, 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 Objection.
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Secured Creditor GSR Mortgage Loan Trust 2005-AR6, U.S. Bank National Association, as Trustee, opposes confirmation of the Plan based on the following:

A. Debtors' Plan improperly modifies its rights by understating the arrearage to be paid.

B. The Plan not being feasible as it relies on a prospective sale.

DEBTORS RESPONSE:

Debtors respond that Plan does not improperly modify Secured Creditors rights and asserts that the Plan proposes to pay all post-petition payments through the plan until their residence is sold and then will pay Secured Creditor in full upon the sale. Debtors further assert that the proposed sale can be relied upon as they have a buyer and set a Motion to Approve the Sale

set for April 16, 2019. Assuming the sale is approved, Secured Creditor will be paid in full.

Discussion:

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 Secured Creditor, GSR Mortgage Loan Trust 2005-AR6 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.

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 23, 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).

<p>The Motion to Confirm the Plan is denied and the Plan is not confirmed.</p>

Cody Bedoy ("Debtor") seeks confirmation of the Plan which moved creditor Lincoln Automotive Financial from Class 2 to Class 3. Dckt. 36 (Declaration). The Plan provides for monthly payments of \$5,600.00 over (60) months and provides for a 60% dividend to general unsecured creditors. Dckt. 38 (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 a response on March 11, 2019. Dckt. 47. The Trustee opposes confirmation based on the following:

A. Debtor is delinquent \$11,162.68. Another Plan payment of \$5,587.56 will become due prior to the hearing. Debtor has paid \$5,600.00 into the plan.

B. Debtor may have a potential claim against State Farm for insurance proceed relating to the vehicle Debtor states was in car fire.

C. The Trustee is not clear what creditors should be included in Class 1 because Debtor's Class 1 creditors are not consistent with secured creditors listed on Schedule D.

DISCUSSION:

At the hearing ----.

The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed. Debtor is not current with Plan payments and the Plan does not correctly identify the creditors that are to be paid through the Plan.

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

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

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

IT IS ORDERED that the Motion is denied, and Debtor's Amended Chapter 13 Plan filed on March 5, 2019, is not confirmed.

24. [12-21196](#)-C-13 RYAN CAMPBELL AND MICHELE
[BHR](#)-2 FLORES-CAMPBELL
Brett Ramsaur

MOTION FOR CONTEMPT
2-25-19 [[90](#)]

No Tentative Issued.

25. [18-24396](#)-C-13 RUTH WILLIS
[DPC](#)-1 Marc Caraska
DEBTOR DISMISSED: 09/21/2018

MOTION TO RECONSIDER
3-14-19 [[34](#)]

Final Ruling: No appearance at the April 16, 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 March 14, 2019. 28 days' notice is required. That requirement was met.

The Motion to Reconsider 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 is granted and the Order Approving Final Report and Discharging Trustee entered on January 3, 2019 (Dckt. 33) is set aside.

On March 14, 2019, David Cusick, the Chapter 13 Trustee filed a Motion to Reconsider Order approving the Final Report and Discharging the Trustee entered on November 29, 2018 (Dckt. 33). Dckt. 36. The Trustee states that on November 27, 2018, a Final Report and Account was filed in this proceeding, however, the report was filed in error. The report that was filed was in relation to a different case, (Case No. 18-23963, Cody James Bedoy). The Trustee requests that the court set aside the Order Approving Final Report and Discharging Trustee entered on January 3, 2019. Dckt. 33

Upon consideration of the record and in light that the Order entered on January 3, 2019 (Dckt. 33) was predicated on an erroneously filed request, the court grants the Trustee's Motion to Set Aside the Order.

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 Set Aside Order (Dckt. 33) 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 Order entered on January 3, 2019 (Dckt. 33) is set aside.
