UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 23.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–22, attempting to first address the items in which short argument is anticipated.

May 15, 2018, at 3:00 p.m.

1.	**18-21225-E-13** **DPC-1**	**RITA KAKALIA** **Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-10-18 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 10, 2018. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not

required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is overruled.

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

A. Rita Kakalia ("Debtor") proposes to value Bank of America's claim but has not filed a motion to value, and

B. The Plan fails the liquidation analysis.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Bank of America, N.A. Debtor filed that motion, and the court granted it at the May 15, 2018 hearing, resolving this ground.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor admitted at the Meeting of Creditors that she owns a 1992 Chevrolet Silverado that has not been listed on Schedule B or exempted on Schedule C. The Plan proposes a zero percent dividend to unsecured claims.

DEBTOR'S REPLY

Debtor filed a Reply on May 8, 2018. Dckt. 24. Debtor acknowledges that the motion to value has been filed and set for hearing on May 15, 2018. She also states that she will amend the schedules to address the missing vehicle.

RULING

On May 8, 2018, Debtor amended Schedules B and C to list a 1992 Chevrolet Silverado. Debtor listed the vehicle on Amended Schedule B with a value of $3,200.00. Dckt. 26. On Amended Schedule C, Debtor claimed an exemption of $3,200.00 pursuant to California Code of Civil Procedure § 703.140(b)(2). Debtor has addressed the liquidation analysis problem by disclosing the vehicle and demonstrating that any equity in it is fully exempt such that a zero percent dividend to general unsecured claims is justified.

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

IT IS ORDERED that the Objection is overruled, and Rita Kakalia's ("Debtor") Chapter 13 Plan filed on March 2, 2018, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. 17-20827-E-13 MRL-3 — STEPHEN ALBERTS — Mikalah Liviakis — MOTION TO SELL — 4-24-18 [49]

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 April 24, 2018. By the court's calculation, 21 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 granted.

The Bankruptcy Code permits Stephen Alberts, Chapter 13 Debtor, ("Movant") to sell property of the estate or 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 4524 McDonald Drive, Sacramento, California ("Property").

The proposed purchaser of the Property is Todd Miller and Juliette Miller, and the terms of the sale are:

A. Purchase price of $380,000;

B. Real estate agent commission of $22,800 to be paid through escrow;

C. Closing costs of $8,686.56 for a home warranty, property taxes, notary fees, title and escrow fees, repairs, and transfer tax;

D. Net proceeds of $88,767.29 to Movant; and

E. $15,000 of the net sales proceeds to be paid directly from escrow to David Cusick ("the Chapter 13 Trustee") with the balance to be distributed directly to Movant.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on May 7, 2018. Dckt. 55. He does not oppose the terms of the Plan, but he notes that the Plan calls for the mortgage arrears to be paid by the Chapter 13 Trustee. He states that he is willing to submit a demand into escrow for payment of those arrears.

He also notes that Movant is delinquent $22,904.39 under the Plan.

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.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides sufficient funding to fully pay the claims in this case. The court does not approve payments to be made directly to Movant, however. Funds shall be disbursed to the Chapter 13 Trustee for payment of the claims in this case, and then they may be disbursed to Movant.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $22,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court but does not assert any grounds.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not granted. FN.1.

FN.1. This court has repeatedly stated to the attorneys that if they seek a waiver of a Rule of Procedure adopted by the Supreme Court, they must provide the court with a basis for such. To provide a basis, the movant must so state in the motion, and not merely "throw up a prayer" that such relief be granted. The Motion seeks, or demands, that this court waive the fourteen-day stay imposed by the Supreme Court for no reason other than because "Movant so instructs the court." Possibly, grounds may exist, but Movant does not state them for the court.

The Chapter 13 Trustee requests that Movant cure the delinquencies to be paid through the Plan, which include the arrearage on the secured claim. The Chapter 13 Trustee has been forced to expend time and money in administering this case through Movant's substantial defaults.

As a practical matter, the creditor being paid its secured claim would expect that it all be paid through escrow, rather than part through escrow and part through the Chapter 13 Trustee, when it is requested to release its deed of trust so the Property may be transferred unencumbered to the Buyer.

To facilitate the transaction and to have the end-of-plan results most closely match up to the Plan, and to account for the work created by Movant's defaults, the court authorizes Movant to pay the arrearage portion of the payments due on the secured claim through the Plan. Movant will have disbursed from escrow to the Chapter 13 Trustee, prior to any disbursement to Movant, the $15,000 proposed to pay the remaining claims and an additional $1,947.00, which additional amount will be used to ensure the full payment of the Chapter 13 Trustee's fees for all monies disbursed "through the Plan," including the arrearage portion of the secured claim. The court does not authorize the Chapter 13 Trustee to compute the fees in this case to include the non-arrearage portion of the secured claim paid directly from escrow.

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 Stephen Alberts, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Stephen Alberts, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Todd Miller and Juliette Miller or nominee ("Buyer"), the Property commonly known as 4524 McDonald Drive, Sacramento, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $380,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 52, 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 (the Chapter 13 Plan arrearage amounts the court authorizes Movant to disburse on behalf of the Chapter 13 Trustee), other customary and contractual costs and expenses incurred in order to effectuate the sale.

C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Movant is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to agents, Lyon Real Estate and New Vision Realty Group.

E. After payment of the above-authorized claims and expenses, Movant will have disbursed from escrow to the Chapter 13 Trustee, prior to any disbursement to Movant, the $15,000 proposed to pay the remaining claims and an additional $1,947.00, which additional amount will be used to ensure full payment of the Chapter 13 Trustee's fees for all monies disbursed "through the Plan," including the arrearage portion of the secured claim. The court does not authorize the Chapter 13 Trustee to compute the fees in this case to include the non-arrearage portion of the secured claim paid directly from escrow.

F. After payment of the above claims, costs, expenses, and disbursements to the Chapter 13 Trustee, all remaining net proceeds from the sale may be disbursed directly from escrow to Movant. Within fourteen days of the close of escrow, Movant 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.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

3. 18-20003-E-13 JAMES ZAMMIELLO MOTION TO CONFIRM PLAN
HWW-2 Hank Walth 3-15-18 [33]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 15, 2018. By the court's calculation, 61 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

James Zammiello ("Debtor") seeks confirmation of the Amended Plan because he fell behind on mortgage payments. Dckt. 35. The Amended Plan proposes to pay $1,862.00 for months 1–3, then $2,748.00 for months 4–60. Dckt. 36. 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 April 13, 2018. Dckt. 46. The Chapter 13 Trustee asserts that Debtor is $1,862.00 delinquent in plan payments, which represents one month of the $1,862.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month

beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee notes that the projected net disposable income on Schedule J is unclear. Debtor is receiving support from Richard Chairez, who has his own bankruptcy case pending, but the various schedules do not match how much is being contributed to this case. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee also notes that the real property listed in Class 1 in this case is listed in Class 4 in Richard Chairez's case. Therefore, it is not clear to the Chapter 13 Trustee how the claim should be treated properly.

DEBTOR'S REPLY

Debtor filed a Reply on May 9, 2018. Dckt. 53. Debtor notes that Richard Chairez is on short-term disability and that this plan is no longer feasible. Debtor states that real property will be sold and that an amended plan will be filed.

RULING

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 James Zammiello ("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.

4. **18-21310-E-13** **GREGORY/TERRY HASAPIS** **MOTION TO SELL**
MWB-1 **Mark Briden** **4-12-18 [24]**

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 12, 2018. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has not been properly 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 Sell Property is denied without prejudice.

The Bankruptcy Code permits Gregory Hasapis and Terry Hasapis, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the personal property commonly known as a 2006 Harley Davidson ("Property").

Movant provided thirty-three days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Movant has provided two fewer days than the minimum. Therefore, the Motion is 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 Sell Property filed by Gregory Hasapis and Terry Hasapis, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT NOTICE OF THE MOTION

The proposed purchaser of the Property is Robert Ray, and the term of the sale is $6,500.00 cash.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 19, 2018. Dckt. 28. The Chapter 13 Trustee notes that the Property is listed on Schedule B and fully exempted on Schedule C. He also notes that Movant intends to use the proceeds to provide for the Gregory Hasapis's general contractor business, for which a business budget has been filed. *See* Dckt. 23.

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: xxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it is fully exempted and provides funding for Movant to support other endeavors.

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 Gregory Hasapis and Terry Hasapis, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gregory Hasapis and Terry Hasapis, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Robert Ray or nominee ("Buyer"), the Property commonly known as a 2006 Harley Davidson ("Property") for $6,500.00.

5. **13-35315-E-13** **STUART/TAMMIE CLARK** **MOTION TO SELL**
WSS-6 **Steven Shumway** **5-1-18 [84]**

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2018. 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 not 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 denied without prejudice.

The Bankruptcy Code permits Stuart Clark and Tammie Clark, Chapter 13 Debtor, ("Movant") to sell property of the estate or 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 556 Alden Way, Roseville, California ("Property").

Movant provided fourteen days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice of the hearing. Movant has provided seven fewer days than the minimum. Therefore, the Motion is 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 Sell Property filed by Stuart Clark and Tammie Clark, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT SERVICE OF THE MOTION

The proposed purchasers of the Property Ernesto Reyes and Christina Reyes, and the terms of the sale are:

A. Purchase price of $430,000.00;

B. A broker's commission of $25,800.00;

C. Movant to pay for a natural hazard zone report, smoke alarm and carbon monoxide device installation and water heater bracing, owner's title insurance, city and county transfer taxes, private transfer fees, and a one-year home warranty plan up to $500.00; and

D. Movant and buyer to split the escrow fee equally.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 3, 2018. Dckt. 89. The Chapter 13 Trustee does not oppose the Motion, but he requests that clarification for a portion of the Motion that reads "The remaining funds will be deposited with and administered by the Chapter 13 trustee."

