

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 27, 2019 at 2:00 p.m.

Notice

**The court has reorganized the cases, placing all of the
Final Rulings in the second part of these Posted Rulings,
with the Final Rulings beginning with Item 22.**

1.	<u>19-23703-C-13</u>	ROBERT/TONI BLANCHE	OBJECTION TO CONFIRMATION OF
	<u>DPC-1</u>	Mohammad M. Mokarram	PLAN BY DAVID P. CUSICK
			7-23-19 <u>19</u>

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis

that:

- A. Debtors' Plan relies on a pending Motion to Avoid Lien of Newport Capital, which was not docketed at the time of the Objection.
- B. Debtors' Plan is not their best effort. The Debtors list a 41k(k) direct loan payment that will be paid off in three and a half years. Debtors' Plan does not provide for increased payments when this loan is paid off.

DISCUSSION

Trustee's objections are well-taken.

The court notes that Debtors' Motion to Avoid Lien of Newport Capital Recovery Group II, LLC was granted at the August 13, 2019 hearing. Dckt. 24. However, the Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Plan does not provide for an increase in plan payments upon the full payment of Debtor's repayment of a 401(k) loan. Thus, the court may not approve the Plan.

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

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

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

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

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

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

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

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

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

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

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The Motion to Incur Debt is XXXXX.
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Michael Wallace and La Quita Wallace ("Debtors") seek permission to purchase a 2003 BMW Z4, with a total purchase price of \$6,000.00 and monthly payments of \$227.95 to Sea West Coast Guard Federal Credit Union over 30 months with a 10.04% interest rate. Debtors flag for the court the purchase is to replace their 2004 Infinity GS35 which they have spent approximately \$2,000.00 on non-scheduled repairs in the last year. Dckt. 67. Debtors state that the purchase of the new vehicle it to avoid further costs associated with their current vehicle.

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 notes that the 2004 Infinity GS35 (as listed on Debtors' Schedule A/B as being worth \$3,725.00) appears to be unencumbered. Dckt. 1. Debtors' Schedule D does not indicate that any creditor has a secured interest in the vehicle. Debtors do not state in their Motion whether the Debtors plan on retaining the 2004 Infinity GS35 or selling the vehicle to assist in the purchase of the proposed vehicle. Additionally, the Debtors have not provided the court with the proposed contract or terms sheet, and have merely submitted a summary of the loan terms which purports to be summary from the credit union. Dckt. 68.

At the hearing the Debtors addressed the court's concerns and provide the required copy of the agreement pursuant to BANKR. P. 4001(c)(1)(B)----

~~The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. 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 Michael Wallace and La Quita Wallace ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Michael Wallace and La Quita Wallace is authorized to incur debt pursuant to the terms of the agreement, Exhibit xx, Dckt. xx.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 15, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, James Marven Hurley ("Debtor") seeks confirmation of the Fifth Modified Plan because Debtors' income from the business has increased. Declaration, Dckt. 69. The Modified Plan provides that beginning with the May 25, 2019 payment, debtor will pay \$900.00 a month for 22 months for a total plan length of 60 months. The percentage to be paid to unsecured claims is not less than 21%. Modified Plan, Dckt. 72. 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 August 9, 2019. Dckt. 78. The Trustee also argues that Debtor's Schedules I and J filed on May 27, 2019 are marked as amended rather than supplemental, checking the box that this is an amended filing rather than a supplemental filing. Dckt. 59. Debtor is stating the income and expenses previously given were never accurate and that their current budget is what their budget was when the case was filed. Debtor's prior Schedule I and J filed on September 13, 2016 reflect a monthly income of \$2,611.75 and monthly expenses of \$2,011.77. Opposition, Dckt. 78.

The Trustee notes that this Opposition was raised in regards to Debtor's Fourth Modified Plan,

and Debtor did no cure the defect. Dckt. 66, Trustee's Opposition to Fourth Modified Plan.

DISCUSSION:

The Chapter 13 Trustee argues that the most recent Schedules I and J are marked both supplemental and amended, as such the Debtor has provided insufficient information to assess the feasibility of the plan. Accordingly, cause exists to deny confirmation.

The court notes that on August 23, 2019, Debtors filed Supplemental Schedules I and J. Dckt. 81. **At the hearing the Trustee informed the court whether this has resolved the Objection -----**

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 James Marven Hurley ("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 Modified Plan is denied.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor did not appear at the Meeting of Creditors held on July 18, 2019. The court notes that Debtor appeared at the August 8, 2019 Meeting of Creditors and that the meeting was further continued until September 5, 2019.
- B. Debtor's Plan required 67 months to complete. The monthly plan payments must be increased to \$1,569.26 to complete within 60 months.
- C. Debtor's Plan may not satisfy the best efforts test of 11 U.S.C. § 1325(b). Debtor's Schedule I and J show monthly net income of \$3,057.99 but the monthly plan payments are only \$1,368.00 and proposes a 0% dividend to general unsecured creditors.

- D. Debtor initially filed pro se, but appears to now have representation, but no substitution of attorney is reflected on the docket. There is also not indication in the documents filed providing information on attorneys fees, paid or otherwise.

DISCUSSION

Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 67 months due to insufficient plan payments. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

The Plan does not provide for the disposable income, as determined by Debtor's Schedules I and J. Thus, the court may not approve the Plan.

The court is not certain whether Debtor is represented and whether the Trustee's Objection regarding uncertainty as to attorneys fees is relevant. **At the hearing -----**

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

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

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

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

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

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

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 July 22, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

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

The debtor, Juan Mendoza ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan cures delinquent plan payments by making two payments of \$110.00 in June 2019. Amended Plan, Dckt. 28. 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 August 5, 2019. Dckt. 35. The Trustee questions whether Debtor can afford the monthly payment of \$110.00 because it relies on \$718.00 of monthly income derived from tax refunds.

DEBTOR'S REPLY:

Debtor's counsel filed a Reply stating that Debtor has made the May, June, and July payments of \$110.00. Debtor's counsel states without evidentiary support, that in his opinion the Debtors will be able to complete the plan.

