

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

June 25, 2019 at 2:00 p.m.

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1.	<a href="#"><u>19-23400</u></a> -C-13	IBRAHEYMA ALHARK	MOTION TO EXTEND AUTOMATIC STAY
	<a href="#"><u>SDH-1</u></a>	Scott D. Hughes	6-3-19 <a href="#"><u>[13]</u></a>

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 3, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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**The Motion to Extend the Automatic Stay is granted.**

Ibrageyma Alhark ("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. 2015-29262) was dismissed on March 12, 2019, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 2015-29262, Dckt. 63, March 12, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor failed to make plan payments due to several changes in his

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employment that affected his ability to earn income. Dckt. 15, Debtor's Declaration.

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

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

A. Why was the previous plan filed?

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

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

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

Debtor explains the changes that occurred since the previous bankruptcy filing and the current filing. According to Debtor, he now has a new job, three fewer people are living at his residence, and his car loan and mortgage arrears have been paid down. Debtor has not incurred any new debts since the dismissal of the prior case. Debtor states he will provide for 100% dividends to unsecured creditors in this new case, compared to the zero percent that were provided in the prior case.

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

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

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

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

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

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

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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 May 7, 2019. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is xxxx.**

Estella Gonzales ("Debtor") seeks confirmation of the Modified Plan because Debtor is modifying the plan to address mortgage payments that were incorrectly paid directly to Wells Fargo for two months of the plan. Dckt. 35 (Declaration). The Plan provides for monthly payments of \$879.79 starting in month four and provides for a 0% dividend to unsecured creditors. Dckt. 36 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 7, 2019. Dckt. 41. Trustee states that Debtor has not provided sufficient proof that the stated payments for months 2 and 3 were paid directly to Wells Fargo. Debtor lists inconsistent plan payment amounts in the Plan. Debtor does not address how post-petition arrears will be paid.

#### **DEBTOR'S RESPONSE:**

Debtor's counsel responded on June 10, 2019. Dckt. 44. Debtor's counsel concedes that the monthly plan payment should be \$882.79 as suggested by the Trustee and requests that be specified in the order confirming the plan.

## DISCUSSION:

~~At the hearing the Trustee addressed Debtor's concession regarding the monthly plan payments and the Debtor addressed the Trustee's concerns regarding proof that two payments were in fact paid directly to Wells Fargo.~~

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~~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 Estella Gonzales ("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 May 7, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court~~

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor [ Debtor's Counsel], Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 8, 2019. By the court's calculation, 48 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).

<p><b>The Motion to Confirm the Plan is denied.</b></p>
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The Debtor, Angelita Adams ("Debtor"), seeks confirmation of the Second Amended Plan. Debtor does not explain the reason for the Amended Plan, an issue raised by the court in connection with Debtor's request to confirm the First Amended Plan. Dckts. 44, Civil Minuets; 57, Debtor's Declaration. The Plan proposes to pay \$3,450.46 for 60 months and provides for a 0% dividend to the general unsecured creditors. Dckt. 56. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("the Chapter 13 Trustee"), filed an Opposition on June 3, 2019. Dckt. 59. The Trustee opposes the plan based on the following:

1. The Plan is not feasible because the Plan requires 78 months to complete because it does not provide for all required claims. Debtor's Plan does not include all required claims including the claim filed by the County of Sacramento Unities. Debtor would need to increase the plan payment to \$3,529.44 per month.

2. The Trustee again raises concerns regarding Debtor's Schedules. Debtor lists 6 household members on Form 122C-1 and only claims 3 household members on Amended Schedule J.

## DISCUSSION

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 78 months due to Debtor's proposed plan payments of \$3,450.46. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor's proposed plan does not include the Proof of Claim filed by County of Sacramento Utilities in the amount of \$2,505.66, which is secured by a utility lien against Debtor's residence. Trustee projects however that it may be paid as part of Debtor's ongoing utility bill.

Trustee also previously raised concerns regarding Debtor not properly completing Form 122C-1 (Dckt. 14). Debtor amended Form 122C-1, which addresses all of Trustee's previous concerns, except, Debtor is still reporting her household remains at 6 members. Dckt. 33. Amended Schedule J (Dckt. 19) claims a household of 3, consisting of Debtor and two grandchildren. Trustee is currently unable to determine if Debtor has more dependents and whether she can afford the plan.

**At the hearing Debtor addressed the Trustee's concerns and also addresses the court's concerns regarding Debtor's repeated failure to provide a reason for the Amended Plan.....**

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

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**  
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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 Counsel, on June 5, 2019. By the court's calculation, 20 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 -----  
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**The Objection to Confirmation of Plan is sustained.**

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

A. The Plan states that attorney received \$0.00 prior to the case, which leaves a \$4,000.00 balance remaining to be paid through the Plan. The Statement of Financial Affairs (Dckt. 1) reflects that the Law Office of Stephen Johnson received \$2,325 prior to the case.

B. Debtor's Plan may not provide for a distribution to the general unsecured creditors that would be at least what they would receive in a Chapter 7. The Trustee questions whether Debtor properly scheduled all estate assets including: real property, bank accounts, spousal support income, and horse show income.

i. Debtor's Statement of Financial Affairs does not reflect all property transfers. The Nevada County Public records reflect a 2018 Grant Deed from the Debtor to Atlas FMB as well as a 2018 Grant Deed from Atlas FMB back to the



Debtor.

- ii. Debtor shows no money in any checking or savings account and no interest in any business.
- iii. Debtor admits to being married and lists a spousal income at \$45,000 in 2016 and 2017 but does not identify any spousal income in 2018.
- iv. Debtor does not indicate whether a retirement loan will be paid off or not within the life of the Plan.
- v. Debtor claims additional “special circumstances” of \$1,100.00 for “3 horses vet”, “Horse Shows” and “Travel”, without any supporting evidence. The Trustee also questions where Debtor has any horse show income. Debtor also claims income will be reduced by \$1,000.00 per month starting January 2019, without any supporting evidence. This negatively projects a disposable income of \$451.24, which means Debtor presumably cannot afford any Plan payment.

C. The Trustee flags that if all of Debtor’s claim expenses are allowed and Debtor’s income is reduced by \$1,000.00 starting in January 2019 (as stated in Debtor’s Schedules) Debtor would have negative projected income.

D. The Plan may also be attempting to improperly modify Claim No. 2 relating to a recently acquired 2015 Chevy Silverado.