The Chapter 13 Trustee states that he would not oppose language in the order stating that all remaining proceeds, after the first Deed of Trust and real estate commissions are paid, be paid to the Chapter 13 Trustee as a plan payment, above and beyond the existing payments.

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.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will generate approximately $30,000.00 in net proceeds for Movant.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $25,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six 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 Stuart Clark and Tammie Clark, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Stuart Clark and Tammie Clark, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ernesto Reyes and Christina Reyes or nominee ("Buyer"), the Property commonly known as 556 Alden Way, Roseville, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $430,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 87, 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 in order to effectuate the sale.
>
> C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Connect Realty.com Inc. and Coldwell Banker-Res R E Srv.
>
> 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.

6. **18-21418-E-13** **VELMA WALL** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Scott Hughes** **PLAN BY DAVID P. CUSICK**
4-17-18 [27]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 17, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. There are problems with the additional provisions, attorney fees, and signature of the Plan;

B. The Plan fails the liquidation analysis;

C. Velma Wall ("Debtor") cannot afford the plan payments; and

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

The Chapter 13 Trustee's objections are well-taken. The Additional Provisions contain terms to sell Debtor's house within twelve months or surrender it, but the terms do not require notice to the Chapter 13 Trustee, placing an undue administrative burden on him to monitor Debtor's plan each month

to determine if and when to change payments to claims. The Plan also does not disclose how Debtor's counsel will be paid fees because neither attorney's fees provision is selected. Last, Debtor did not sign the Plan.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor claimed her mortgage claim as $121,753.43 higher than claimed by the mortgageholder in her prior case. There may be additional equity available to distribute to general unsecured claims in this case.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided an attachment for her business income, she has not listed Social Security income, she has not provided evidence of tax withholdings, and she appears to be claiming roommates as dependents. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Debtor admitted at the first Meeting of Creditors that she receives income on behalf of some of her dependents, but she has not reported that income on Schedule I.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

7. **18-21422-E-13 AP-1** **RACHEL ALLEN** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR PNC BANK, N.A. 4-19-18 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on April 19, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

PNC Bank, National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan does not cure pre-petition arrears and does not provide ongoing post-petition payments.

Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $6,113.84 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

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 PNC Bank, National Association ("Creditor") holding a secured claim having been presented to the court,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

8.	**18-21422-E-13** **APN-1**	**RACHEL ALLEN** **Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WELLS FARGO BANK, N.A.** **4-17-18 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on April 16, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A., ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan does not cure the pre-petition arrears on its claim.

Creditor's objection is well-taken. The objecting creditor holds a deed of trust secured by Rachel Allen's ("Debtor") residence. Creditor has filed a timely proof of claim in which it asserts $5,043.51 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment

in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 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 to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

9. **18-21422-E-13** **RACHEL ALLEN** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
4-17-18 [13]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on April 17, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Rachel Allen ("Debtor") appeared at the Meeting of Creditors and stated that she would be dismissing this case;

B. Tax returns have not been provided;

C. Business documents have not been provided;

D. The Plan will not complete within sixty months;

E. The Plan fails the liquidation analysis;

F. Debtor failed to file an attachment to Schedule I showing gross business income and expenses; and

G. Debtor failed to report income on the Statement of Financial Affairs.

The Chapter 13 Trustee's objections are well-taken. Debtor appeared at the Meeting of Creditors, but stated that she would be dismissing this case. As such, Debtor was not examined, and the Meeting has not been concluded. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

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

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 100 months due to not providing a large enough payment to Wells Fargo Home Mortgage for its claim. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has non-exempt assets of $350,000.00, but the Plan proposes to pay 0.00% to general unsecured claims.

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor has not provided the required attachment.

Debtor failed to report year-to-date income and income from the prior two years on the Statement of Financial Affairs. Also, despite listing that she is self-employed, Debtor has not listed any business on the statement.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

10. 18-20929-E-13 DPC-1 — SHARON SUMPTER — Aubrey Jacobsen — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 4-4-18 [22]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 4, 2018. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Sharon Sumpter ("Debtor") is delinquent on plan payments;

B. Debtor has not provided tax returns; and

C. Debtor cannot afford the plan payments.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $2,575.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter13 Trustee notes that Debtor has not provided for the secured claim of Vallejo Police Department in the amount of $6,225.00, and she has not indicated how student loans are being paid, even though the Plan lists a 100% dividend to general unsecured claims. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

DEBTOR'S RESPONSE

Debtor filed a Response on May 1, 2018. Dckt. 26. Debtor states that she will be filing an Amended Plan to cure the delinquency because she was unable to make payments after falling ill and being hospitalized. Debtor states that tax returns were provided on March 29, 2018.

For the Vallejo Police Department claim, Debtor states that she requested validation by mail of the claim that was not answered. Debtor states that she then called the police department and was informed that the lien arose because Ditech Financial, LLC, failed to comply with foreclosure monitoring requirements. Debtor states that she is trying to resolve the lien informally but may consider filing pleadings with the court, if necessary.

For the student loans, Debtor states that her amended plan provides for payment of all unsecured claims, except for the student loans because those are paid directly by Debtor's daughter.

RULING

Debtor appears to concur with the Chapter 13 Trustee that the current plan cannot be confirmed by stating that an amended plan will be proposed. No amended plan has been filed yet.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

11. 18-20554-E-13 JOS-1 — FLORENTINO RAGADIO, AND FEMMIE RAGADIO — Jeanne Serrano — MOTION TO CONFIRM PLAN 3-9-18 [25]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2018. By the court's calculation, 67 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Florentino Ragadio and Femmie Ragadio ("Debtor") seek confirmation of the Amended Plan because it raises the plan payment, administrative fees, and unsecured dividend after removing a car loan from Schedule J. Dckt. 27. The Amended Plan proposes sixty payments of $1,150.00 with a 66% dividend to general unsecured claims. Dckt. 21. 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 April 13, 2018. Dckt. 31. The Chapter 13 Trustee notes that the Amended Plan's terms do not match the terms in Debtor's declaration. The Declaration states that the plan payments will actually be $1,215.91 per month and that the unsecured dividend will be 74%. He notes that Debtor does not indicate when the increased payments will begin, but he believes it should begin with the March 2018 payment.

The Chapter 13 Trustee also argues that the Motion does not comply with Federal Rule of Bankruptcy Procedure 9013. He notes that the Motion has a brief statement for confirmation and alleges no significant facts.

RULING

The entirety of Debtor's Motion reads:

> TO THE UNITED STATES TRUSTEE, CHAPTER 13 TRUSTEE, PARTIES IN INTEREST, AND THEIR RESPECTIVE ATTORNEYS OF RECORD:
>
> Debtors Florentino Gordoncillo Ragadio, Jr. and Femmie Viray Ragadio hereby move the Court for confirmation of their First Amended Chapter 13 Plan.
>
> WHEREFORE, Debtors pray for entry of an Order of Confirmation of their Chapter 13 Plan.

Dckt. 25.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013.

See 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Review of Declaration and "Testimony" Provided by Debtor Under Penalty of Perjury

Reviewing Debtor's Declaration, the court notes that beside conflicting with the Amended Plan on file, the declaration lacks factual support for the Motion. Instead, the Declaration contains Debtor's various, inappropriate legal conclusions about the state of the case and the Amended Plan. Debtor is not a competent witness to make the judicial determinations that a case has been filed in good faith or that a plan complies with all laws. FED. R. EVID. 601.

From reviewing the Declaration, it appears to be evidence of the following: (1) Debtor, and each of them, did not read the Declaration and are willing to say whatever is written for them "So Long As It Means We Win;" (2) Debtor read the Declaration, knew it is not true (them not having the requisite legal training) and were willing to intentionally make statements under penalty of perjury without regard to it actually being true, "So Long As It Means We Win;" and/or (3) counsel for Debtor is suborning their testimony under penalty of perjury knowing that it is not truthful, treating the federal judicial process as nothing more than an opportunity to try to improperly "game the system." Unfortunately, any of those conclusions may well result in there being no confirmable plan in this case, Debtor devoid of any credibility in providing "testimony" to the court.

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

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

12. 14-30855-E-13 HWW-5 | **RICHARD CHAIREZ** | **Hank Walth** | **MOTION TO MODIFY PLAN** | **4-10-18 [96]**

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 Not Provided. No Proof of Service was filed with the Motion. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has not been properly set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

Richard Chairez ("Debtor") seeks confirmation of the Modified Plan because he wants to lower his plan payments while providing funds to James Zammiello's bankruptcy case. Dckt. 98. The Modified Plan proposes $36,194.00 paid through March 2018, $1,052.00 for one month, and then $365.00 per month for the remainder of the plan term, with a zero percent dividend to unsecured claims. Dckt. 99. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Debtor did not file a Proof of Service with the Motion and the Modified Plan. There is no evidence that all of the necessary parties have been provided sufficient notice of the Motion and hearing so that any interested party could respond. Therefore, the Motion is denied without prejudice.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 26, 2018. Dckt. 100. The Chapter 13 Trustee asserts that Debtor is $1,052.00 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In opposing the Motion, the Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Plan proposes to pay a zero percent dividend to unsecured claims, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $4,168.00 when combined with the monthly income of his co-debtor. The Chapter 13 Trustee's review of Debtor's Schedule I shows that there is at least $1,055.00 unaccounted for. Thus, the court may not approve the Plan.