DISCUSSION

The Trustee's objection is 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's Schedule I states that Debtor anticipates monthly income of \$718.00 from his tax return. The court notes that Debtor's counsel appears to be attempting to average the Debtor's \$8,450.00 federal tax refund over a 12 month period, however, the court notes that \$8,450.00 is not \$718.00 but \$704.00, which over a one year period is an over estimate of \$168.00 (over one month of the proposed \$110.00 plan payment).

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

Medallion Bank ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor's Plan does not provide for Secured Creditors arrearage reflected in Proof of Claim 3-1. Debtor's Plan does not provide for Creditor in Class 1.

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 \$1,826.26 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by Medallion 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Counsel June 24, 2019. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

~~The Objection to Confirmation of Plan is overruled and the Plan is confirmed.~~

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

A. Debtor has failed to file all pre-petition tax returns for the four years preceding the filing of the petition. Debtor admitted at the First Meeting of Creditors held on June 20, 2019 that no federal tax return for 2017 had been filed.

DEBTOR'S RESPONSE:

The debtor, Matthew Rubb ("Debtor") filed a Reply to the Trustee's Opposition on July 8, 2019. Dckt. 22. Debtor states in his declaration that the 2017 tax return has been filed and is delivering a copy to the Trustee.

DISCUSSION

Absent a continued Opposition that the required 2017 tax return has not been filed, Debtor

has addressed the Trustee's Opposition.

At the July 30, 2019 hearing the court continued the matter to allow additional time for the Debtor to file his 2017 tax return.

SUPPLEMENTAL DECLARATION:

On August 12, 2019, Debtor filed a supplemental declaration stating that he has filed his 2017 tax return. Dckt. 33. However, Debtor claims that he did not retain a copy of the return and has not been successful obtaining a tax transcript from the IRS, as proof of his filing for the Trustee.

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

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

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

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

~~**IT IS ORDERED** that the Objection is overruled, and Matthew Rubb's ("Debtor") Chapter 13 Plan filed on May 16, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2019. 14 days' notice is required. That requirement was met.

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

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<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. The Trustee is uncertain if Debtor can make the required plan payments because it does not appear that debtor has provided accurate information:
 - 1. Debtor lists a motorcycle on Schedule B but stated at the Meeting of Creditors that the vehicle was sold.
 - 2. Debtor lists Business Machinery and Equipment and Byrant Brady in Class 4 and the Trustee questions whether these debts should be listed in Class 4. Debtor stated that the machinery securing the first liability was already sold and also made statements that the business debts may be those of her boyfriends.

3. The Trustee has not been provided sufficient information to determine the accuracy of the information relating to the business assets and debts.

- B. Debtor's plan proposes to pay the attorney \$4,000.00 through the plan and the Disclosure of Compensation for Attorney for Debtors states a total of \$2,000.00 was charged.

DEBTOR'S RESPONSE:

On August 20, 2019, Debtor's counsel responded that Debtor will file amended schedules prior to the hearing. Debtor's counsel also states that the Disclosure of Compensation of Attorney was filed when Debtor was represented by Gary F. Zilaff and that present counsel is proposing \$4,000.00 to be paid through the plan. Dckt. 78.

DISCUSSION

Trustee's objections are well-taken. Debtor has failed to timely provide Trustee with business documents including whether assets listed on Debtors schedules have been sold. Without Debtor submitting all required information, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 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 the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

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

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~~The Objection to Confirmation of Plan is overruled.~~

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

- A. Debtors are delinquent \$84.86 in plan payments. Another payment of \$735.00 is due prior to the hearing. Debtors have paid \$1,385.14 into the Plan.
- B. Debtor's Plan relies on a Motion to Value the secured claim of Santander Consumer USA. The court notes that Debtor's motion was granted on August 13, 2019. Dckt. 35.

DISCUSSION

Trustee's objections are well-taken. Debtor is \$84.86 delinquent in plan payments, which represents less than one month of the \$735.00 plan payment. Before the hearing, another plan payment

will be due. 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).

A review of the Docket shows that Debtor's Motion to Value the secured claim of Santander Consumer USA was granted on August 13, 2019. Dckt. 35.

At the hearing -----

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

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

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

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

~~**IT IS ORDERED** that the Objection is overruled, and James Angeles and Alicia Angeles's ("Debtors") Chapter 13 Plan filed on July 19, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2019. By the court's calculation, 27 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.

FSB for Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor's plan does not provide for payment of the pre-petition arrearage of \$18,608.67 as reflected in Proof of Claim No. 8-1. Dckt. 25.

DISCUSSION

Creditor's objections are well-taken. 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 \$18,608.67 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by FSB for Lakeview Loan Servicing, 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.

THRU #12

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2019. 14 days' notice is required. That requirement was met.

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

<p>The Objection to Confirmation of Plan is continued to September 17, 2019 at 2:00 p.m.</p>

Vallejo Cerros Homeowners Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor disputes Debtor's classification as a Class 2 Creditor in the Plan. Creditor asserts that its claim is fully secured. The court notes there is an unresolved Motion to Value set for hearing on September 17, 2019.
- B. Creditor states that Debtor's Plan does not properly provide for pre-petition Covenants, Conditions, and Restrictions related to monthly

Homeowner Associations dues.

- C. Debtor's plan does not provide for interest on the pre-petition arrears.
- D. Debtor's plan should provide for attorney's fees and costs incurred by the Creditor in the filing of this Objection.

DISCUSSION

The court notes that Creditor and the Debtor are presently litigating a Motion to Value set for hearing on September 17, 2019. The resolution of the Motion is directly related several of the Objections raised by Creditor. Accordingly the court will continue this hearing to September 17, 2019.

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is continued to September 17, 2019 at 2:00 p.m.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2019. 14 days' notice is required. That requirement was met.

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

-----.

The Objection to Confirmation of Plan is continued to September 17, 2019 at 2:00 p.m.

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

- A. Debtor's plan relies on a Motion to Avoid Lien of Vallejo Cerros Homeowners' Association.