## DISCUSSION

Trustee’s objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to provide proper information regarding attorney’s fees, spousal income, account balances, expenses and real property transfer. Debtor also proposes to pay no less than 0% to unsecured creditors and does not pay in Debtor’s projected disposable income for 60 months of the Plan. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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



**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).**  
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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 Counsel, and the Chapter 13 Trustee on June 6, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

Plumas Bank ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor did not disclose transfers of the Creditor's secured asset, real property, in her Statement of Financial, which constitutes a misrepresentation of the facts. Creditor filed a state court action alleging Debtor made two fraudulent transfers of this asset.

B. Debtor overstated her deductions to income on Form 122C and has understated her Purported Disposable income by \$2,000.00. Creditor asserts Debtor's disposable income should be at least \$2,548.76 per month.

C. Debtor proposes a 0% dividend in the Plan. However, there appears to be over \$100,000 of equity that would be recoverable for the unsecured creditors in the Chapter 7 Bankruptcy.

## **DISCUSSION**

At the hearing Debtor addressed Movant's allegations of bad faith ....

~~Creditor's objections are well-taken. Debtor has not proposed the Plan in good faith, does not satisfy the disposable income test and does not satisfy the best interest of the creditors test and therefore the Plan does not satisfy the requirements for confirmation under 11 U.S.C. §1325.~~

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2019. 28 days' notice is required. That requirement was met.

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

<p><b>The Motion to Avoid Judicial Lien is <span style="color: red;">xxxxx</span>.</b></p>
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This Motion requests an order avoiding the judicial lien of Ronny Dhaliwal ("Creditor") against property of Vishaal Virk ("Debtor") commonly known as 9646 Rivage Way, Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$344,568.66. An abstract of judgment was recorded with Sacramento County on December 12, 2019, that encumbers the Property.

Debtor notes that the parties previously arrived at an agreement to value the secured portion of the lien at \$15,045.51 and requests that the court enter an order to that effect.

**TRUSTEE'S RESPONSE:**

The Trustee notes that Debtor and Creditor have been involved in an Adversary Proceeding (14-2263) regarding dischargeability, an Objection to the claim (Dckt. 43), a Motion to Avoid Lien (Dckt. 113), and a Motion to reconsider judgment on Objection to Claims (Dckt. 143). The Debtor's Motion to Avoid Lien was heard on November 9, 2015 and the civil minutes reflect that the Motion was granted as resolved by Stipulation with the order to be prepared by Peter Macaluso and Sean Gavin. No stipulation has been filed with the court since November 9, 2015.

Additionally, the Trustee notes the court denied Debtor's Motion to Modify (Dckt. 234) based on the fact that there was an unresolved Contested Matter Motion to Avoid Lien of Ronny Dhaliwal. It appears that Debtor is now trying to re-litigate the matter here.

#### **CREDITOR'S RESPONSE:**

Creditor responds noting a long history with the Debtor, including events that predate this proceeding, including but not limited to, stated events involving Debtor and Creditor's father.

The Creditor does not indicate whether the relief sought by Debtor here is identical to the agreement the parties arrived in the prior Motion to Avoid Creditor's Lien back in November of 2015. The court requests that Creditor be prepared to articulate the terms of the stipulation agreed to in the original lien avoidance action in 2015 and whether the relief sought by Debtor deviates from that original agreement.

#### **DEBTOR'S RESPONSE:**

Debtor responds that the parties had previously arrived at an agreement in the originally filed Motion to Avoid Lien. Debtor attaches the transcript from the hearing where the parties stated their agreement and intention to draft an order for the court. Debtor's counsel acknowledges that no such order was provided to the court. Debtor's counsel claims, nearly four years later, that he is unable to have the order signed. Debtor chose to initiate a new motion to avoid lien rather than address the original motion.

#### **DISCUSSION:**

The court notes that Creditor, who filed pro se, claims an inability to obtain counsel. The court notes again, as it did on May 21, 2019 that Creditor's counsel has not obtained court approval to withdraw from representation.

At the June 4, 2019 hearing, the court informed Debtor's counsel that he is able to discuss the matter with Creditor directly. The matter was continued to allow additional time for the parties to meet and confer.

**At the hearing ----**

An 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 Vishaal Virk ("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 Avoid Lien is **xxxxxx**.

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors and Office of the United States Trustee on May 7, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is denied.**

Vishaal Virk ("Debtor") seeks confirmation of the Modified Plan to include the previously disputed, secured claim of Ronny Dhaliwal. Dckt. 245 (Declaration). The Modified Plan proposes that payments of \$1,250.00 will begin March 2019 for 3 months and a lump sum of \$20,120.00, or an amount sufficient to complete the plan, be submitted on or before April 25, 2019 to complete the Plan and a 0% distribution to the general unsecured creditors. Dckt. 247 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 23, 2019. Dckt. 254.

The Chapter 13 Trustee is uncertain whether the Plan provides for payment of all required claims. Debtor has an unresolved lien avoidance action pending before the court. The Trustee flags for the court that Debtor and the Creditor, Ronny Dhaliwal, informed the court on November 9, 2015 that they resolved the matter by stipulation. No stipulation appears on the docket. Accordingly, the Trustee is unable to determine if Claim No. 10 is properly provided for in the plan.

The Chapter 13 Trustee also argues that the 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 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.

## **DISCUSSION:**

The court notes that Debtor and Creditor Ronny Dhaliwal appeared before this court on June 4, 2019 in connection with a “renewed” Motion to Avoid Creditor’s Lien. At the June 4, 2019 hearing, the court instructed the parties to confer and determine if they can propose a stipulation that will resolve the original Motion to Value filed on June 3, 2015. Dckt. 113. The court notes that on June 5, 2019, Debtor filed with the court a Motion to Grant Order Pursuant to Oral Stipulation As Agreed on Record on November 9, 2015. Dckt. 275. Debtors Motion is set for hearing on June 25, 2019. It is not yet apparent to this court whether Debtor’s Motion will resolve the lien avoidance issue or not. Absent this resolution, the court, and Trustee, will be unable to determine if the proposed plan payments are sufficient to provide for all required claims.

The court also notes for Debtor that the plan form does not comply with plan form adopted by this court on December 1, 2017.

At the June 11, 2019 hearing the court noted that Debtor filed a Motion to enforce stipulation entered into the parties on the record at the prior evidentiary hearing. The hearing on the Motion to Enforce the Stipulation is set for hearing on June 25, 2019. The hearing was continued to permit both motions to be resolved on the same date.