DEBTOR'S REPLY

Debtor filed a Reply on May 8, 2018. Dckt. 103. Debtor states that the Modified Plan is no longer feasible because Debtor is unemployed again and not receiving enough in short-term disability pay to fund the plan. Debtor consents to denial of confirmation.

RULING

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Richard Chairez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

13. **18-20067-E-13 WW-1** **ROBERT GODFREY** **Mark Wolff** **CONTINUED MOTION TO CONFIRM PLAN** **2-9-18 [35]**

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2018. By the court's calculation, 53 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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.

Robert Godfrey III ("Debtor") seeks confirmation of the Amended Plan to include payment to a claim for Schools Financial Credit Union. Dckt. 37. The Amended Plan proposes to pay $638.00 per month for twenty-nine months, then $940.00 per month for eighteen months, and then $1,238.00 per month for thirteen months, with a zero percent dividend to nonpriority unsecured claims. Dckt. 38. 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 March 20, 2018. Dckt. 49. The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of

> the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a zero percent dividend to unsecured claims, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $99,184.20. The Chapter 13 Trustee calculates that there are errors on Form 122C-1 about business expenses, household member deductions, direct payments from a spouse, and vehicle payments from a non-filing spouse. He also notes that there are errors on Form 122C-2 about deductions for dependents, public transportation, additional health care expenses, additional home energy costs, priority claims, and qualified retirement deductions. Thus, the court may not approve the Plan.

The Chapter 13 Trustee argues that the Plan may not have been proposed in good faith. 11 U.S.C. § 1325(a)(3). For one, he notes that Debtor's non-filing spouse is supposedly paying debts through a consolidation company, but Debtor deducts significant expenses on Schedule J that do not appear reasonable and necessary. Debtor and his spouse provided pay stubs for January through March 2018 showing bonus income that is not calculated into Schedule I. Expenses for utilities may be billed bi-monthly or quarterly, and the Chapter 13 Trustee requests additional information to ensure that the expenses are not less. Out-of-pocket medical expenses may not be monthly expenses without more information as well. Debtor proposes to withhold additional amounts for taxes, but the Plan does not provide for those funds. Debtor's spouse's debt consolidation payments end during the plan term, but the Plan does not propose increasing payments, and Debtor's spouse also has vehicle payments that end during the Plan but are not provided for through plan payment increases.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee notes that the Plan does not provide for Wells Fargo Bank's secured claim against purchases made at California Backyard. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

APRIL 3, 2018 HEARING

At the hearing, the court noted that Debtor had filed supplemental pleadings on the eve of the hearing that the Chapter 13 Trustee had not reviewed. Dckt. 56. The court concurred with the Chapter 13 Trustee that the hearing be continued for time to review the pleadings. The court continued the hearing to 3:00 p.m. on May 15, 2018.

CHAPTER 13 TRUSTEE'S SUPPLEMENTAL RESPONSE

The Chapter 13 Trustee filed a Supplemental Response on May 1, 2018. Dckt. 58. The Chapter 13 Trustee interprets Debtor's pleading as stating that the non-filing spouse's income and expenses are not relevant to confirmation. The Chapter 13 Trustee is not certain what Debtor's business income may be, but he argues that it should be $73.00 per month based on the pleadings.

The Chapter 13 Trustee notes that Debtor appears to agree that his household is different because he reduced the household size to two, and he corrected what his spouse is paying each month for a vehicle

lease ($346). The Chapter 13 Trustee maintains, though, that the lease will end during the plan term and should be amortized over sixty months.

The Chapter 13 Trustee questions Debtor's inclusion of a $250.00 per month contribution to a disabled family member because Debtor has not shown that the expense was paid during the six months prior to filing, that the family member is unable to pay the amount, or that the expense is reasonably necessary.

The Chapter 13 Trustee notes that medical expenses have increased so much that there would now be a $316.00 shortfall preventing Debtor from being able to make the plan payments. The Chapter 13 Trustee notes that Debtor lists health and disability insurance expenses and states that Debtor should clarify why insurance does not pay the medical expenses. He notes too that there is a questionable expense for "ten different products" without describing if they are a prescription and without explaining why spending $22,857.60 over five years is reasonably necessary when unsecured claim are paid nothing.

The Chapter 13 Trustee questions $600.00 in additional monthly home energy costs because there only appear to be three expenses (PG&E, SMUD, and Solar City), and those three total only $332.38. The Chapter 13 Trustee would concede that $98.18 for Solar City appears appropriate, but he does not know why the expenses for PG&E and SMUD are not listed as part of the regular home energy costs.

Priority claims listed by Debtor are $163.34 per month, but after claims filed by the Franchise Tax Board and Internal Revenue Service, the monthly payment according to the Chapter 13 Trustee should be $44.46, which represents a monthly $118.88 difference.

Previously, the Chapter 13 Trustee had questioned Debtor's $851 deduction for qualified retirement. Now, Debtor has increased the deduction to $969, but he has not explained whether the loan requires interest or how the "buyback of service credits" qualifies as a retirement loan.

The Chapter 13 Trustee maintains that the Plan has not been proposed in good faith and that Debtor has not disclosed how Wells Fargo's secured claim will be paid.

DEBTOR'S STATUS STATEMENT

Debtor filed a Status Statement on May 8, 2018. Dckt. 61. Debtor states that he has been working with the Chapter 13 Trustee to resolve the issues raised, and he expects to solve them by increasing the plan payments. Currently, the proposed plan payments are $638.00 for twenty-nine months, then $940.00 for eighteen months, and then $1,238.00 for thirteen months. Debtor proposes to change payments to $638.00 for twelve months, then $738.00 for twelve months, then $838.00 for five months, then $1,240.00 for two months, then $1,390.00 for five months, then $1,490.00 for eleven months, then $1,790.00 for one month, and then $1,890.00 for twelve months.

Debtor notes that the Chapter 13 Trustee has scheduled a deposition of Debtor's spouse for May 18, 2018, and should the parties not have resolved the issues before the hearing, Debtor anticipates that the parties will request another continuance.

RULING

At the hearing, the Chapter 13 Trustee reported that **the proposed increases in plan payments are satisfactory / more time is needed because the deposition of Debtor's spouse has not yet occurred**.

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 Robert Godfrey III ("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 **xxxxxx**.

14. 18-21469-E-13 DONNA WELCH — MOTION TO CONFIRM PLAN
DEF-2 David Foyil — 3-16-18 [18]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2018. By the court's calculation, 60 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). FN.1.

FN.1. Counsel for Debtor may want to review the Certificates of Service filed for this Contested Matter. They do not attest to service having been made on a specific date, just that it had been "made" (speaking in the past tense). For this Motion, the court infers that it occurred as of the time the Certificate was filed. The court may not so infer in the future.

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

The Motion to Confirm the Plan is denied.

Donna Welch ("Debtor") seeks confirmation of the Plan, but instead of providing factual testimony about why, her declaration largely provides her legal conclusions about what the Plan proposes and why it is lawful. Dckt. 20. The Plan proposes monthly payments of $965.00, with a zero percent dividend to unsecured claims. Dckt. 17. The Plan also calls for Debtor to sell real property at an estimated amount that will fully fund this case.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 27, 2018. Dckt. 46. The Chapter 13 Trustee argues that the Amended Plan is based upon a plan form that is no longer effective now

that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1 and General Order 17-03.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee notes that the Additional Provisions call for a 1.95% dividend to Class 7, even though the main text of the Plan calls for a 0.00% dividend. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee also argues that the Motion conflicts with the filed Plan about how Debtor is funding this case—future income versus sale of property. He notes too that the Plan lacks specifics about Debtor's proposed sale and that no motion to approve a sale has been filed with the court.

The Chapter 13 alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). He argues that the plan payments are insufficient to pay the $905.25 monthly contract installment on the Class 1 claim. The Chapter 13 Trustee calculates that the plan payments would need to be $980.78 per month to pay Class 1 post-petition mortgage payments and the Chapter 13 Trustee's fees. Thus, the Plan may not be confirmed.

The Chapter 13 Trustee also notes that Debtor set this confirmation hearing earlier than the May 22, 2018 date listed on the Notice of Commencement of Case.

RULING

The 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 Chapter 13 Plan filed by Donna Welch ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

15. 17-24875-E-13 LINDA VANPELT — MOTION TO CONFIRM PLAN
PGM-4 Peter Macaluso — 3-21-18 [117]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2018. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

Linda VanPelt ("Debtor") seeks confirmation of the Amended Plan because she became delinquent on mortgage payments. Dckt. 119. The Amended Plan proposes payments of $4,400.00 through December 2017, then $2,040.00 per month for three months, then $3,500.00 for the remaining fifty-two months, with a zero percent dividend to general unsecured claims. The Additional Provisions propose terms for a loan modification. Dckt. 123. 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 April 16, 2018. Dckt. 126. He notes that the Plan proposes incomplete Ensminger provisions, specifically not proposing proper adequate protection payments. Additionally, the Chapter 13 Trustee questions whether this Plan was proposed in good faith because it does not address the concerns raised by the court previously. *See* Dckt. 114.

CREDITOR'S OPPOSITION

HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-10, by and through its servicing agent Wells Fargo Bank, N.A., ("Creditor") filed an Opposition on April 18, 2018. Dckt. 129. Creditor argues that pursuant to 11 U.S.C. § 1322(b)(2) & (5) and 1325(a)(5)(B), the Plan must fully cure the arrearages on its claim as well as provide ongoing monthly payments. Creditor argues that Debtor's intention to apply for a loan modification is too speculative to support confirmation, however.