DISCUSSION

Trustee's objections are well-taken. Debtor's Plan relies on avoiding the lien of Vallejo Cerros Homeowners' Association. The court notes that the Motion is presently set for hearing on September 17, 2019 at 2:00 p.m. The court continues this matter to allow for the resolution of the Motion to Avoid Lien.

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 continued to September 17, 2019 at 2:00 p.m.

THRU #15

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 overruled.

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. Dckt. 19.

DISCUSSION:

At the June 4, 2019, the hearing was continued to July 16, 2019 to allow for the resolution of Debtor's Motion to Value.

At the July 16, 2019 continued hearing, Debtor's Motion to Value was set for further hearing and the filing of opposition pleadings. Accordingly, the Objection to Confirmation was similarly continued to August 27, 2019.....

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

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

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

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

~~**IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled, and the proposed Chapter 13 Plan filed on April 19, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("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.

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 July 22, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is ~~xxxx~~

Harley-Davidson ("Secured Creditor), opposes confirmation of the Plan on the basis that:

A. Secured Creditor disputes Debtor's valuation of the asset securing its claim. Asserting that the Plan does not provide for its claim because Secured Creditor's Proof of Claim reflects that its secured claim is \$13,065.00 not \$10,000, as asserted by Debtor.

DISCUSSION:

The court notes that the Motion to Value the subject asset is set for hearing on August 28, 2019. Secured Creditor's Objection is directly impacted by the resolution of that Motion. At the hearing -----.

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

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

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

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

~~**IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled, and the proposed Chapter 13 Plan filed on April 19, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, Office of the United States Trustee on June 18, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Harley-Davidson Credit Corp ("Creditor") is xxxx.

The Motion filed by the debtor, Rajender Sarin ("Debtor"), to value the secured claim of Harley-Davidson Credit Corp. ("Creditor") is accompanied by Debtor's (unsigned) declaration. Declaration, Dckt. 21. Debtor is the owner of a 2014 Harley-Davidson FLHXS Street Glide Special Motorcycle ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$10,000.00 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).

CHAPTER 13 TRUSTEE'S OBJECTION

On July 1, 2019, the Chapter 13 Trustee filed an objection to Debtor's Motion to Value, asserting that Debtor's motion was not properly served. Citing Federal Rules of Bankruptcy Procedure 7004, which requires service be made upon a street address, Trustee states that Creditor was served notice at PO Box 9013, Addison, Texas. The chapter 13 Trustee also notes that neither the declaration in support of Debtor's Motion, nor the proof of service were properly signed.

CREDITOR'S OPPOSITION:

Harley-Davidson ("Secured Creditor") filed an Opposition to Debtor's Motion to Value on July 22, 2019. Dckt. 37. Secured Creditor disputes Debtor's valuation and asserts that the value of the motorcycle is \$15,265.00. In support, Secured Creditor filed a NADA Guide valuation, however, Secured Creditor did not provide evidence, such as a declaration, to properly authenticate the NADA valuation.

Secured Creditor argues that Debtor was obligated to keep the vehicle in good repair and a failure to do so should not disadvantage the Secured Creditor.

DISCUSSION :

At the hearing the parties address the valuation of the vehicle. The court notes that Secured Creditor has not offered admissible evidence to dispute the Debtor's lay opinion of the value of the motorcycle.....

The lien on the Vehicle's title secures a purchase-money loan incurred on October 22, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,070.62. Proof of Claim, No. 5-1. ~~Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$10,000.00, 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 the debtor, Rajender Sarin ("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 Harley-Davidson Credit Corp. ("Creditor") secured by an asset described as 2014 Harley-Davidson FLHXS Street Glide Special Motorcycle ("Vehicle"), is determined to be a secured claim in the amount of \$23,070.62, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$10,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

16. [18-25178](#)-C-13 FRANK DAVIS
[PGM-5](#) Peter G. Macaluso

OBJECTION TO CLAIM OF JOSEPH A.
DAVIS, CLAIM NUMBER 6
7-8-19 [[147](#)]

THRU #17

NO TENTATIVE ISSUED

17. [18-25178](#)-C-13 FRANK DAVIS
[19-2074](#) PGM-1
DAVIS V. DAVIS Peter G. Macaluso

**MOTION TO DISMISS ADVERSARY
PROCEEDING**
7-22-19 [[7](#)]

NO TENTATIVE

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—Opposition Filed.

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion is granted and the case is converted to one under Chapter 7.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor has not filed an amended plan since the court sustained the Trustee's Objection to Confirmation on March 5, 2019.

DEBTOR'S RESPONSE

Debtor filed a Response on May 14, 2019. Dckt. 41. Debtor states an amended plan will be filed prior to the hearing date.

May 29, 2019 HEARING

A hearing on the Motion to Dismiss was held on May 29, 2019. At the hearing, the Motion to Dismiss was continued to 2:00 p.m. on July 2, 2019.

DISCUSSION

The court notes that Debtor filed and served an Amended Plan and Motion to Confirm on May 24, 2019. Dckts. 44; 47. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtors. Dckts. 44; 46. The Motion may not comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), as the Motion does not state what changes are present in the Amended Plan. The Declaration similarly, does not address how the deficiencies in the initial Plan have been cured through the Amended Plan in order to support

confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Under the terms of the proposed Amended Plan the Debtor is to fund the Plan with \$11,880.00 for the first six months of the plan, which averages \$1,980.00 a month, and then for the remaining sixty-four months of the plan make monthly plan payments of \$7,550.00. Amended Plan, Additional Provision Section 7; Dckt. 47 at 7.