### **At the hearing ----**

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 Vishaal Virk (“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.



**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).**  
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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 June 2, 2019. 14 days' notice is required. That requirement was met.

The Motion 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, -----  
-----.

<b>The Motion to Grant Order Pursuant to Oral Stipulation is <span style="color: red;">xxxx</span></b>
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Debtor requests that the court grant an Order pursuant to the oral statement made on November 9, 2015 in connection with Debtor's Motion to Avoid Creditor Ronny and Sunit Dhaliwal's Claim. Debtor claims that the parties reached a stipulation on November 9, 2015 that was not finalized by the court because Debtor's attorney was not able to provide the proposed order as requested by the court.

Debtor claims that at the November 9, 2015 hearing the parties stated to the court that court that they agreed to value the underlying asset at \$22,311.00. Debtor requests that the court enter an order to Avoid Creditor's Lien and that the judicial lien filed by Ronny Dhaliwal be paid in the amount of \$22,311.00 as a Class 2 claim, with the balance to be treated as unsecured. Debtor provides the transcript of the hearing in support of his assertions. Dckt. 278, Exhibit A.

#### **CHAPTER 13 TRUSTEE'S RESPONSE:**

On June 11, 2019, the Chapter 13 Trustee filed a response stating that if the court grants the Motion then Debtor will need to make an additional plan payment. Further the Trustee seeks clarification on how to pay Creditor's claim. Creditor appears to have duplicate claims filed, Claim No.

9 and Claim No. 10, and the Trustee is not sure which claim to pay. Lastly, the Trustee requests clarification how to classify payments that have already been during the pendency of the plan if the Motion is granted.

**DEBTOR'S RESPONSE:**

On June 18, 2019, Debtor responded to the Trustee's Motion stating that Debtor does not wish to reclassify the amount already paid by the Trustee as a payment to the secured portion and requests that it still be applied to the general unsecured portion of the claim. Debtor agrees with the Trustee that an additional payment of \$1,220.00 will need to be paid if the Motion is granted.

**DISCUSSION:**

At the hearing Creditor informed the court whether the proposed Order accurately reflects the agreement the parties reach on November 9, 2015.

Counsel for Debtor offered no legal authority to support the contention that oral stipulations made on the record are enforceable.

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 Grant Order filed by Vishaal Virk ("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 **XXXXX**.

**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.

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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 May 21, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

Lorraine Legg ("Debtor") seeks confirmation of the Modified Plan because Debtor sold her home to preserve her equity interest in the property and has been living in a Motel 6 in Fresno. Dckt. 67. Debtor proposes to pay off the plan early using the funds from the sale of the home. The Modified Plan proposes a lump sum payment in month 10 to complete the plan. The plan also provided for 1% dividend to general unsecured creditors. Dckt. 68. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 7, 2019. Dckt. 72. The Trustee notes that proposed plan provides for a \$5,500.00 payment in month 10 of the plan to be paid from the balance on hand. The Trustee notes that it has a balance of \$61,978.46 from the sale of Debtor's property and the proceeds were all exempted. The Trustee states that Debtor's Modified Plan does not indicate the plan payments for months 1 through 9. The Trustee states that Debtor has made (9) payments of \$150.00. The Trustee does not oppose correcting these issues in an order confirming.

## **DISCUSSION:**

At the hearing Debtor addressed the Trustee's concerns ----

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 Lorraine Legg ("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 May 21, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 2019. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is denied.**

The debtors, Anthony and Georgenia Aka ("Debtors"), seek confirmation of the Modified Plan because Debtors became delinquent in payments under the existing Plan due to unanticipated temporary delay in receiving income. Dckt. 143. Debtors claim that the issue has since been resolved and are able to complete the proposed Modified Plan. The Modified Plan seeks to bring payments under the Plan current with \$383,086.21 paid through April 2019. Then proposes (7) Monthly Plan payments starting in May 2019 of \$11,5500.00, a reduction from \$12,000.00. Dckt. 145 at p. 7. General unsecured claims shall receive no less than a zero percent (0%) dividend. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on June 7, 2019. Dckt. 152.

The Chapter 13 Trustee argues that Debtors are \$10,600.00 delinquent in plan payments. A total of \$395,086.21 has come due under the existing Plan. To date, Debtor has paid \$284,486.21, with the last payment of \$11,900.00 posted on June 3, 2019.

Trustee points out that the payment amount set forth in the Modified Plan conflicts with Debtor's Counsel's Motion to Confirm and Debtor's Declaration in Support of the Motion. The Modified Plan, under §7.01, proposes a total Plan payment of \$383,086.21 paid through April 2019, with \$12,000 monthly payments beginning May, 2019 until the Plan's completion seven months later. Modified Plan, Dckt. 145 at p. 7. Debtor's Motion to Confirm and Declaration in Support, however, both propose a \$11,550.00 Plan payment, beginning May, 2019. Dckt 141 at p. 1:22-23; Dckt. 143 at p. 1:24-25.

Trustee also raises objections to proposed modifications of monthly dividends to Class 1 creditors under the Modified Plan. Although \$9,330.14 in prepetition mortgage arrearage remains to be paid to Caliber Home Loans, Inc., Debtor's Modified Plan proposes to reduce monthly dividend payments to \$0.00 from \$2,514.29 under the confirmed Plan.

Trustee notes several issues with Debtor's modified Schedule I and J. Both Schedules are filed only as an Exhibit, and are not otherwise identified on the Court's docket. Additionally, Trustee takes issue with several changes to Debtor's Schedules, including Mr. Aka's unexplained monthly disability income of \$625.00 under Supplemental Schedule I, Ms. Aka's unexplained payroll deductions with respect to various items for which \$0.00 was previously budgeted, and unexplained increases in numerous expense categories under the Supplemental Schedule J. Opposition, Dckt. 152 at p. 3:12-28.