DEBTOR'S REPLIES

Debtor filed two near-identical Replies, one on May 1 and the other on May 5, 2018. Dckt. 138, 141. Debtor states that a loan modification application has been submitted and that Debtor is working to provide additional documents that have been requested.

Debtor requests that the hearing on this Motion be continued sixty days while the application is pending.

RULING

Creditor's Opposition relies upon the legal assertion that the automatic stay provision of 11 U.S.C. § 362 and the adequate protection provisions of 11 U.S.C. § 361 are inapplicable in Chapter 13 cases. Creditor essentially asserts that a Chapter 13 debtor can be "punished" by being forced to make payments on a loan arrearage that debtor has the right (either legally or based on economic reality) to have modified. Further, Creditor asserts that it has the right to extract from Debtor the much higher payments, ignoring any obligation to modify the loan. Creditor is wrong. The automatic stay applies. The adequate protection provisions apply. Creditor is entitled to receive adequate protection payments if Debtor is going to use the automatic stay while Debtor exercises her rights. But Creditor is not entitled to bonus payments or to use the Bankruptcy Code to pummel the consumer debtor into foregoing the rights granted by Congress under the Bankruptcy Code. The Ensminger Additional Provisions do not modify the contract but ensure that the adequate protection rights placed by Congress are fully enforced. If grounds for relief from the stay exist, Creditor can move forward to enforce its rights. The court is at a loss to understand what good faith opposition grounds exist as advanced by Creditor.

Here, Debtor seeks to make an adequate protection payment of $2,258.32 per month until Creditor grants or denies the loan modification, or if other grounds exist, Creditor seeks and obtains relief from the automatic stay. Third Amended Plan, Additional Provisions § 6.07. The issue may well exist as to whether this is an "adequate" protection payment as provided for by Congress in 11 U.S.C. § 361. However, Creditor has waived any such opposition, instead asserting that 11 U.S.C. § 361 does not exist.

The Chapter 13 Trustee, potentially riding to Creditor's rescue, notes the court's prior analysis that it appears the adequate protection payment should be in the amount of $3,160.34. Opposition, Dckt. 126 at 2:1–13.5. However, Creditor does not believe the amount is inadequate under 11 U.S.C. § 361, so the court will not force the Chapter 13 Trustee's observation on Creditor, it having carefully prepared and presented its limited basis of opposition.

While the Third Amended Plan could be confirmable, Debtor's demonstrated lack of credibility in providing a "testimony on demand" declaration warrants denial of the Motion. The court presumes that the testimony under penalty of perjury, provided in the cool calm outside of court, prepared by Debtor's experienced counsel, is the best that can be done. Debtor's best consists of her legal conclusions, parroting Bankruptcy Code provisions, and imposing on the court Debtor's personal "findings of fact." Debtor's counsel is well aware of the Federal Rules of Evidence, of what constitutes admissible and credible testimony, and that the court does not treat federal court proceedings as a "free-for-all so long as one can get away with it" to abuse the federal judicial process.

Debtor has not provided credible evidence for the court to determine that the proposed Chapter 13 Plan complies with the provisions of 11 U.S.C. §§ 1325 and 1322. Debtor demonstrates that she has little knowledge of her plan and these proceedings. The Motion is denied without prejudice. FN.1.

FN.1. Given that this is not Debtor's first, second, or even third recent foray into bankruptcy, one presumes that she and her counsel worked extra hard to craft the best declaration and allow Debtor to demonstrate her most credible testimony. The current case was filed on July 25, 2017, and now ten months later, Debtor has been unable to confirm a Chapter 13 plan. Debtor's prior recent cases are:

Chapter 13 Case No. 15-24979
Filed.....June 21, 2015
Dismissed.....September 19, 2015

Plan Payments by Debtor.....$0.00; 15-24976; Trustee's Final Report, Dckt. 49.

Chapter 13 Case No. 15-20897
Filed.....February 5, 2015
Dismissed.....June 26, 2015

Plan Payments by Debtor.....$0.00; 15-20897; Trustee's Final Report, Dckt. 39.

Chapter 13 Case No. 14-27048
Filed.....July 7, 2014
Dismissed.....December 3, 2014

Plan Payments by Debtor.....$13,500.00; 14-27048; Trustee's Final Report, Dckt. 41.

Monies Refunded to Debtor.....$ 6,062.38; *Id.*

Creditor Payments Only For Post-Petition Mortgage Installments, No Arrearage. *Id.*

Chapter 13 Case Converted to Chapter 7 Case No. 11-30525
Filed.....April 28, 2011

Converted.....February 13, 2013; 11-30525; Notice of Voluntary Conversion, Dckt. 37

Plan Payments by Debtor.....$2,200; *Id.*; Trustee's Final Report, Dckt. 45.

Discharge Entered.....March 7, 2016

The entry of discharge was delayed because of ongoing litigation with the Chapter 7 Trustee. In requesting extension of time to enter discharge, the Chapter 7 Trustee stated grounds including the Debtor's continuing failure to turn over non-exempt assets to the Chapter 7 Trustee. *Id.*; Motion, Dckt. 138.

In substance, Debtor has been utilizing Chapter 13 since April 2011, has made little in plan payments, and has enjoyed living in bankruptcy. This may well add another dimension to the confirmation process, and these prior unsuccessful Chapter 13 cases may well be the reason Debtor fails (refuses) to provide personal knowledge testimony, instead choosing to have her attorney prepare declarations for which she (incorrectly) believes that she can assert plausible deniability:

Plausible Deniability

The ability to deny blame because evidence does not exist to confirm responsibility for an action. The lack of evidence makes the denial credible, or plausible. **The use of the tactic implies forethought, such as intentionally setting up** the conditions to plausibly avoid responsibility for one's future actions.

The term was coined by the CIA in the 1960s to describe the withholding of information from senior officials in order to protect them from repercussions in the event that certain activities by the CIA became public.

Taegan Goddard's Political Dictionary, http://politicaldictionary.com/words/plausible-deniability/. The use of this political device is antithetical to a debtor and counsel filing and prosecuting a bankruptcy case in good faith.

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 Linda VanPelt ("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 without prejudice.

16. 18-20883-E-13 DPC-1 | **MELODY SIMPSON** **Steven Shumway** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-4-18 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 4, 2018. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Melody Simpson ("Debtor") is delinquent on plan payments, and

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

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $1,785.00 delinquent in plan payments. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 the Chapter 13 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17. 18-20484-E-13 LESSIE MCMILLER — MOTION TO CONFIRM PLAN
SLE-2 Steele Lanphier — 4-18-18 [28]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 3, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

Lessie McMiller ("Debtor") seeks confirmation of the Plan because of unexpected changes to monthly finances. Dckt. 30. The Plan proposes sixty monthly payments of $556.00 with a one percent dividend to general unsecured claims. Dckt. 21.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 27, 2018. Dckt. 32. The Chapter 13 Trustee questions whether the Plan was filed in good faith because this is Debtor's fourth case in past 24 months, with the most recent case (No. 18-20038) omitted. He also asserts that the Motion was set on short notice, having been filed on April 18, 2018.

With respect to the prior cases, he has been represented by counsel (the same as in this case) in two of the prior three cases since April 2016.

The Proof of Service for this Motion was filed on April 18, 2018, but it states that service was performed on April 3, 2018. Dckt. 31. Local Bankruptcy Rule 9014-1(e)(2) states that "[a] proof of service,

in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed." The court has not waived that rule for Debtor, and there is no explanation why the Proof of Service was filed fifteen days later. Not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny a motion. LOCAL BANKR. R. 1001-1(g).

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. To attempt to confirm a plan while failing to appear and be questioned by the Chapter 13 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 indicate in Section 3.05 whether attorney's fees are being paid according to Local Bankruptcy Rule 2016-1(c) or whether they will be sought by separate motion.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor lists income from being a bar owner and from operating McMiller Customer Delivery Service, but neither of those businesses or any assets are listed on Schedule A/B. There appear to be unreported assets.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor lists his residence as a property that is also listed as being foreclosed upon, but Schedule J also includes a rent/mortgage expense of $1,308.00. Debtor's pleadings are unclear whether the expense is a mortgage payment or an estimated rental expense once Debtor vacates the foreclosed property. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

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

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Debtor provided only the 2016 tax return. Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

RULING

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

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

18. 18-21487-E-13 RJ-1 — ROBERT BATEY — Richard Jare — MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORPORATION — 4-17-18 [21]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 17, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Nissan Motor Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $22,841.00.

The Motion filed by Robert Batey ("Debtor") to value the secured claim of Nissan Motor Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2017 Nissan Altima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $13,000.00 as of

the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in April 5, 2017, which is fewer than 910 days prior to filing of the petition.

Debtor requests that the loan held by Creditor be determined to be secured in the amount of $22,841.00 and that the negative equity carried into the loan from a trade-in of a 2016 Toyota Camry in the amount of $6,780.00 be determined to be an unsecured claim.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 26, 2018. Dckt. 31. The Chapter 13 Trustee notes that no Memorandum of Points and Authorities has been filed, even though the Motion and Proof of Service reference one. He also notes that the Plan and Schedules include Creditor's claim.