Under the proposed Amended Plan, the following is provided for the payment of claims:

Class 1 Secured Claims Plan ¶ 3.07(c)	Amount of Claim	Monthly Payment
Wells Fargo Post-Petition Arrearage	(\$5,550.00)	\$101.85
Wells Fargo Pre-Petition Arrearage	(\$23,617.70)	\$450.00
Wells Fargo Current Post- Petition Installments		\$5,138.70
Class 2 Secured Claims Plan ¶ 3.08		
Krestas	(\$50,000.00)	\$0.00
Class 3 Secured Claims - Surrender, Plan ¶ 3.09		None
Class 4 Secured Claims - Direct Pay by Debtor, Plan ¶ 3.10.		
McIntosh		\$500.00
Class 5 Priority Unsecured Claims, Plan ¶ 3.12	(\$62,461.95)	\$1,041.04 (over 60 months)
Class 6 Special Treatment Unsecured Claims, Plan ¶ 3.13		None

Class 7 General Unsecured Claims, Plan ¶ 3.14	(\$368,427.67)	\$0.00 (0% dividend)
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Debtor provides a Declaration in support of confirmation. In that Declaration, Debtor states under penalty of perjury that beginning May 25, 2019, Debtor will be making monthly plan payments of \$7,550.00. Dec. ¶ 3, Dckt. 46. No testimony is provided as to how Debtor has \$7,550.00 a month of projected disposable income to fund a plan.

Debtor's Income and "Business" Information

Debtor previously stated under penalty of perjury of having \$13,000.00 a month in net income from operation of Debtor's business. Schedule I, Dckt. 1 at 39-40. On Schedule I Debtor lists his employer as Golden Omega, LLC. On Schedule A/B Debtor does not list owning any interest in Golden Omega, LLC. *Id.* at 11-17. Debtor does list an \$8,000.00 receivable due him from Golden Omega, LLC. Schedule A/B Question 38, *Id.* at 16.

In response to Question 19 that asks Debtor to state whether he has any:

19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture;

Debtor states under penalty of perjury "No." *Id.* at 14.

On the Bankruptcy Petition Debtor states under penalty of perjury that Debtor is a "sole proprietor" of a business named "Golden Omega, LLC." *Id.* at 4. However, a limited liability company, like a partnership or corporation, is not a "sole proprietorship." ^{FN. 1}

FN. 1. <https://www.sos.ca.gov/business-programs/business-entities/starting-business/types/#sole>, listing this type of business entity as separate from Corporation, Limited Liability Company, Limited Partnership, and Limited Liability Partnership; *Ball v. Steadfast-BLK*, 196 Cal.App. 4th 694, 699 (2011).

When at the Secretary of State website, the court ran the name "Golden Omega, LLC" in the limited liability company search engine to see if Debtor's assertion that it was just a "sole proprietorship" was correct. The Secretary of State reported that there was no "Golden Omega, LLC" entity registered to do business in California. The court then broadened the search parameters to not require an exact name match and the Secretary of State reports that there is an limited liability company registered with the name "Goldenomega, a Limited Liability Company."

<https://businesssearch.sos.ca.gov/CBS/Detail>.

The Secretary of state identifies Varitimi Pereira at the agent for service of process and the LLC has one manager - that being Varitimi Pereira. See December 7, 2018 filing.

Debtor states under penalty of perjury on Schedule A/B that Debtor has no office equipment,

furnishings, and supplies used in his business. Question 39, *Id.* at 16.

In response to Question 27 on the Statement of Financial Affairs Debtor states under penalty of perjury that Debtor is a member of a limited liability company, and not a sole proprietorship. *Id.* at 51.

In another twist, on an attachment to Debtor's Form 122C-2 Calculation of Disposable Income, Debtor states, for his purported sole proprietorship Golden Omega, LLC, that he get "50% profits" for which there are no expenses. If it is a "sole" proprietorship, then the "sole" proprietor should get 100% of the profits. Dckt. 1 at 64.

Debtor's Expense Information

However, on Schedule J Debtor stated having (\$11,019.00) in reasonable and necessary expenses, yielding only \$1,981.00 in monthly net income to fund a Chapter 13 plan. *Id.* at 4-42.

Looking at Schedule J, in the (\$11,019.00) is (\$6,513.12) in the home mortgage expense, which appears to include taxes and insurance. *Id.* at 41.

If this mortgage expense is backed out, then Debtor would show having \$8,494.12 a month in net income to fund a plan, more than Debtor now proposes.

Absence of Tax Payments

Under penalty of perjury Debtor states that on \$142,560 (\$11,880 a month x 12 months a year) in annual net income, Debtor does not have to pay:

Any Federal Income Taxes

Any State Income Taxes

Any Self-Employment Taxes (if a "sole proprietorship")

Any Social Security Taxes

Any Unemployment Taxes (if a "sole proprietorship")

See Schedules I and J, Dckt. 1, and Debtor's Declaration, Dckt. 46, for which there is no provision for payment of the above taxes by Debtor.

Other Expenses

In looking at Schedule J, Debtor who has some other questionable expenses. First, Debtor states that his food and housekeeping expenses are only (\$300) a month. Schedule J, Dckt. 1 at 42. Assuming modest housekeeping expenses of only (\$75) a month for a home with a (\$6,513.12) monthly mortgage for the \$1,000,000 value property, that leaves Debtor only (\$225) a month for food - which for a 31 day month is (\$2.42) per meal per day. Not a reasonable sounding food budget for sixty months.

In comparison to the (\$300) a month food and housekeeping supplies expense, under penalty of perjury Debtor states that:

Electricity and heating gas expense is (\$479.88) a month

and

Water, sewer, garbage expense is (\$500.00) a month.

Thus, it costs (\$6,000.00) a year to just heat the residence and run the lights of the \$1,000,000 residence, but only (\$2,700) a year to feed the person paying for the heat and juice.

Debtor, who has no dependant and spouse, lists having a monthly life insurance expense of (\$1,172.00), which totals \$13,064 a year for this Debtor who can only squeeze out a 0.00% dividend for creditors holding general unsecured claims in this Bankruptcy Case.

On Schedule A/B the only life insurance policy listed is a term policy having a value of \$1.00. Dckt. 1 at 15.

A review of Schedule J, Debtor lists her mortgage to be \$6,513.12 a month. On the Notice of Mortgage Payment Change filed on March 12, 2019, Wells Fargo Bank, N.A. states that the total payment (P, I, T, I) is "only" \$5,138.70. This payment increased by \$212. Thus, the amount stated on Schedule J sure appears to be inaccurate and grossly overstated.