## **DISCUSSION**

Debtors are \$10,600.00 delinquent in plan payments under the proposed plan, which represents less than one month of the plan payment. Another plan payment will be due on the day of the hearing. 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 may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Supplemental Schedule J reflects a net monthly income of \$11,555.50. Dckt. 144, Exhibit A. Debtor's Modified Plan proposes monthly payments in the amount of \$12,000.00. Debtor's Motion and Declaration calls for monthly payments in the amount of \$11,550.00. Debtor's net monthly income appears insufficient to support either of the proposed payments. Moreover, the improperly filed Supplemental Schedules I and J do not explain Debtor's proposed increases in monthly expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Anthony and Georgenia Aka ("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.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

Secured creditor, U.S. Bank National Association ("Creditor"), opposes confirmation of the Plan on the basis that:

- A. the proposed Chapter 13 Plan of debtor, Earl Miller ("Debtor"), was filed in bad faith, as it is based upon contradictory representations regarding income and expenses, made by Debtor under penalty of perjury. These conflicting statements include:
  - i. Debtor's non-filing spouse is listed as receiving net monthly income of \$1,700 from a rental property. Plan, Dckt. 1 at p. 29:8. Monthly net rental income in the amount of \$1,200 is reported on the Official Form 122C-1. Plan, Dckt. 1 at p. 40:6.
  - ii. Debtor's Schedule J lists a monthly payment on a property located at "1201 Glen Cove Pkwy" in the amount of \$1,550.00. Plan, Dckt. 1 at p. 31:21. Form 122C-1



lists a \$2,088.53 monthly payment on the same property. Plan, Dckt. 1 at p. 41:13.

iii. Debtor lists a \$521.81 monthly payment for his spouse's car and miscellaneous monthly expenses in the amount of \$300.00 for his spouse. Plan, Dckt. 1 at p. 41:13. The monthly expenses are not listed in Debtor's Schedule J.

- B. Debtor's Plan fails to provide a cure for Creditor's pre-petition claim. Creditor's claim for pre-petition arrears totals \$244,947.33. Debtor's Plan provides for the cure of only \$244,947.33. Debtor will have to increase their monthly Plan payment to Creditor to approximately \$4,082.46 in order to cure Creditor's pre-petition arrears within the provided 60 month period.
- C. Debtor's Plan is not feasible because Debtor's level of disposable income cannot adequately fund payments proposed under the Plan. The monthly plan payment necessary to cure Creditor's pre-petition arrears exceeds the Debtor's \$13,997.37 stated monthly disposable income. Reductions in Debtor's disposable income likely to stem from rectifying the discrepancies in Debtor's Plan (described above) will only exacerbate this insufficiency.

## **DISCUSSION:**

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 \$244,947.33 in pre-petition arrearages. The Plan does not propose to fully 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.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Glaring inconsistencies in the Debtor's Plan cast doubt upon its feasibility. Moreover, the discrepancies call into question the Debtor's Plan was proposed in good faith. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

- A. the debtor, Earl Miller ("Debtor"), is \$13,975.00 delinquent in Plan payments to the Trustee. Debtor has paid \$0.00 into the Plan to date. Trustee notes the next scheduled payment of \$13,975.00 is due on June 25, 2019.
- B. Debtor proposes to value the real property located at 452 Lansing Cir., Benicia, California, but Debtor has not filed a Motion to Value Secured Claim.
- C. Nonstandard Provisions in Debtor's Chapter 13 Plan state that a lump sum payment of \$50,000.00 will be paid in month 48 of the Plan. None of Debtor's filing documents indicate a source

of that payment. Trustee also notes various inconsistencies in Debtor's Plan opposing creditor U.S. Bank raises at length in its Opposition to Confirmation. Dckt. 32.

- D. Debtor failed to file a Spousal Waiver for use of the California State Exemptions, under the California Code of Civil Procedure §703.140

## **DISCUSSION:**

Trustee's objections are well-taken. Debtor is \$13,975.00 delinquent in plan payments, which represents one month of the \$13,975.00 plan payment. Another plan payment will come due on the day of this hearing. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan proposes a \$50,000.00 lump sum payment in month 48, but Debtor offers no explanation as to the source of proceeds for the payment. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the Plan, which proposes a 0% dividend to unsecured creditors, does not pay unsecured creditors what they would receive in the event of a Chapter 7.

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

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

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

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

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

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

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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 May 14, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<b>The Motion to Confirm the Modified Plan is denied.</b>
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The debtor, Elaine Chafoya ("Debtor"), seeks confirmation of the Modified Plan because of delinquency in Plan payments caused by confusion surrounding the proper monthly payment amount. Declaration, Dckt. 80. The Modified Plan shall be considered current with \$18,830 paid in through April 2019, with Plan payments totaling \$1,720.00 per month for the remainder of the 60-month Plan. Modified Plan, Dckt. 82. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 7, 2019. Dckt. 89. Trustee raises objections to Debtor's Supplemental Schedules I and J, which are marked neither as amended or supplemental, and are filed only as an Exhibit. Dckt. 81. Additionally, Debtor's Schedule I does not include a statement of business income and expenses in support of Debtor's business income; Debtor's Supplemental Schedule remains unchanged from her prior Schedule I (Dckt. 21).

#### DISCUSSION

Debtor has not filed 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 is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

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 Elaine Chafoya (“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.

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 6, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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Secured Creditor, Flagstar Bank, FSB ("Creditor"), opposes confirmation of the Plan on the basis that:

- A. the debtor, Allen Gamble, II ("Debtor"), understates Creditor's prepetition arrears. Creditor's Proof of Claim reflects Debtor's prepetition arrears totaling \$48,383.04. Claim 5-1. Debtor's Plan states that prepetition arrears owed to Creditor are only \$47,302.69, a discrepancy of \$1,080.35.
- B. Debtor's Schedule I indicates monthly income of \$2,617.84, while Schedule J indicates monthly expenses are \$4,041.73, leaving no monthly net disposable income to go towards the proposed Plan payments of \$2,822.00.
- C. The monthly payment amount under Part 3 of the Plan appears to include ongoing payment amounts, but it is not clear from

the Plan whether this is Debtor's intention.

## **DISCUSSION**

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 \$48,383.04 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.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's monthly expenses under Schedule J exceed monthly income under Schedule I, which leaves no disposable income with which to make monthly payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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



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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), creditors, and Office of the United States Trustee on June 3, 2019. By the court's calculation, 22 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 -----  
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**The Objection to Confirmation of Plan is sustained.**

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

- A. the debtor, Allen Gamble II ("Debtor"), failed to appear at the First Meeting of Creditors held on May 30, 2019. A Continued First Meeting of Creditors is scheduled for July 11, 2019.
- B. Debtor did not provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent prepetition tax year for which a return was required, or a written statement that no such documentation exists.
- C. Debtor did not provide evidence of his current income, and did not provide evidence of the current income of his non-filing spouse.