DISCUSSION

Creditor filed a Proof of Claim No. 1-1 on March 16, 2018, claiming a secured claim in the amount of $27,591.00. A review of the Retail Installment Sale Contract filed as an attachment to Creditor's Proof of Claim shows that the total amount financed by Debtor was $26,086.94. There was a net trade-in of ($6,780.00). Essentially, the total amount financed is two separate loans, one for negative equity arising from the trade-in and another for the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 25.99% of the amount financed, and the remaining 74.01% is new financing secured as a purchase money security interest in the new Vehicle. Applying those percentages to the amount claimed by Creditor, $6,780.00 of the amount financed is to the negative equity arising from the trade-in. The remaining $19,306.94 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired fewer than 910 days prior to the filing that prevents Debtor from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), Debtor is only seeking to value the portion of the financing that was for negative equity arising from the trade-in, not the actual purchase of the Vehicle.

In the Ninth Circuit, negative equity is not considered as part of the price for a new vehicle and is not included in the purchase money security interest. *AmeriCredit Fin. Servs. v. Penrod (In re Penrod)*, 611 F.3d 1158,1161–62 (9th Cir. 2009), *reh'g denied*, 636 F.3d 1175 (2011), *cert. denied* 565 U.S. 822 (2011). Debtor may value that portion of the secured claim relating to the negative equity financed in addition to the purchase price.

The definition of a "purchase money security interest" is determined by state law. *Id.* California Commercial Code § 9103 "does not provide a precise, encapsulated definition of a purchase money security interest, but rather a string of connected definitions." *Id.* at 1161; CAL. COM. CODE § 9103.

In *Penrod*, the Ninth Circuit Court of Appeals quoted the plain language of the California Commercial Code, stating,

> "'Purchase money collateral' means goods or software that secures a purchase money obligation." CAL. COM. CODE § 9103(a)(1). "'Purchase money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." CAL. COM. CODE § 9103(a)(2).

611 F.3d at 1161.

The California Commercial Code defines the term "goods" to be,

> (44) "Goods" means all things that are movable when a security interest attaches. The term includes (I) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (I) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

CAL. COM. CODE § 9102(44). Physical "things" are included in the definition, but contracts, claims, instruments, letters of credit, and other non-physical "things" are not included.

Here, Debtor purchased a vehicle (a thing) and obtained additional credit to finance the negative equity arising from the trade-in. The court organizes the various purchases and obligations as follows:

Purchase of Vehicle	Source Document—Retail Installment Sale Contract. Proof of Claim No. 1-1	
Purchase Price of Vehicle (Cash Price Day of Sale)	$22,952.00	Price of Collateral
Document Processing	$80.00	Documentation as part of purchase of Vehicle

Sales Tax	$1,756.19	Though This is not a tax that the purchaser is obligated to pay, but a tax that the seller is obligated to pay, the court includes it as part of the actual necessary cost in buying the vehicle. FN.1.
Electric Vehicle Registration	$29.00	Cost with above purchase price
Vehicle License	$261.00	Estimated cost with above purchase price
Registration	$NA	Estimated cost with above purchase
California Tire Fees	$8.75	Cost with above purchase
Total obligation incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	$26,086.94	

FN.1. As discussed by the California Court of Appeal, the state sales tax is not a tax on the sale but an excise tax imposed upon the retailer for the "privilege of conducting a retail business." *Xerox Corp. v. County of Orange*, 66 Cal. App. 3d 746, 756 (Cal. Ct. App. 1977); *see* CAL. REV. & TAX. CODE § 6051 (imposing tax on retailers). A retailer is allowed to add the sales tax to the sales price under specified circumstances (which is the common practice in California). CAL. CIV. CODE § 1656.1.

In addition to the credit extended for the purchase of the Vehicle, Creditor extended further credit to purchase or finance these additional items:

Item	Source Document—Retail Installment Sale Contract. Proof of Claim No. 1-1	
Negative Equity in Trade-In	($6,780.00)	This negative equity that Creditor chose to provide additional credit for is not part of the purchase money obligation as determined by the court in *Penrod*.

Total obligation incurred not as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	($6,780.00)	

As discussed by the court in *Penrod*, creditors are given some extraordinary rights for purchase money finance and a purchase money lien. While extraordinary rights are given, the California Legislature carefully circumscribed the obligations that would be protected.

Therefore, based on the foregoing, Creditor's secured claim is determined to be in the amount of $22,841.00. *See* 11 U.S.C. § 506(a). The remaining $6,780.00 is determined to be a general unsecured claim arising from negative equity arising from the trade-in. 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 for Valuation of Collateral filed by Robert Batey ("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 Nissan Motor Acceptance Corporation ("Creditor") secured by an asset described as a 2017 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of $22,841.00. That is the amount of the secured claim pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a), and the balance of the claim, $6,780.00, is a general unsecured claim to be paid through the confirmed bankruptcy plan.

19. 18-20290-E-13 DPC-1 | **LUIS MANZO** **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-21-18 [28]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on February 21, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Luis Manzo ("Debtor") fails the liquidation analysis;

B. Debtor has not provided all pay advices;

C. Debtor has not proposed all disposable income; and

D. Debtor did not list any income on Form 122C-1.

MARCH 27, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on May 15, 2018, and ordered Debtor to file and serve opposition by April 13, 2018, with any replies due by April 27, 2018. Dckt. 55.

DEBTOR'S REPLY

Debtor filed a Reply on April 13, 2018. Dckt. 65. Debtor argues that he has not interest in the properties at issue and has no opposition to a creditor asserting a viable action against them because all control over them are in another person.

Debtor states that he is a commission-based sales agent and has provided all pay advices to the Chapter 13 Trustee. Debtor states that he intends to remain current on taxes throughout the year by paying the taxable portion of commission closings at the time of closing. Debtor states that he has filed an Amended Form 122C-1 and will amend Schedule C to claim exemptions under California Code of Civil Procedure § 704.

Debtor's Failure to Provide Evidence in Opposition to Objection to Confirmation

Unfortunately, Debtor's Reply consists merely of his attorney making short arguments of "fact," without testimony by Debtor or other evidence to support such facts. The court has addressed this defective pleading practice, and Debtor's counsel is well aware of the Federal Rules of Evidence and the need to submit credible evidence, so it appears that Debtor is willfully and intentionally avoiding providing testimony. Presumably, that is because if he were to so testify, it would not support his attorney's "factual" arguments.

Given that Debtor's counsel is well aware of the Federal Rules of Evidence, what constitutes admissible and credible testimony, and that the court does not treat federal court proceedings as a "free-for-all so long as one can get away with it" to abuse the federal judicial process, the failure to provide such evidence is not inadvertent. Rather, such failure to have Debtor provide simple testimony to support "factual" arguments of counsel is intentional.

This may well add another dimension to the confirmation process and a reason Debtor fails (refuses) to provide personal knowledge testimony, instead choosing to have her attorney prepare declarations for which he (incorrectly) believes that she can assert plausible deniability:

> Plausible Deniability
>
> > The ability to deny blame because evidence does not exist to confirm responsibility for an action. The lack of evidence makes the denial credible, or plausible. **The use of the tactic implies forethought, such as intentionally setting up** the conditions to plausibly avoid responsibility for one's future actions.

> The term was coined by the CIA in the 1960s to describe the withholding of information from senior officials in order to protect them from repercussions in the event that certain activities by the CIA became public.

Taegan Goddard's Political Dictionary, http://politicaldictionary.com/words/plausible-deniability/. The use of this political device is antithetical to a debtor and counsel filing and prosecuting a bankruptcy case in good faith.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on April 20, 2018. Dckt. 75. The Chapter 13 Trustee argues that Debtor has not sufficiently addressed the transfers of real property. He notes that Debtor admitted at the Meeting of Creditors that he has been married to Elizabeth Manzo, who has owned the properties since 1986, and that he was listed on title to some of the properties when they were purchased. For the Chapter 13 Trustee, the mere assertion that seven real properties were transferred in 2010 so that Debtor no longer has an interest is insufficient without evidence.

The Chapter 13 Trustee states that the only proof of income he has received is a copy of a check made out to Debtor from an escrow trust account in the amount of $4,842.11 on August 14, 2017. Nothing further has been provided, and Debtor has not filed a business attachment for his income.

The Chapter 13 Trustee notes that the Internal Revenue Service has filed a priority claim for $555.00 for 2017 taxes, and he asserts that Debtor has not shown a willingness to pay ongoing taxes. With an amended Form 122C-1 filed, the Chapter 13 Trustee notes that his ground for objecting has been resolved.

The liquidation analysis issue has not been resolved for the Chapter 13 Trustee. Debtor filed a spousal waiver but still claimed exemptions under California Code of Civil Procedure §§ 703.140(b) and 704.010. Additionally, Amended Schedule A/B deletes broker fees without any explanation. Amended Schedules I and J also contain numerous decreases without explanation.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that there are five properties that were transferred, but in which Debtor shows no interest even though he admitted at the Meeting of Creditors that he was on title to some of the properties when purchased. As addressed in the minutes for creditor Esteban Cardiel's Objection to Confirmation, there were five properties transmuted into community property by Debtor's spouse in 2016 that total as much as $440,000.00 in value, but Debtor claims they have no value for this case. Debtor does not explain why unsecured claims are entitled to a 0.00% dividend when there may be as much as $440,000.00 in unreported equity in this case. The Plan fails the liquidation analysis. 11 U.S.C. § 1325(a)(4).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Chapter 13 Trustee presents several grounds for why Debtor's plan is not his best effort. Debtor has not listed an expense for income taxes, he is claiming expenses for a pre-petition deceased parent, he does not pay the $1,000.00 he listed on Schedule J, and he has not disclosed the life insurance policy he claims he pays.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

20. 13-32494-E-13 THEODORE/MOLLY MCQUEEN MOTION TO SELL
GEL-1 Gabriel Liberman 4-24-18 [252]

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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2018. By the court's calculation, 21 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 xxxxxxxxxxxxxxxx.