Debtor states on Schedule J that she is paying \$1,172 a month for life insurance. That equals \$14,064 a year in life insurance premiums. On Schedule A/B Debtor states that the life is "Term life insurance fidelity & guarantee [sic]" which is stated to have a value of only \$1.00. This raises a serious issue as to where the \$14,064 is actually going and whether payments are being made for somebody else.

Debtor also states that she is only taking 50% of the profits from her business. That leaves hanging where the other 50% of the profits have been going, the transferee of those profits, and the possibility of the recovery of fraudulent conveyances of those 50% of the profits.

Original Plan Filed in this Case

In the original Chapter 13 Plan in this case Debtor listed Wells Fargo Home Mortgage as having a Class 4 Claim. This required Debtor to certify (subject to Fed. R. Bankr. P. 9011) that there was no pre-petition defaults on the obligation to Wells Fargo Home Mortgage. Plan ¶ 3.10, Dckt. 2 at 4.

As now admitted by Debtor in connection with the Amended Plan and Proof of Claim No. 10, there is a substantial pre-petition arrearage that renders the prior certification in proposing the original Plan was false.

In both the original plan and the Amended Plan, Debtor lists a "Craig McIntosh" as receiving a \$500.00 a month payment directly from the Debtor. Amended Plan, ¶ 3.10, Dckt. 47. A review of the Claims Register for this case discloses that no proof of claim has been filed by a "Craig McIntosh." Only Wells Fargo Bank, N.A. has filed a proof of claim for a secured claim which could be a Class 4

Claim.

DISCUSSION:

While the Debtor has filed a document titled “Amended Plan” and a motion to confirm, the financial information provided by Debtor does not reflect a debtor who is prosecuting a Chapter 13 case in good faith. It does not reflect a debtor who is seeking relief as permitted under the Bankruptcy Code.

Debtor did file Supplemental Schedules I and J on May 28, 2019. Dckt. 49. Debtor has not attempted to file other amended schedules or statement of financial affairs to address the sole proprietorship-limited liability copy “who owns the business” and “who gets the income” morass in this case.

On Schedule J Debtor states he is “Employed” by Golden Omega, LLC, but he is not paid wages. He continues to state that he has monthly net income of \$11,550.14 from operating a business - not being an employee of an entity.

On Supplemental Schedule J Debtor states that he has reasonable and necessary monthly expenses of **\$7,550.26, which Debtor asserts are reasonable and necessary monthly expenses (which does not include mortgage/rent/property taxes/insurance) for his family unit of one person.**

Again, Amended Schedule J filed under penalty of perjury by Debtor and subject to the Federal Rule of Bankruptcy Procedure 9011 certification by Debtor and Debtor’s counsel, continue to state that Debtor pays no state income taxes, no federal income taxes, no Social Security contributions, and no self-employment taxes (if Debtor is not an employee) for her \$138,601.68 in annual net monthly income from her employment/business.

Given that the court has expressly raised this point in prior hearings, one would expect the Debtor and Debtor’s counsel, in filing financial information and pursuing confirmation of a Chapter 13 plan in good faith, to address the absence of any income taxes, Social Security contributions, and self-employment taxes being paid by Debtor. None is provided in Debtor’s declaration in support of confirmation. Dckt. 46. None is provided in the Supplemental Schedules.

In a Reply to the Trustee’s Opposition to Motion to Confirm, Debtor’s counsel now reports that “Communication between Debtor and Counsel has broken down.” Reply ¶ 1, Dckt. 56. It is further reported that Debtor is seeking new counsel.

Debtor and counsel have used this bankruptcy case to “hang out” without a confirmed plan for eight months. Debtor has persisted in presenting facially defective (false) financial information. To stay in this bankruptcy case Debtor would be burdened by her prior inaccurate statements under penalty of perjury.

Consideration of Conversion as Proper Relief to be Granted

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the

creditors and the estate.”” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)). For Chapter 13 cases, the Bankruptcy Code Provides:

§ 1307. Conversion or dismissal

(c) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, **the court may convert** a case under this chapter to a case under chapter 7 of this title, **or may dismiss a case** under this chapter, **whichever is in the best interests of creditors and the estate**, for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first

becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c).

Cause clearly exists to grant relief pursuant to 11 U.S.C. § 1307(b). There has been continuing unreasonable delay that is prejudicial to creditors. Debtor has failed to confirm a plan in this case and has been unable to prosecute a confirmation of a plan in this case. Debtor's financial information under penalty of perjury is internally inconsistent and facially inaccurate (such as not having to pay any income or Social Security taxes). As discussed below, Debtor's purported mortgage expense stated on Schedule J and upon which she purports to compute her plan payment is grossly overstated.

The question arises as to whether the case should properly be dismissed or the case converted to Chapter 7 so that the assets of the estate may be administered by a Chapter 7 trustee rather than being abandoned back to the Debtor.

In discussing the best interests of creditors factor provided for in 11 U.S.C. § 1307(b), Collier on Bankruptcy explains:

The Code does not define the phrase "best interests of creditors and the estate." Presumably, the parties will be the best judge of their own best interests, and if all of the parties agree on one course of action, the court should accommodate their desire. On the other hand, the test is not one of majority rule. If the parties disagree on conversion, dismissal or appointment of trustee or examiner, the court should evaluate and choose the alternative that would be most advantageous to the parties and the estate as a whole. In doing so, the court may consider such factors as (1) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal, (2) whether there would be a loss of rights granted in the case if it were dismissed rather than converted, (3) whether the debtor would simply file a further case upon dismissal, (4) the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors, (5) in assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise, (6) whether any remaining issues would be better resolved outside the bankruptcy forum, (7) whether the estate consists of a "single asset," (8) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests, (9) whether a plan has been confirmed and whether any property remains in the estate to be administered and (10) whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns. In addition, the court should make its decision with due regard to the effect of dismissal under section 349

7 COLLIER ON BANKRUPTCY P 1112.04 (16TH 2019), discussing the "best interests of creditors" standard in connection with identical language used for dismissal or conversion of a Chapter 11 case.