- D. Debtor filed his Plan using Official Form 113, not Plan EDC 003-080.
- E. Debtor's Plan payment totals \$2,822.00 per month. Debtor and his non-filing spouse's combined monthly income is \$2,617.84. Schedule J lists Debtor's monthly net income as negative \$1,423.89 per month.

## DISCUSSION

Trustee's objections are well-taken.

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

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

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's monthly expenses under Schedule J exceed monthly income under Schedule I, which leaves no disposable income with which to make monthly payments. Additionally, Debtor failed to provide evidence of his current income, or the current income of his non-filing spouse. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Trustee argues that the Plan is based upon an outdated plan form that is no longer effective since the court adopted a new plan form as of December 1, 2017. The 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.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 47 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.**

Paul Anthony Stanley, Jr. and Michelle Debbie Stanley ("Debtor") seek confirmation of the Plan because Debtors stated they needed to make unanticipated payments. Debtors claim they needed to pay the Contractors State Licensing Board a payment in the amount of \$4,750.00 or Debtors' license would have had to shut down their business which is the primary source of income. Further, Debtors state that their newly born grandson and son needed financial support by way of a special baby formula. Dckt. 73 (Declaration). The Plan reduces the monthly amount paid to Debtors' attorney, adjusts the monthly payments to Debtors' mortgage company, adjusts the monthly payments to the attorneys for Debtors' mortgage company, and adjusts the monthly payments to Debtors' mortgage company for the two payments missed after filing for bankruptcy. Dckt. 76 ( Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on June 6, 2019. Dckt. 78. The Chapter 13 Trustee asserts that Debtor is \$3,600.00 delinquent in plan payments. Debtor has paid \$18,012.69 into the Plan to date. On the day of the hearing, another plan payment will be due.

#### **DISCUSSION:**

The Chapter 13 Trustee asserts that Debtor is \$3,600.00 delinquent in plan payments,, which represents one month of the \$3,920.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 Paul Anthony Stanley, Jr. and Michelle Debbie Stanley (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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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 June 4, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is sustained.**

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

- A. The Debtor is delinquent in the amount of \$1,700.00 and another payment will come due the date of the hearing. The Debtor has paid \$0.00 into the plan to date.
- B. The Internal Revenue Service filed a secured claim that is not provided for in the plan or listed on Schedule D, and there is no expense listed on Schedule J to provide for this claim. The payment required is \$1,700.00 however Debtor's budget does not support the plan payment. Debtor's Schedule J indicates monthly net income of \$1,021.10.

**DISCUSSION:**

The Trustee's Objections are well taken. Debtor is \$1,700.00 delinquent in plan payments,

which represents one month of the \$1,700.00 plan payment. At the time of the hearing, another plan payment will be due. 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). Debtor has insufficient Income to support Proposed Plan Payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

**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.

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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, and Office of the United States Trustee on May 28, 2019. By the court's calculation, 28 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 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.

<p><b>The Motion to Sell Property is denied.</b></p>
--

The Bankruptcy Code permits Julian Edward Gaston, Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 2063 Gold Nugget Drive, Plumas Lake, California ("Property").

The proposed purchaser of the Property is Dell Danise Fields, the mother of Debtor's children, and the terms of the sale are:

The Property is to be sold for \$295,000.00. The buyer will obtain a loan/mortgage. No appraisal is required or desired. The buyer accepts the Property "As is, Where is, and With all faults." Possession shall be delivered at closing. The seller shall pay \$0.00 in closing costs and the buyer shall pay all closing costs.

**TRUSTEE'S OPPOSITION:**

The Chapter 13 Trustee filed an Opposition on May 29, 2019. Dckt. 32. The Trustee flags for the court that the purchase price does not appear to be the best price since Debtor scheduled the property as having a value of \$325,000.00 and the purchaser may be considered an insider. The Trustee is uncertain if the Debtor proposes to pay the secured creditors with the proceeds or whether the

purchaser is buying the property subject to those encumbrances.

## **OPPOSITION OF SECURED CREDITORS:**

Secured Creditors, Wilmington Trust, N.A. and U.S. Bank National Association, both filed Oppositions stating that it was not clear how Debtor proposes to disburse the proceeds of the sale and whether Debtor seeks to sell the property free and clear of their liens. Dckts.35 and 37. Both Secured Creditors, oppose a sale that is free and clear of their liens.

## **DISCUSSION**

Based on the evidence before the court, the court determines that the proposed sale is not in the best interest of the Estate because Debtor states the home is to be sold for \$295,000.00, however in Debtor's Schedules the property is listed as "fmv \$325k." Dckt 1. Debtor does not explain why they are selling the Property at a \$30,000.00 discount. Debtor does not indicate how or where the funds will be applied. Debtor does not indicate whether the \$235,039.87 scheduled debt to Specialized Loan Servicing or the \$125,406.00 scheduled debt to Chase Mortgage will be paid.

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 Julian Edward Gaston, 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 Julian Edward Gaston, Debtor, is not authorized to sell pursuant to 11 U.S.C. § 363(b), the Property commonly known as 2063 Gold Nugget Drive, Plumas Lake, California ("Property").



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 3, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

<b>The Motion to Incur Debt is granted.</b>
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Shawn Bartlett ("Debtor") seeks permission to purchase real property commonly known as 6320 Westwood Dr., Rocklin, California 95677, with a total purchase price of \$382,000.00 and monthly payments of \$2,600.00 to Energy One Lending over 30 years with a 4.25% fixed interest rate. Debtor also states that his month with provide a gift of \$12,000.00 to be used as a down payment.

**TRUSTEE'S RESPONSE:**

On June 7, 2019 the Chapter 13 Trustee filed a Response to Debtor's Motion. Dckt. 42. The Trustee notes for the court that Debtor was previously paying \$2,000.00 per month for rent. Debtor seeks to pay an additional \$600.00 a month in order to purchase a home. The Trustee notes that Debtor was renting during the course of the plan and has faced displacement issues and needs to find another place to reside.

The Trustee also flags for the court the issue that arose in the previous motion to incur debt. Debtor's spouse's child support income and later earned income were omitted from Debtor's Schedule I. The Trustee states that Debtor's explanations for the omissions are satisfactory and Debtor has filed supplemental Schedules addressing the income omissions. Based on the Supplemental Schedules I and J, Debtor can afford the house and could increase plan payments to \$1,000.00.