The Bankruptcy Code permits Theodore McQueen and Molly McQueen, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell their ownership interest in Heaven's Best Carpet and Upholstery franchise ("Property").

The proposed purchaser of the Property is Daniel G. Child, Jr., and the terms of the sale are:

A. Purchase price of $20,000.00;

B. No additional cost of sale charges because structured as a direct sale;

C. Proceeds paid to Movant upon court approval;

D. Movant will assist in transferring the business phone number, website, and client lists;

E. Sale includes all business cleaning equipment;

F. Movant shall be responsible for a business debts that occurred prior to sale, including royalty fees; and

G. There shall be a two-year non-compete clause for the city limits of Fair Oaks, Rancho Cordova, Carmichael, Sacramento, and West Sacramento, California.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 1, 2018. Dckt. 257. The Chapter 13 Trustee argues that the sale may not be in Movant's best interest because no information has been provided about how offers were solicited other than Movant stating that $20,000.00 was the best offer received.

The Chapter 13 Trustee questions whether Movant will be able to afford the remaining plan payments. He notes how the Motion pleads that income from Movant's in-home support services business has increased sufficiently to fund the Plan, but no amended statement of income and expenses has been filed.

Finally, the Chapter 13 Trustee requests that any order approving the sale direct that the sale proceeds be paid to the Chapter 13 Trustee, not to Movant directly.

MOVANT'S SUPPLEMENTAL DECLARATION

Movant filed a Supplemental Declaration on May 8, 2018. Dckt. 260. Movant states first that they believe they bought the franchise at an exorbitant price based upon "cooked" books. Movant also states that the business lost its three biggest clients at the beginning of this year.

Movant states that they spoke with ten to fifteen prospective buyers and that none of them offered better than $4,000 or $8,800. Ultimately, Movant's best course was to sell back to the franchiser for $20,000.00.

As to the ability to make plan payments, Movant insinuates that the numbers on Schedules I and J are misleading. Contrary to the $2,509.00 net income listed for the business, Movant states that such amount "has been non-existent," and instead, Movant has made up the difference through an increase in other income from a nursing waiver. Movant argues that the sale will not affect them negatively for the five remaining payments.

Movant argues finally that there is no need to filter money through the Chapter 13 Trustee because the sale is structured as a direct sale back to the franchiser without any escrow involved. Debtor concedes, though, that if the Chapter 13 Trustee is still concerned, then they would not have an objection to the Chapter 13 Trustee preparing a notarized contract of sale and conducting the sale directly with the prospective buyer.

DISCUSSION

For the final five months of this case, Movant's confirmed plan calls for four payments of $2,435.00 and one lump sum payment of $26,000.00, anticipated to be available from a refinance or sale of Movant's business. Dckt. 220. That total amount is $35,740.00. The proposed sale is for $20,000.00, which leaves $15,740.00 to be funded to complete the Plan.

History of Debtor and the Business

This bankruptcy case comes with a long and complicated history concerning this business. Debtor commenced this bankruptcy case on September 25, 2013. On Original Schedule B, Debtor stated under penalty of perjury that they owned a corporation called "Eliminator Enterprises, Inc." that was Debtor's carpet cleaning business under the name "Heaven's Best of Sacramento." Dckt. 9 at 5. Debtor further affirmatively stated that as of September 1, 2013, the corporation had ceased doing business. *Id.*

Debtor further stated that Debtor began operating the carpet cleaning business as a sole proprietorship as of September 1, 2013, and that all of the corporation's former assets, including the business, were Debtor's personal assets. *Id.* at 6.

That transfer of asset led to Adversary Proceeding 14-02004 being filed by G&K Heaven's Best, Inc. ("G&K, Inc.") against Debtor. In Adversary Proceeding 14-2004, G&K Inc. asserted that it held a security interest on all of the assets of Debtor's corporation, that such assets had been fraudulently (without value) conveyed to Debtor, that G&K, Inc. was entitled to enforce its lien rights, and that obligations owing to it by Debtor on a guaranty were nondischargeable. Debtor filed a cross-claim, asserting that fraud had occurred in the sale of the franchise to it by G&K Inc. and that the terms of the sale were abusive.

Debtor then commenced Adversary Proceeding 14-2027 against G&K, Inc. In that Adversary Proceeding, Debtor asserted that the lien claimed by G&K, Inc. could be avoided pursuant to 11 U.S.C. § 547 and § 522(f).

A comprehensive settlement was entered into by Debtor and G&K, Inc., which was approved by the court. 14-2027; Order, Dckt. 98, and Civil Minutes, Dckt. 95.

Debtor then confirmed a Plan, committing Debtor to make substantial payments from monies generated from the operation of their business.

Denial Without Prejudice of Motion

Movant's primary source of income—according to the Amended Schedule I filed on November 25, 2014—is from the business being sold, roughly $10,000.00 per month versus $4,000.00 from in-home support services. Dckt. 218. The accompanying Amended Schedule J shows a monthly net income of $2,435.24. *Id.* Without the business income, that monthly net income would become ($7,564.76).

Movant states in a supporting declaration that the "In-Home Supportive Services business has improved sufficiently that [Movant] will be able to complete the remaining" plan payments. Dckt. 254 at

2:20–22. Movant does not provide any calculations of the current income being earned, however. Based upon the financial documents filed with the court, Movant will not have sufficient disposable income to support making the final plan payments.

Movant's Supplemental Declaration does little to ease the court's concerns either. Instead of providing simple explanations for why the Motion should be granted, Movant has essentially admitted to the court that the Schedules in this case are inaccurate and that Movant has actually been earning different amounts of income than stated under penalty of perjury on Schedule I.

Additionally, Movant's statements that they "spoke" with ten to fifteen people about buying the company is not sufficiently detailed to show that a reasonable search was conducted leading to a sale. Ten and fifteen are not large numbers, but Movant apparently is unable to tell the court the exact number of prospective buyers who were approached, or how they were solicited.

Further, Debtor has previously demonstrated a "generous" view of Debtor's ability to transfer assets away from creditors. Here, Debtor seeks to obtain an order for the sale of a business with a $10,000 per month income (Amended Schedule I filed thirteen months after the case was commenced, Dckt. 218) for the grand total of $20,000. Motion, Dckt. 252. This is being proposed with only five months remaining under the Plan.

Debtor asserts that the court should not worry about this apparent fire sale value because Debtor's other income has increased sufficiently for it to make the required plan payments. *Id.* However, there is no evidence presented as to what this increased income is and how it will fund the Plan. Debtor's Declaration, Paragraph 10 merely dictates a finding of fact that Debtor's other income has increased sufficiently to fund a plan.

The Confirmed Chapter 13 Plan requires that Debtor fund the Plan and administer the assets available to pay creditor claims as follows:

A. For Months 1–12, Debtor will have funded the Plan with $17,100.

B. For Months 13–59, Debtor will fund the Plan with $2,435 monthly.

C. For Month 60, Debtor will fund the Plan with $26,000, which is to be generated from the sale or refinance of Debtor's business.

Plan Additional Provisions, Dckt. 220.

In their Declaration, Debtor states that the offer from Mr. Child for $20,000 is the best Debtor received. Declaration ¶ 4, Dckt. 254. The Declaration provides no testimony as to the efforts made by Debtor, the Plan Administrator fiduciary to perform the Plan, to market the business for sale. It does state Debtor's conclusion that "The Buyer is a bona fide buyer and is not a party of [presumably a typo and Debtor means party 'in' interest]." However, the Declaration carefully avoids stating facts concerning Mr. Child and his connection or non-connection to Debtor.

Debtor attempts to rehabilitate the prior testimony with a Supplemental Declaration. Dckt. 260. With respect to the Chapter 13 Trustee's opposition that the fiduciary Plan Administrator Debtor failed to provide any testimony of the marketing efforts of the business, Debtor's response is limited to the following:

> a. The Trustee's first objection is that he is uncertain that our best offer for the sale of the business is $20,000, as we have failed to elaborate on marketing, other offers, etc. This business is a franchise that we purchased from a previous franchisee for an exorbitant price. We are convinced that we were shown "cooked" books that grossly exaggerated its value. The business has done nothing but lose money since it was purchased. We lost our 3 biggest accounts around the first of this year. We have had absolutely zero luck at finding anyone willing to buy this losing business. With our knowledge of this business we spoke with 10 – 15 prospective buyers. The best offers we received was for $4,000 and $8800. Therefore, it was only the franchiser that is willing to buy it back, and his offer is $20,000. We have no objection to the Court or the Trustee setting up an auction or making a higher offer.

Declaration ¶ 2.a., *Id.*

That response discusses the dispute with the seller of the business, which was settled long ago. As to marketing, this fiduciary Plan Administrator Debtor states that Debtor "talked with" ten to fifteen persons. There is nothing about communicating with a business broker. There is nothing about advertising the business. There is nothing about who the ten to fifteen persons are. This Supplemental Response could be read that the "talk" was merely window dressing to cover up a less than *bona fide* sale.