Here, Debtor has been living in bankruptcy for eight months, protected from creditors. On Schedule A/B, Debtor states under penalty of perjury having an interest in her \$1.1MM residence

property ("Property") in which she lives, with it being co-owned with at least one other person. Debtor claims a 50% interest in the property. As discussed below, George Krestas has appeared in this case and has identified himself as the co-owner, asserting that he has a 60% interest in the Property. On Schedule C Debtor claims a \$75,000 homestead exemption in the property.

On Schedule D Debtor lists the following claims secured by her interest in the real property, which the court has compared to the proofs of claim ("POC") filed in this case:

- Craig McIntosh having a \$60,000 secured claim (No POC filed)
- California Franchise Tax Board having a \$6,340 secured claim

POC 6-1 Filed Only as Unsecured Priority in the amount of \$1,637.16

- IRS having a \$24,621 secured claim

Amended POC 2-2 Filed Only as Unsecured Claim, with Priority Claim in the amount of \$58,640.13 and General Unsecured in the amount of \$79,621.60

- Wells Fargo Bank, N.A. having a \$651,000 Secured Claim

POC 10-1 filed as a Secured Claim in the amount of \$663,044.60, with the collateral identified as the Property (in which Debtor asserts a 50% interest)

The bankruptcy case now being almost a year old and given Debtor's "creatively" in providing financial information under penalty of perjury, it is likely that the value of the Property is greater. Operating off an assumption that the Property would actually sell for \$1,150,000, the value to the bankruptcy estate of the Property is computed as follows:

FMV.....	\$1,150,000
Costs of Sale (Est. 8%).....	(\$ 92,000)
Well Fargo Bank, N.A.....	(\$ 660,000)

Net Value to be divided between Debtor and co-owner.....\$398,000

The \$398,000 would be divided between the bankruptcy estate and the co-owner as follows:

Bankruptcy Estate		Co-Owner Proceeds	
	\$199,000		\$199,000
McIntosh			
Scheduled Debt	(\$60,000)		
Homestead			
Exemption	<u>(\$75,000)</u>		
Net For Bkcy		Net for Co-Owner	
Estate \$64,000		Co-Owner	\$199,000

In reviewing the court's file, the court notes a pleading from George Krestas. Dckt. 24. The grounds asserted in the letter include the following:

- A. He is a 78 year old man living without any family or relatives close by.
- B. Twenty years ago Debtor asked Mr. Krestas to give her a loan to help Debtor to buy a house, which is the Property. This loan was documented in writing.
- C. Mr. Krestas states that he invested in the Property and is the co-owner.
- D. Debtor pulled \$50,000 in equity from a refinance to improve the property, but diverted the money to other purposes.
- E. Debtor improperly changed the ownership of the property to 50-50 with Mr. Krestas from the 60-40, with Mr. Krestas owing the 60%.
- F. Debtor refinanced the property a second time, keeping all of the \$25,000 in additional monies gained by the refinance.
- G. Mr. Krestas asserts that Debtor forged his signature.
- H. Mr. Krestas did not take any action on the above because Debtor was the only person "looking after him."
- I. Mr. Krestas viewed the Property and his interest therein as a good retirement investment.
- J. In 2010 Debtor convinced Mr. Krestas to loan an additional \$50,000 that the Debtor was using to buy commercial property that would generate rental income.
- K. After obtaining the \$50,000, Debtor did not purchase the commercial property but used the \$50,000 for her personal expenses.
- L. Debtor made sporadic, small payment on the loans.
- M. Mr. Krestas hired an attorney, but after incurring \$50,000 in legal fees, his attorney was repeated "outsmarted" by Debtor's attorney, with Debtor's strategy including the current bankruptcy case filing.
- N. Mr. Krestas requests that the Property in which he asserts a 60% interest be sold, and he is willing to take only 50% of the proceeds. This will still allow him to recover his original \$120,000 in vestment in the Property and recover some of his monies loaned to the Debtor.

On June 12, 2019, Mr. Krestas sent another letter to the court. Dckt. 54. In it he restates

much of what was said in the earlier document filed with the court. On June 12, 2019, the Hon. Christopher M. Klein, the judge to whom this case is assigned, issued an order appointing Estella Pino as counsel for Mr. Krestas. Dckt. 54 at 3.

The court did not complete the necessary second part of the analysis in ruling on the motion - was conversion or dismissal in the best interests of the bankruptcy estate and creditors. Such analysis is necessary. It appears that strong grounds exist for conversion of this case to protect the rights and interests of the bankruptcy estate (which may include avoidable preferences). Additionally, it appears that a strong argument can be made that it is in the best interests of creditors, those holding secured and unsecured claims, to have this case converted to Chapter 7, the non-exempt value of property of the estate liquidated and creditors paid. Mr. Krestas had manifested an intention to work with the fiduciary of the bankruptcy estate to not only recover on his claim, but do so in a manner that is advantageous to the bankruptcy estate.

Therefore, the court continued the hearing to afford the parties the opportunity to file supplemental pleadings on the best interests of the estate and creditors element for the relief to be granted.

SUPPLEMENTAL BRIEFING FILED:

Chapter 13 Trustee Supplemental Motion in Support of Conversion:

The Chapter 13 Trustee filed a Supplement to its Motion in Support of Conversion on July 9, 2019. Dckt. 62. The Trustee notes that Debtor has engaged in unreasonable delay during the course of this Chapter 13 Case, having been filed on October 24, 2018 and not having presented a confirmable Plan. The Trustee states that while there is definitely cause to dismiss the case, there is also ample cause to convert the to one under Chapter 7.

In support of conversion the Trustee notes that Debtor has non-exempt equity, there appear to be significant avoidable transfers, the co-owner of valuable real property appears willing to sell the asset, and there is a real possibility unsecured creditors would be paid in a Chapter 7. Further, the Trustee notes that Debtor has repeatedly filed budgets that are not credible.