## DISCUSSION:

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. The Trustee does not oppose the present motion, but may seek a 2004 examination if a modification is not properly filed. There being no opposition from any party in interest and the terms being reasonable, the Motion 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 Incur Debt filed by Shawn Bartlett (“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 Shawn Bartlett is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 38.

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

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<b>The Motion to Abandon is granted.</b>
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On June 11, 2019, the debtors, Jitendra and Jeannette Singh (“Debtors”), by and through Debtors’ Attorney, filed a Motion for Order Directing the Payment of Insurance Proceeds. The Motion asks the court to direct payment of insurance proceeds in the amount of \$200.00 to the Chapter 13 Trustee to pay the remaining balance of creditor, Safe Credit Union’s (“Creditor”) secured claim and to distribute the remainder of the insurance proceeds to Debtors. Dckt. 105. The Motion states with particularity the following:

- A.            At the time of filing the instant Chapter 13 case in October, 2015, Debtors owned a 2006 Honda Civic (the “Vehicle”), which was financed by, and security for, a loan from Creditor.
- B.            Debtors’ confirmed a 48 month Plan (currently in month 43) proving for Creditor as both a secured creditor in Class 2B in the amount of \$4,231.00 and as a general unsecured creditor in the amount of \$2,186.72.

- C. The Vehicle securing Creditor's claim was valued at \$4,231.00. Dckt. 51.
- D. To date, the Chapter 13 Trustee, David Cusick ("Trustee"), has paid over \$4,191.55 towards the secured claim, leaving a \$39.45 principal balance on the secured claim.
- E. On June 2, 2019, the Vehicle was involved in an accident. Debtors' insurance carrier "totaled" the Vehicle, and has proposed an insurance claim payment in the amount of \$4,730.00, after Debtors' deductible.
- F. Debtors wish to use the net insurance proceeds to use the remainder of the proceeds to purchase, or finance the purchase of, a replacement vehicle (although Debtors' Counsel notes Debtors may prefer to postpone the purchase or financing thereof until after their Chapter 13 case concludes). Debtor acknowledge they would need to obtain court authorization to incur debt to purchase a vehicle.

## DISCUSSION

In essence, Debtors are asking the court to issue an order compelling Trustee to abandon the insurance proceeds from the Vehicle, property of the estate, back to Debtors. Therefore, the court recasts Debtors' Motion as a Motion to Abandon, pursuant to 11 U.S.C. § 554(a). After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate, of inconsequential value and benefit to the Estate, or in which the Estate has no equity. 11 U.S.C. § 554(a). *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

Debtors' Schedule B, lists the value of the vehicle at issue, a 2006 Honda Civic (the "Property") at \$4,231.00. Petition, Dckt. 1 at p. 15:25. Debtors' Schedule C claims an exemption on the Property under §703.140(b)(2), in the amount of \$5,000.00. Dckt. 1 at p. 16.

The court granted Debtors' Motion to Value the Property on December 9, 2015, valuing Creditor's secured claim in the amount of \$4,321.00, with the balance of the claim as a general unsecured claim. Dckt. 51.

Here, the court valued the now-destroyed Property, for which Debtors claimed an exemption in the amount of \$5,000.00, at \$4,321.00. This leaves \$0.00 in non-exempt value for the Estate.

Therefore, the court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 13 Trustee to abandon the Estate's residual interest in the Property back to Debtors.

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

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

hearing.

The Motion to Abandon Property filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the residual interest in the Property identified as a 2006 Honda Civic is abandoned to Jitendra and Jeannette Singh by this order, with no further act of the Chapter 13 Trustee required.

**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).**

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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 June 9, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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<p><b>The Motion to Extend the Automatic Stay is granted.</b></p>
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The debtor, Deborah Candate ("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. 17-25902-B-13J) was dismissed on May 3, 2017, after Debtor became delinquent in Plan payments. *See* Order, Bankr. E.D. Cal. No. 17-25902-B-13J, Dckt. 42, May 3, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor explains that the previous case was dismissed because Debtor experienced a temporary decrease in work hours, which lead to a decrease in income, which caused her to become delinquent in Plan payments. Debtor asserts the instant case was filed in good faith, and notes that her work hours and income have stabilized, and, as the senior employee in her position at work, she does not foresee the possibility of future interruptions in income that would cause the instant case to suffer the same fate as her previous filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C.

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

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay filed by debtor, Deborah Candate (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors’ Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of FCI Lender Services, Inc. (“Creditor”) is XXXX**

## **PROCEDURAL HISTORY**

The court granted Debtors’ Motion to Value Collateral and Secured Claim on April 27, 2019. Order, Dckt. 30. The creditor, Partners For Payment Relief DE III, LLC, the lender for which Creditor acts as a loan servicer (collectively “Creditor”), filed its Motion to Vacate the Court’s Order on April 29, 2019. Lender asked the court to reconsider its decision to grant Debtors’ Motion to Value because it mis-calendared the opposition deadline for Debtors’ Motion to Value. Dckt. 31 at p. 2:27-29. The court granted the Motion for Reconsideration on May 21, 2019, vacated is April 27 Order, and set a hearing on Debtors’ Motion to Value for 2:00 p.m. on June 25, 2019. Parties filed additional briefs to address the merits of Debtors’ Motion to Value.

## **DEBTOR’S INITIAL MOTION:**

Initially on March 26, 2019, Leonid Banar and Lyudila Banar (“Debtors”) filed their Motion to value the secured claim of FCI Lender Services, Inc. (“Creditor”). The Motion was accompanied by



Debtor's amended declaration. Debtors are the owners of the subject real property commonly known as 8219 Villaview Drive, Citrus Heights, California ("Property").

## **CREDITOR'S OPPOSITION**

On May 31, 2019, Creditor filed its Opposition to Debtors' Motion to Value Collateral. Dckt. 43. Creditor dispute Debtors' valuation of the subject Property. Where Debtors allege that the Property is worth \$255,000.00, Creditor asserts that the Property is actually worth \$282,500.00, providing \$27,500.00 of equity over the senior lien holder for Creditor's lien to attach. Declaration, Dckt. 44 at Exhibit 3. In addition, Creditor raises objection to Debtors' proposed valuation. Creditor argues that Debtors are employed, respectively, as a Cobbler and a Housekeeper, and have no real estate experience upon which to base their proposed valuation. Creditor asked the court to deny Debtors' Motion to Value, or order a final hearing on the matter to allow Creditor to perform its own valuation on the Property.