With respect to the second opposition, the Chapter 13 Trustee questioning how the loss of $10,000 per month in income will be replaced, Debtor offers only the following:

> b. The Trustee's second objection is whether we would have the ability to make our Plan payments because this business is the primary source of our income. On the contrary, our Schedules I and J (DN 218) show $10,000 gross income from the business, less $5,973.29 in Schedule J operating expenses, and less $1,517 in Schedule J for Self-Employment taxes for a net income of $2,509.00 from this business. Since $4,413.08 is shown on our Schedule I as net income other than this business, it was not our primary source of income. As a matter of fact, this $2,509.00 net income has been non-existent as stated in paragraph 3 above. We have been able to make up the difference and continue to fund our Plan payment due to an increase in our other income. The nursing waiver income has increased in both the hours and hourly rate, which is non-taxable and has been significant in our ability to make our Plan payment. Therefore, the sale of this business is not going to negatively affect our ability to make our remaining 5 Plan payments.

Declaration ¶ 2.b., *Id.*

Debtor is correct stating that Amended Schedule I lists $10,000 in income and on Schedule J and attachment thereto Debtor states having $5,973.29 in business expenses. That would yield net monthly business income of $4,027 (rounded).

In the Supplemental Declaration, Debtor states that Debtor lost three of the largest accounts at the first of the year.

In response to the third opposition ground of the Chapter 13 Trustee—that the payments from the sale will not be disbursed from escrow to the Chapter 13 Trustee, Debtor responds:

> c. The Trustee's third objection is that the proceeds from this sale may not get directed to the Trustee, and rather than having us turn over the proceeds that they be paid out of escrow. As stated in our original declaration (DN 254), this will be a direct purchase contract of sale to the franchiser. There is no escrow or cost of sale. Furthermore, we ask the Court to take notice that we have diligently made our payments for 4 and ½ years into this Plan. Getting this Plan confirmed was a significant ordeal. We have no intention of risking not completing this Plan, leaving us with non-discharged debts, and taking the money and run. If, nonetheless, the Trustee still has concerns in this regard, we have no objection to the Trustee preparing the notarized contract of sale and conducting the sale directly with the prospective buyer.

Declaration ¶ 2.c., *Id.* The court can envision simpler (constructive) procedures rather than having the Chapter 13 Trustee take over the sale from the fiduciary Plan Administrator Debtor. One possibility would be for the certified or cashier's check for the sales price (certified or cashier's check appears necessary because the transaction will not be made through an escrow who can confirm receipt of all monies before transferring the business) to be made jointly payable to the Plan Administrator Debtor and the Chapter 13 Trustee.

Further Information Presented at Hearing

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

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 Theodore McQueen and Molly McQueen, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is ~~denied without prejudice.~~

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PRESENTS SUFFICIENT INFORMATION AT THE HEARING

The Motion to Sell Property filed by Theodore McQueen and Molly McQueen, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Theodore McQueen and Molly McQueen, Chapter 13 Debtor, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Daniel G. Child, Jr., or nominee ("Buyer"), the Property commonly known as Movant's ownership interest in Heaven's Best Carpet and Upholstery franchise ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $20,000.00, on the terms and conditions set forth in the Agreement, Exhibit A, Dckt. 255, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs and other customary and contractual costs and expenses incurred to effectuate the sale.

C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. 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 by a certified or cashier's check made jointly payable to Movant and the Chapter 13 Trustee.

21. **18-20895-E-13** **CYNTHIA BAKER** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Peter Macaluso** **PLAN BY DAVID P. CUSICK**
4-4-18 [20]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 4, 2018. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it will not complete within sixty months.

The Chapter 13 Trustee's objections are well-taken. Cynthia Baker ("Debtor") is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 111 months due to the Internal Revenue Service filing a priority claim for $20,356.62, higher than the $2,896.39 anticipated by Debtor. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

22. 18-22284-E-13 FF-2 | **SALLY ALLEN** / **Gary Fraley** | **MOTION TO EXTEND AUTOMATIC STAY O.S.T.** **5-9-18 [28]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 9, 2018. By the court's calculation, 8 days' notice was provided. The court set the hearing for 3:00 p.m. on May 15, 2018. Dckt. 35.

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, with the automatic stay extended on an interim basis through 11:59 p.m. on June 23, 2018, with a final hearing to be conducted at 3:00 p.m. on June 12, 2018.

Sally Allen ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-25371) was dismissed on March 21, 2018, after Debtor became delinquent with plan payments. *See* Order, Bankr. E.D. Cal. No. 17-25371, Dckt. 62, March 21, 2018. 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 she was not earning from her two jobs. Now, Debtor states that one of those jobs has changed and that she is earning "significantly more" in income so that she can afford plan payments. Dckt. 30.

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, on an interim basis through and including 11:59 p.m. on June 23, 2018, 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 Sally Allen ("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, through and including 11:59 p.m. on June 23, 2018.
>
> **IT IS FURTHER ORDERED** that the final hearing on this Motion shall be conducted at 3:00 p.m. on June 12, 2018. Debtor shall provide notice of the continued hearing on or before May 19, 2018, with written oppositions, if any, to be filed and served on or before June 1, 2018; and replies, if any, filed and served on or before June 6, 2018.

FINAL RULINGS

23. 14-32313-E-13 TOG-7 — SALVADOR/ANGELINA LEON — Thomas Gillis — MOTION FOR HARDSHIP DISCHARGE — 3-27-18 [88]

Final Ruling: No appearance at the May 15, 2018 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 27, 2018. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Hardship Discharge is granted.

Salvador Leon and Angelina Leon ("Debtor") move for entry of a hardship discharge on the ground Salvador Leon was diagnosed with cancer several years ago, and it appears that he will not survive. Debtor argues that Angelina Leon works only part-time but has been taken off of work to care for Salvador Leon and will not be in a financial position to continue with plan payments.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on April 20, 2018. Dckt. 94. The Chapter 13 Trustee does not oppose the Motion.

He notes, however, that the Declaration in support of the Motion conflicts with the confirmed plan. The Declaration states that two vehicles have been surrendered, but the plan calls for surrender of only one vehicle, with two others listed in Class 2.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

> Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> >
> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> >
> > (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden or proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event "such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments." *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that "[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan." *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, "the availability of case closure does not eliminate a bankruptcy court's duty to ensure that a debtor complies with the Bankruptcy Code's 'best interests of creditors' test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan." *Id.* The Ninth Circuit found explicitly that a "bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter." *Id.*

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Salvador Leon's life that prevents him and Co-Debtor Angelina Leon from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor in this 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 Motion for Hardship Discharge filed by Salvador Leon and Angelina Leon ("Debtor") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1328(b) for Salvador Leon and Angelina Leon in this case based on the Plan as performed as of the May 15, 2018 hearing date on this Motion.

24. **18-21225-E-13** **RITA KAKALIA** **MOTION TO VALUE COLLATERAL OF**
PGM-1 **Peter Macaluso** **BANK OF AMERICA, N.A.**
4-5-18 [13]

Final Ruling: No appearance at the May 15, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 5, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Rita Kakalia ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6808 Janet Drive, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $261,522.00 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'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on April 26, 2018. Dckt. 22. The Chapter 13 Trustee notes that a claim has not been filed by Creditor and that he does not oppose the Motion.

DISCUSSION

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 $285,702.20. Creditor's second deed of trust secures a claim with a balance of approximately $31,733.95. 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 Rita Kakalia ("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 Bank of America, N.A., ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 6808 Janet 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 $261,522.00 and is encumbered by a senior lien securing a claim in the amount of $285,702.20, which exceeds the value of the Property that is subject to Creditor's lien.

25. 17-27629-E-13 MEIKO HILL MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso 3-19-18 [43]

Final Ruling: No appearance at the May 15, 2018 hearing is required.

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

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

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

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

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

26. **18-21031-E-13** **MICHAEL CIAPESSONI** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Rick Morin** **4-4-18 [17]**

Final Ruling: No appearance at the May 15, 2018 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar. The Chapter 13 Plan filed on February 23, 2018, was confirmed on April 24, 2018**. Dckt. 22.

27. **18-22041-E-13** **KRISTY NEAL** **MOTION TO VALUE COLLATERAL OF GM FINANCIAL**
RJ-2 **Richard Jare** **4-13-18 [22]**

Final Ruling: No appearance at the May 15, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 13, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 GM Financial ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,600.00.

The Motion filed by Kristy Neal ("Debtor") to value the secured claim of GM Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Volkswagen CC Sedan 4D R-Line ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,600.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in February 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 $17,128.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor has not filed a claim. Creditor's secured claim is determined to be in the amount of $7,600.00, 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 Kristy Neal ("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 GM Financial ("Creditor") secured by an asset described as 2012 Volkswagen CC Sedan 4D R-Line ("Vehicle") is determined to be a secured claim in the amount of $7,600.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $7,600.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

28. 17-27346-E-13 KENNETH TABOR — MOTION TO CONFIRM PLAN
SS-4 Scott Shumaker — 3-19-18 [94]

Final Ruling: No appearance at the May 15, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2018. By the court's calculation, 57 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Kenneth Tabor ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") withdrew his opposition on May 2, 2018, stating that Debtor was current with plan payments. Dckt. 114. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Kenneth Tabor ("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 19, 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.

29. 12-39954-E-13 PLC-6 | **JOHN/MICHELLE PINEDA** | **Peter Cianchetta** | **MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC** | **4-17-18 [139]**

Final Ruling: No appearance at the May 15, 2018 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 17, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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 Midland Funding LLC("Creditor") against property of John Pineda and Michelle Pineda ("Debtor") commonly known as 924 Gerling Court Galt, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,683.02. An abstract of judgment was recorded with Sacramento County on January 25, 2011, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $249,990.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $387,234.39 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 131. Debtor has claimed

an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 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 John Pineda and Michelle Pineda ("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 Midland Funding LLC, California Superior Court for Sacramento County Case No. 34-2010-00078896, recorded on January 25, 2011, Book 20110125 and Page 0474, with the Sacramento County Recorder, against the real property commonly known as 924 Gerling Court Galt, 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.