Debtor's Supplemental Response:

Debtor filed and Opposition to Conversion on July 15, 2019. Dckt. 68. Debtor states that she obtained new counsel and new counsel, at the time of filing, at had not yet fully reviewed the case. Debtor states her intention is to refile the case and reach an agreement with Creditor, George Krestas, the co-owner of Debtor's residence. Debtor request additional time, until August 27, 2019 to present argument in opposition to conversion.

Creditor George V. Krestas' Response in Support of Conversion:

Creditor George V. Krestas filed a Statement of Position and Joinder on July 15, 2019, in support of the Chapter 13 Trustee's arguments in favor of conversion. Dckt. 70. Creditor supports the Trustee's reasons for conversion and highlights the argument that there are avoidable transfers that could be pursued in a Chapter 7.

Specifically, Creditor notes that there may be an avoidable transfer to Craig McIntosh. Creditor obtained a Deed of Trust, attached as Exhibit A (Dckt. 71) dated October 17, 2017, which has some peculiarities, including the fact that Deed requests that Deed of Trust be returned to the Debtor instead of the creditor, purportedly benefitting Debtor's attorney at the time (Craig McIntosh), and the document generated by Debtor's entity Goldenomega, LLC. It also may be connected with the debt asserted in Claim 1-2, arising from a stipulated judgement entered into on November 13, 2017 where Debtor was represented by Craig McIntosh. There may also be an avoidable transfer in the approximate amount of \$30,000.00 to Debtor's daughter.

RULING:

On July 16, 2019, a Substitution was filed, seeking to have Steven Reynolds, a recognized bankruptcy attorney in this District, substitute in the place of Peter Macaluso, another recognized bankruptcy attorney in this District. Dckt. 74.

Debtor has had, and does now have, experienced bankruptcy counsel, she appears to have been operating in her own version of bankruptcy laws, without regard to the Bankruptcy Code. Limited liability companies are actually sole proprietorships, but she does not disclose that. This is information that she knows and would have to communicate to her attorney. This is information that she knows and would see is incorrect when reviewing Schedules before filing them. It appears that maintaining a fiction that a limited liability company existed and that the assets were not part of the bankruptcy estate and the finances were outside of initial disclosure could be construed as an intentional deception.

Debtor and Mr. Krestas have been litigating for years, with Mr. Krestas asserting that it has been the Debtor who has engaged in delay and derailing the litigation to determine their respective interests in the real property. Further, that only when trial in the state court finally appeared to be occurring was the current case filed to derail that trial and have this Chapter 13 case that has not been prosecuted.

While Debtor now has her new counsel argue that the limited liability company has been "recently converted" to a sole proprietorship, such is inconsistent with the information provided by the California Secretary of State.

In her declaration, it appears that Debtor is attempting to place blame on her former counsel for not communicating business information to the Chapter 13 Trustee. Declaration ¶ 1, Dckt. 69. Again, it appears that Debtor's view of what she wants the law to be does not comport with the applicable law.

As Mr. Krestas counsel argues, the court's conclusions in connection with this Motion at he prior hearing was that the financial information provided by Debtor, including not having to pay any income or self-employment taxes to be internally inconsistent though being made under penalty of perjury. This is all information that the Debtor knows, that the Debtor provides, and that the Debtor reviews before making such statements under penalty of perjury to the court and parties in interest. It is not a lack of transmitting of information by former counsel.

Mr. Krestas also highlights the Trustee's assertion that there may well be avoidable payments made by Debtor to Craig McIntosh. Mr. McIntosh has served as attorney purported for the Debtor, as

wells as for the limited liability company that Debtor now says was recently converted into a sole proprietorship.

A copy of the McIntosh deed of trust is provided by Mr. Krestas. Exhibit A, Dckt. 71. Interestingly, the trustor granting an interest in the property is Varitimi Pereira, as Trustee of the Varitimi Pereira Living Trust. On Schedule A/B Debtor does not list any interests in any trusts. In fact, in response to Question 25 Debtor states under penalty of perjury that he has “No” interests in any trusts. Dckt. 1 at 15. On Schedule A/B Debtor states that she, and not a trust, owns the real property in which Mr. Krestas asserts his interest. *Id.* at 11.

The deed of trust identifies Varitimi Pereira, as Trustee, the borrower and that Mr. McIntosh may make advances to Varitimi Pereira, as Trustee. It does not appear that the deed of trust secures any obligation of Varitimi Pereira personally or that of any limited liability companies.

This Motion to Dismiss was filed on April 23, 2019. Now, three months later, Debtor, the Chapter 13 Trustee, and parties in interest have been provided more than an adequate opportunity to address these issues. Debtor has been afforded the opportunity to prosecute a plan.

Significantly, Debtor has had more than a sufficient opportunity to address the long standing dispute with Mr. Krestas. She has the opportunity to address his interest and how to provide for it. She has not taken advantage of that opportunity.

It is clearly in the best interests of the bankruptcy estate and creditors to convert this case to one under Chapter 7. An independent fiduciary for the Bankruptcy Estate can properly navigate these rights, interests, and disputes to properly recover what the Bankruptcy Estate is entitled to. If, as Debtor now states that the limited liability company has been transformed into a sole proprietorship, she can turn over the business to the Trustee. If it can be properly operated while in the Bankruptcy Estate, the Debtor and her counsel can work that out with the Trustee. However, if such a transformation has not occurred under state law, the Trustee can take control of the member interests and review the conduct of the fiduciaries of the limited liability company.

If the Debtor and her counsel believe that an agreement can be quickly reached with Mr. Krestas and that they will stand shoulder to shoulder to have this case reconverted to Chapter 13, they can so diligently act even though the case is converted to Chapter 7. If such good faith plan exists, the Chapter 7 trustee would be likely to join them, recognizing the significantly better result for the Bankruptcy Estate, creditors, and Debtor.

At the July 30, 2019 hearing, the court provided additional time for Debtor’s new counsel to allow additional time for Debtor to respond, despite the court finding the cause exists immediately to convert the case to one under Chapter 7.