In support of Creditor's stated valuation, the Creditor submits a Broker's Price Opinion ("BPO") dated April 10, 2019 valuing the property at \$282,500.00. Creditor attempts to authenticate the BPO providing a sworn statement from Creditor's employee that the attached BPO is the report that the company ordered. However, no sworn statements are provided to authenticate the truth of the contents of the BPO.

## **DEBTOR'S RESPONSE**

On June 7, 2019, Debtors filed their Response to Creditor's Opposition to Debtor's Motion to Value Collateral. Dckt. 49. Debtors' Counsel responded that because Debtors' have superior personal knowledge of the Property, Debtors' opinion of the Property's value is more reliable than Creditor's. Debtors' Counsel also takes issue with the BPO presented as evidence in support of Creditor's valuation, noting no declaration was filed by its author, and no information is provided as to the qualifications of its author. Additionally, Debtors' Counsel points out multiple defects with the Property that would ostensibly have an adverse effect on its valuation. The defects include abnormal wear and tear caused by Debtors' eight children, non-permitted alterations to the Property, and needed repairs to the Property's roof and water pipes. According to a contractor's estimate submitted as evidence by Debtors' Counsel, repairing the roof and water pipes alone would cost at least \$20,195.00. Dckt. 51 at Exhibit A. The expense of remedying these defects, argue Debtors' Counsel, would exceed the \$24,237.29 of equity Lender claims based on its proposed valuation of the Property.

## **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 parties offer conflicting evidence as to the value of the Property. Debtors seek to value the Property at a fair market value of \$255,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (In re *Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

At the hearing -----

~~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):~~

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

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

~~—————The Motion to Value Collateral and Secured Claim filed by Leonid Banar and Lyudila Banar ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

**IT IS ORDERED** that the Motion pursuant to 11  
U.S.C. § 506(a) is **XXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 47 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.**

Partners For Payment Relief DE III, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor does not provide for Creditor's claim and Debtor has failed to provide evidence that Creditor is completely unsecured.
- B. Creditor alleges that Debtor will not be able to afford the Plan. Debtor's Schedules show disposable income of \$150.00 and a monthly plan payment of \$150.00. Confirmation of the Plan would be impossible in the event Creditor's claim is included in the plan.

## **DISCUSSION**

Creditor asserts a claim of \$97,106.81 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$98,406.73 and indicates that it is secured by a second deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a \$0.00 monthly dividend on account of the claim.

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).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of FCI Lender Services, Inc. Debtor has filed a Motion to Value the Secured Claim of FCI Lender Services, Inc. Dckt. 8. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

#### **JUNE 4, 2019 HEARING**

At the June 4, 2019 hearing the Objection to Confirmation of Plan was continued to June 25, 2019 to permit the Debtor's Motion to Value Creditor's Claim to resolve.

**At the hearing -----**

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

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

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

The Objection to the Chapter 13 Plan filed Partners For Payment Relief DE III, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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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 May 15, 2019. By the court's calculation, 41 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.**

Francisco Javier Solorio ("Debtor") seeks confirmation of the Plan because Debtor intends to pay his mortgage through the Plan rather than directly. Dckt. 58 (Declaration). The Plan provides for general unsecured non-priority creditors to be paid no less than a zero percent dividend. Further, Debtor provides for repayment on his mortgage as a Class 1 debt. Dckt. 60 ( Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 23, 2019. Dckt. 72. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Financial, SLE-5.

The Trustee also flags for the court that Debtor's Plan shows that US Bank Home Mortgage is now listed as a Class 1 Creditor. The Plan, however, still lists US Bank Home Mortgage in Class 4 with a \$0.00 monthly contract installment payment. It is not clear why US Bank is listed in Class 1 and Class 4.

**DISCUSSION:**

Debtor has filed a Motion to Value the Secured Claim of Ally Financial, SLE-5 to be heard on the same day as this hearing. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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 Francisco Javier Solorio (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

-----

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

**INSUFFICIENT Notice Provided.** The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 21, 2019. The Proof Of Service states that Creditor, Ally Financial, was served "Per California Secretary of State" however the address listed does not match the address reflected by the Secretary of State. Debtor lists a New York address; however, the Secretary of State reflects a California address in the most recent 1505 Certificate.

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 Ally Financial ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$17,000.00.~~**

~~—————The Motion filed by Francisco Solorio ("Debtor") to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 69. Debtor is the owner of a 2015 Dodge Charger ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$17,000.00 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).~~

#### **~~DISCUSSION~~**

~~—————The lien on the Vehicle's title secures a purchase-money loan incurred in September 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$24,300.00. Declaration, Dckt. 69. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$17,000.00, the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

~~The Motion to Value Collateral and Secured Claim filed by Francisco Solorio (“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 Ally Financial (“Creditor”) secured by an asset described as 2015 Dodge Charger (“Vehicle”) is determined to be a secured claim in the amount of \$17,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$17,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~



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

**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 June 4, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is continued to July 16, 2019.**

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor has failed to file a Motion to Value and that the Debtor has failed to file a Spousal Waiver.

The court's review of the docket reveals that spousal wavier has been filed. Dckt. 23.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Harley Davidson Financial. Debtor has filed a Motion to Value the Secured Claim of Harley Davidson Financial to be heard on July 16, 2019. Dckt. 19. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is continued to July 16, 2019.

**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.

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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 May 15, 2019. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied.**

The debtor, Ramona Garcia ("Debtor"), seeks confirmation of the Amended Plan. Declaration, Dckt. 44. The Plan proposes adequate protection payments during Debtor's home loan modification application process, and provides for opportunity for Debtor to modify her Plan or convert her case to Chapter 7 in the event the bank denies the loan modification. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 10, 2019. Dckt. 57. Trustee objects to the Amended Plan because Debtor's Counsel failed to use the recognized and adopted language associated with the "Ensminger Provisions", specifically: Naming the Creditor, Secured Claim Treatment, Adequate Protection Treatment, Loan Modification, Denial of Loan Modification, Events of Default and Modification of the Automatic Stay.

Additionally, the Trustee notes that if Debtor's loan modification is denied, the Plan will take over 104 months to complete.