30. **12-39954-E-13 PLC-7** **JOHN/MICHELLE PINEDA** **Peter Cianchetta** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** **4-17-18 [144]**

Final Ruling: No appearance at the May 15, 2018 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 17, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA) N.A. ("Creditor") against property of John Pineda and Michelle Pineda ("Debtor") commonly known as 924 Gerling Court, Galt, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,995.68. An abstract of judgment was recorded with Sacramento County on December 7, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $249,990.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $387,234.39 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 131. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 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 John Pineda and Michelle Pineda ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank (USA) N.A., California Superior Court for Sacramento County Case No. 34201000068477, recorded on December 7, 2010, Book 20101207 and Page 1954, with the Sacramento County Recorder, against the real property commonly known as 924 Gerling Court, Galt, 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.

31. 17-28158-E-13 JIMMY/RACHEL STEELE MOTION TO MODIFY PLAN
TLA-1 Thomas Amberg 4-2-18 [21]

Final Ruling: No appearance at the May 15, 2018 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 April 2, 2018. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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. Jimmy Steele and Rachel Steele ("Debtor") have filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on April 20, 2018. Dckt. 27. 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 Jimmy Steele and Rachel Steele ("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 April 2, 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.

32. 18-20665-E-13 DPC-2 | **LINDA MCINNES** **Julius Cherry** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **4-12-18 [20]**

Final Ruling: No appearance at the May 15, 2018 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 on April 12, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled without prejudice.

David Cusick ("the Chapter 13 Trustee") objects to Linda McInnes's ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140(b)(2)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values.

An Amended Schedule C was filed on May 1, 2018. Dckt. 32. A review of that schedule shows that real dollar amounts have been claimed. The Chapter 13 Trustee's Objection is overruled.

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

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

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

IT IS ORDERED that Objection is overruled without prejudice.

33. 18-21469-E-13 DPC-1 | **DONNA WELCH** / **David Foyil** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **3-28-18 [30]**

Final Ruling: No appearance at the May 15, 2018 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, and Office of the United States Trustee on March 28, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Donna Welch'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 9, 2016. Case No. 16-26013. Debtor received a discharge on January 9, 2017. Case No. 16-26013, Dckt. 18.

The instant case was filed under Chapter 13 on March 13, 2018.

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 9, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 16-26013, Dckt. 18. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-21469), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick,the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-21469, the case shall be closed without the entry of a discharge.

34. 18-20779-E-13 DPC-2 | **DAMON TURNER** **Scott Hughes** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **3-28-18 [22]**

Final Ruling: No appearance at the May 15, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 28, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled as moot, Debtor having filed an Amended Schedule C.

David Cusick ("the Chapter 13 Trustee") objects to Damon Turner's ("Debtor") claimed exemptions under California law because Schedule C lists exemptions from mutually exclusive sections 703.140(b) and 704 of the California Code of Civil Procedure. Section 703.140(a) states that subdivision (b) exemptions may not be claimed with other exemptions.

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on May 3, 2018. Dckt. 44. He notes that Debtor filed an Amended Schedule C on April 19, 2018, that claims exemptions under California Code of Civil Procedure § 704. *See* Dckt. 35. One problem, however, is that Debtor has listed "Clothing" under the automobile exemption in 704.010, instead of 704.020.

RULING

The court's review of the docket shows that Debtor has corrected Schedule C to claim exemptions under California Code of Civil Procedure § 704, but as the Chapter 13 Trustee notes, there

appears to be an error for how Debtor's clothing is exempted. That is an error that can be correct by further amending Schedule C.

While the Chapter 13 Trustee has identified what appears to be a typographical error listing a $300 exemption for clothing by citing to California Code of Civil Procedure § 704.010 (Motor Vehicles), this appears to be sufficiently *de minimis* so as not to warrant continuing this hearing.

The Chapter 13 Trustee's Objection is overruled as moot, Debtor having filed an Amended Schedule C addressing the grounds stated in the Objection.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled without prejudice as moot, Debtor having filed an Amended Schedule C addressing the grounds stated in the Objection.

35. **17-27883-E-13** **DENISE ASHLEY** **MOTION TO CONFIRM PLAN**
TAG-3 **Aubrey Jacobsen** **3-15-18 [54]**

Final Ruling: No appearance at the May 15, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2018. By the court's calculation, 61 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Denise Ashley ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on April 27, 2018. Dckt. 60. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Denise Ashley ("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 15, 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.

36. 18-20290-E-13 PGM-1 | **LUIS MANZO** **Peter Macaluso** | **OBJECTION TO CLAIM OF DISCOVER BANK, CLAIM NUMBER 1-1 3-20-18 [48]**

Final Ruling: No appearance at the May 15, 2018 hearing is required.

Local Rule 3007-1 Objection to Claim—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 20, 2018. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 1-1 of Discover Bank based on a written contract is sustained, Debtor being the prevailing party in this Contested Matter.

Luis Manzo, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Discover Bank ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $13,767.51. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. According to the Proof of Claim, the last transaction date and charge off date is not available due to the age of the account. The date of last payment on the Statement of Account Information attached to the Proof of Claim states June 6, 2013.

After the Objection was filed, Creditor amended its claim with Proof of Claim No. 1-2. Now, Creditor asserts that it has a claim of $15,922.46 secured by a state court judgment from 2010, which is attached to the Proof of Claim.

DISCUSSION

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

Creditor has amended its claim to show that there is a state court judgment to support its claim.

Proof of Claim 1-1 filed by Creditor under penalty of perjury affirmatively stated that the claim was based on a credit card obligation for which there was no security. The Proof of Claim was prepared by an employee of Creditor (not an attorney, collection agency, or debt buyer). The attachment to Proof of Claim No. 1-1 states that the obligation was charged off October 31, 2009 (date that the creditor deems the debt to be loss for tax purposes, which does not alter Debtor's liability on the obligation), and the last payment was received on June 6, 2013. The 2009 charge off indicates that regular payments terminated prior to October 31, 2009, and that some type of collection effort was undertake on the defaulted obligation, which dragged on for four years to 2013.

Debtor is correct that the Statute of Limitations has expired on this written-contract-based claim filed by Creditor. CAL. CODE CIV. PRO. § 337 (four-year Statue of Limitations); CAL. CODE CIV. PRO. § 360 (tolled by payment). The current bankruptcy case was filed on January 19, 2018, while the last payment received by Creditor (as stated under penalty of perjury in Proof of Claim 1-1 was June 6, 2013—more than four years before this bankruptcy case was commenced).

Debtor's Objection to Proof of Claim No. 1-1, filed on February 15, 2018, is sustained, and the claim based upon the written contract stated in said Proof of Claim is disallowed. Debtor is the prevailing party and shall file such costs bill and motion for attorney's fees, if any, as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 & 9014.

Creditor Proof of Claim Based on a Judgment

This Objection to Claim was filed on March 20, 2018. Creditor filed an Amended Proof of Claim 1-2 on March 29, 2018. It appears that Amended Proof of Claim No. 1-2 was spurred by the "legal assistance" provided by Debtor and Debtor's counsel in asserting the affirmative defense that the Statute of Limitations had expired to original Proof of Claim No. 1-1.

Amended Proof of Claim No. 1-2 is based on a judgment (based on the copy attached to the amended proof of claim) that was filed on June 21, 2010. While the timing for such a judgment sounds correct, it is a bit curious that Creditor is reporting in the original Proof of Claim No. 1-1 that it last received a payment on the contractual obligation in June 2013, when such contractual obligation no longer existed, it having been replaced by the asserted judgment.

Attached to Amended Proof of Claim No. 1-2 is the Declaration of Robert Atkins in support of the entry of a default judgment. Amended Proof of Claim No. 1-2 (commencing on page 10). In paragraph 22 of the Declaration he testifies that there is a contractual obligation to pay various costs and expenses relating to the enforcement of rights relating to the underlying obligation. *Id.* at 15. A copy of such provisions are included as part of this attachment. This underlying obligation is the contractual one upon which original Proof of Claim No. 1-1 was based.

Though sustaining the objection to a claim based on contract, the court does so without prejudice to other claims that could be asserted, including the judgment that is the basis for Amended Proof of Claim No. 1-2. Mistakes occur, and there is noting to indicate (based on the objection to original Proof of Claim No. 1-1) that the error is really intentional misconduct.

To the extent that Debtor has an objection to Amended Proof of Claim No. 1-2, he is fee to assert such objection.

Though the present Objection is sustained without prejudice to the amended proof of claim asserting a different basis for a claim, Debtor is the prevailing party for original Proof of Claim No. 1-1.

The Objection to the Proof of Claim 1-1 is sustained, and said claim is disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Discover Bank ("Creditor") filed in this case by Luis Manzo, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim 1-1 is sustained in its entirety. Objector is the prevailing party, and a costs bill and motion for attorney's fees, if any, may be asserted as provided by Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054 & 9014.
>
> **IT IS FURTHER ORDERED** that sustaining of the Objection is without prejudice to Creditor's Amended Proof of Claim 1-2, which is based on a judgment obtained in 2010, and without prejudice to Objector's right to object to said Amended Proof of Claim No. 1-2.