The Trustee file a Supplemental Memorandum on August 20, 2019 disputing the Debtor’s claim that there is an absolute right to convert and argues that this right is curbed when there are finding of bad faith, as is the case here. Dckt. 80. Creditor George Krestas filed a Joinder to the Trustee’s Motion. Dckt. 89.

Debtor appears to have filed a two Supplemental Declarations one appears to reflect that

Debtor is pro se, despite there being not Motion to Withdraw as Counsel on file. Dckt. 83. The other bearing counsel's information on top. Dckt. 85. The court also notes that the document filed by Debtor pro se, has the same type font as document prepared by Debtor's prior counsel. The requests that Debtor address who prepared the documents filed with the court and the state of Debtor's representation.

At the hearing ---

~~Cause exists to convert this case to one under Chapter 7.~~

~~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 Dismiss the Chapter 13 case 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 is granted and the case is converted to one under Chapter 7.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2019. 14 days' notice is required. That requirement was met.

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

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<p>The Objection to Confirmation of Plan is continued to September 10, 2019 at 2:00 p.m.</p>

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

- A. Debtors' Plan relies on a pending Motion to Avoid Lien of Ally Financial, which was set for August 13, 2019. Dckt. 15.

DEBTOR'S RESPONSE:

Debtor responds that the Motion to Value was continued to September 10, 2019. Dckt. 34, Civil Minutes. Debtor requests that the Objection to Confirmation be continued to allow for the Motion to Value to resolve.

DISCUSSION

Trustee's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Financial. The Motion is set for hearing on September 10, 2019. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The hearing will be continued until September 10, 2019 at 2:00 p.m.

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 continued to September 10, 2019 at 2:00 p.m.

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

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

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

The Motion to Incur Debt 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 Incur Debt is XXXXX.

Paul Nickson ("Debtor") seeks permission to purchase 2019 GMC Sierra, with a total purchase price of \$24,306.75, with \$3,000.00 down and monthly payments of \$623.25 to GM Financial over 39 months with a 0.002725% interest rate. The Debtor states that he will hold a yard sale and obtain some overtime to be able to afford the down payment.

Debtor notes that he is looking purchase a vehicle that is capable of "off-road" work due to the conditions of roads that he drives on for work. Dckt. 47. The Debtor also informs the court that he considered other offers for trucks that he did not believe were better offers. Specifically, Debtor describes: (1) an offer to purchase a 2013 Toyota 4Runner, requiring a \$3,000.00 down, 36 monthly payments of \$697.27 with a 12.99% interest rate; (2) an offer to lease a 2019 GMC Sierra with a \$3,000.00 down payment and 48 monthly payments of \$495.07 at 0.00242% interest; and (3) an offer to purchase a used 2013 Toyota 4Runner with a \$3,000.00 down payment and 48 monthly payments of \$555.15 with a 12.99% interest rate.

CHAPTER 13 TRUSTEE'S RESPONSE:

On August 13, 2019, the Chapter 13 Trustee filed a response. Dckt. 50. The Trustee flags for the court that Debtor's prior Motion to Incur Debt was denied on the basis that Debtor did not address why the Debtor required a brand new truck and demonstrate to the court that the Debtor sought out less expensive options.

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 notes that Debtor has not provided the a copy of the agreement with borrowing conditions and only filed with the court a document titled a lease worksheet as required pursuant to FED. R. BANKR. P. 4001(c)(1)(A). The court will not be able to grant the Motion before receiving the required documentation regarding the transaction.

At the hearing -----

~~-----The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. 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 Paul Nickson (“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 Paul Nickson is authorized to incur debt pursuant to the terms of the agreement, Exhibit xx, Dekt. xx:~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. The court set the hearing for August 28, 2019. Dckt. 50.

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

The Motion to Incur Debt is granted.

James Aquino and Peggy Martin ("Debtors") seek permission to refinance their residential mortgage for real property commonly known as 781 Duncan Way, Folsom, California, with a total amount of \$407,000.00 and monthly payments of \$2,861.70 to Guaranteed Rate Inc./Freddie Mac over 30 years with a 4.125% interest rate. The Debtors state that their current mortgage payment to Mr. Cooper requires monthly payments of \$2,453.30 and a Chapter 13 Plan payment of \$500.00. Further, Debtors state that the confirmed plan pays general unsecured creditors at 100% and that the Chapter 13 Plan will be paid through the refinance.

CHAPTER 13 TRUSTEE RESPONSE:

The Chapter 13 Trustee filed a response on August 21, 2019. Dckt. 48. The Trustee notes that he does not oppose the refinance so long as the debtor receives no less than \$19,900.00 from the transaction, the amount the Trustee estimates will payoff Debtors' Plan at 100%.

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. 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 James Aquino and Peggy Martin (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and James Aquino and Peggy Martin are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 44.

FINAL RULINGS

22. [19-23791](#)-C-13 SVETLANA TKACHUK **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) Pro Se **PLAN BY DAVID P. CUSICK**
7-30-19 [18]

Final Ruling: No appearance at the August 27, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Objection To Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended and corresponding Motion to Confirm on August 19, 2019. Dckts. 43. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the August 27, 2019 hearing is required.

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

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

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

The Motion to Value Collateral and Secured Claim of Santander Consumer USA ("Creditor") is \$8,650.00, and Creditor's secured claim is determined to have a value of \$8,650.00.

The Motion filed by Judy Warren ("Debtor") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 34. Debtor is the owner of a 2011 BMW 128i ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$8,650.00 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 on February 4, 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$8,650.00. Proof of Claim, No. 1-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$8,650.00, 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 Judy Warren (“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 Santander Consumer USA (“Creditor”) secured by an asset described as 2011 BMW 128i (“Vehicle”) is determined to be a secured claim in the amount of \$8,650.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,650.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the August 27, 2019 hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the August 27, 2019 hearing is required.

The exemption having previously been amended, the Objection is dismissed as moot.

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

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

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

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