#### DISCUSSION

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Debtor's Amended Plan contains nonstandard provisions which do not comply with the Enslinger Provisions, as recognized and adopted by this court. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor is in material default under the Plan because the Plan may complete in more than the permitted sixty months. According to the Chapter 13 Trustee, if Debtor's loan modification is rejected, the Plan will complete in 104 months. The Plan would therefore exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

## FINAL RULINGS

28. [19-22991-C-13](#) TASHA ROBINSON MOTION TO VALUE COLLATERAL OF  
[DJC-1](#) Diana J. Cavanaugh WELLS FARGO BANK, N.A.  
5-20-19 [\[13\]](#)

\*

**Final Ruling:** No appearance at the June 25, 2019 hearing is required.  
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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 May 17, 2019. By the court's calculation, 39 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 Wells Fargo Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$15,700.00.**

The Motion filed by the debtor, Tasha Renee Robinson ("Debtor"), to value the secured claim of creditor Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 15. Debtor is the owner of a 2016 Nissan Altima SV 2.5 sed 4DR ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$15,700.00 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 Chapter 13 Trustee filed a statement of non-opposition on June 11, 2019. Dckt. 18.

### DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on April 30, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a

balance of approximately \$22,073.00. Declaration, Dckt. 15. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$15,700.00, 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 Tasha Renee Robinson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wells Fargo Bank, N.A. ("Creditor") secured by an asset described as 2016 Nissan Altima SV 2.5 sed 4DR ("Vehicle") is determined to be a secured claim in the amount of \$15,700.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$15,700.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling:** No appearance at the June 25, 2019 hearing is required.  
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**The Objection is dismissed without prejudice.**

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Objection on June 3, 2019, Dckt. 21; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Clark and Rachel Clark (“[Debtors ”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 21, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is dismissed without prejudice.

**Final Ruling:** No appearance at the June 25, 2019 hearing is required.

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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 May 22, 2019. 28 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee") objects to the debtor, Mary Doherty's ("Debtor"), claimed exemptions under California law because the wrong exemption was used. Debtor listed the Louks Family Trust on Schedule B, with a value of \$15,314.58. Dckt. 1 at p. 17:32. On Schedule C, Debtor exempted the Louks Family Trust under CCP §703.140(b)(10)(D), in the amount of \$15,314.58. Dckt. 1 at p. 21:17.2. The exemption claimed by Debtor is for "Alimony, support, or separate maintenance" but Debtor admitted at the First Meeting of Creditors that the Trust is not for Alimony, support or separate maintenance for her or any of her dependants.

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

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir.



B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

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

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

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

**IT IS ORDERED** that Objection is sustained], and the claimed exemptions for the Louks Family Trust under California Code of Civil Procedure § 703.140(b)(10)(D) are disallowed in their entirety.

**Final Ruling:** No appearance at the June 25, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

Stutz Law Office, P.C., the Attorney ("Applicant") for Roland Lee Phillips and Elaine Stella Phillips, Debtor ("Client"), makes a First And Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 11, 2019, through May 20, 2019. The order of the court approving employment of Applicant was entered on March 6, 2019. Dckt. 61. Applicant requests fees in the amount of \$1,000.00.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

of the services, by asking:

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

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

### **Lodestar Analysis**

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

### **Reasonable Billing Judgment**

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include preparing and filing Substitution of Attorney, setting up Debtor's file, review of Debtor's documents file by previous attorney, review of Debtor's certificate of death and the docket so that notice of death and subsequent motion for omnibus relief may be sought, preparing and filing the instant application for attorney fees and costs, and subsequent correspondence and meetings with Debtor to maintain the case. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration: Applicant spent .10 hours in this category.

Substitution of Attorney: Applicant spent .60 hours in this category. Applicant prepared and filed Substitutions of Attorney.

Notice of Death: Applicant spent 5.50 hours in this category. Applicant prepared the Notice of Death and Subsequent Motion for Omnibus Relief.

Motion for Fees: Applicant spent 1.5 hours in this category. Applicant prepared the Motion for Fees.

Client Communications: Applicant spent 1.80 hours in this category. Applicant communicated with client via electronic mail, telephone, and in person appointments.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Matthew J. Decaminada	8.50	\$275.00	\$2,337.50
<b>Total Fees for Period of Application</b>			<b>\$2,337.50</b>

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

Applicant seeks to be paid a single sum of \$1,000.00 for its fees incurred for Client, a reduction of the actual fees Applicant claims to be entitled. First and Final Fees and Costs in the amount of \$1,000.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees allowed by the court.

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

Fees	\$1,000.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 331 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Stutz Law Office, P.C. ("Applicant"), Attorney for Roland Lee Phillips and Elaine Stella Phillips, Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Stutz Law Office, P.C. is allowed the following fees and expenses as a professional of the Estate:

Stutz Law Office, P.C., Professional employed by Debtor  
Fees in the amount of \$1,000.00

as final allowance of fees pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay 100% of the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

**Final Ruling:** No appearance at the June 25, 2019 hearing is required.

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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, and Office of the United States Trustee on May 13, 2019. By the court's calculation, 43 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 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.

<p><b>The Motion to Confirm the Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Roque Delarosa ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on June 10, 2019. Dckt. 68. The 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 Chapter 13 Plan filed by Roque Delarosa ("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 Chapter 13 Plan filed on May 13, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

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

33. [19-20980](#)-C-13 PATRICIA SITTINGER AMENDED MOTION TO RECONSIDER  
[MSK](#)-1 Richard L. Jare 5-31-19 [[92](#)]

No appearance that the June 26, 2019 as the hearing was continued to July 30, 2019.  
Dckt. 101.



**Final Ruling:** No appearance at the June 25, 2019 hearing is required.

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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 counsel, and creditor on May 7, 2019. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") objects to Rudolf Vincent Isch's ("Debtor") claimed exemptions under California law because Debtor has over-exempted assets under CCP §§ 7013.140(b)(2), (2006 Dodge Ram 2500) (b)(4), (Jewelry – uncle's ring), and (b)(5), claiming \$30,835, \$5,859, and \$1750 where the limits at the time the case was filed were \$26,800, \$5,350, and \$1,600 respectively. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed to the extent they exceed the allowed exemption amount.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

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

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

hearing.

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

**IT IS ORDERED** that Objection is sustained in part, and the claimed exemption for 2006 Dodge Ram 2500 under California Code of Civil Procedure §7013.140(b)(2) is \$26,800.00 and the claimed exemption for the jewelry under California Code of Civil Procedure §7013.140(b)(4) is \$5,350.