UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 27, 2019 at 3:00 p.m.

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1. 15-22115-E-13 LBG-2 ALAN/GLORIA SCHLOSSBERG MOTION TO MODIFY PLAN 6-18-19 [56]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2019. By the court's calculation, 70 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Alan Mark Schlossberg and Gloria Z Schlossberg ("Debtor") seeks confirmation of the Modified Plan to account for changes in income and expenses. Declaration, Dckt. 58. The Modified Plan, filed only as an exhibit, provides for payments of $2,400.00 for 46 months and $1,150.00

for 14 months. Modified Plan, Dckt. 59. 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. 61. Trustee opposes confirmation on the following grounds:

1. Debtor is delinquent $600.0 in plan payments.

2. Based on the claims and Trustee's fees in the case, the plan would complete in 62 months.

3. The Modified Plan has not actually been filed, and was only attached as an exhibit.

DISCUSSION

Trustee's arguments are well-taken.

As an initial matter, no Modified Plan was actually filed. The Second Modified Plan proposed for confirmation was only attached as an Exhibit.

Furthermore, Debtor is $600.00 delinquent in plan payments, which is around a quarter of the $2,400.00 monthly payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 62 months given the claims and Trustee's fees in this case. Declaration, Dckt. 62. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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 the debtor, Alan Mark Schlossberg and Gloria Z Schlossberg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

2. **19-25021-E-13 MMP-1** **STEPHEN/KAREN GINGOLD** **MOTION TO EXTEND THE AUTOMATIC STAY O.S.T. 8-13-19 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 14, 2019. By the court's calculation, 13 days' notice was provided. On August 13, 2019, the court issued an Order setting the hearing for August 27, 2019 on 20 days' shortened notice. Dckt. 9.

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

The Motion to Extend the Automatic Stay is denied.

The debtors, Stephen Anthony Gingold and Karen Michelle Gingold ("Debtor") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-23826) was dismissed on July 8, 2019, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 19-23826, Dckt. 13, July 8, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on August 15, 2019. The Response notes that Debtor has filed several cases in the past and that there was a judgement issued against Debtor based on Debtor's filings.

However, Trustee does not oppose the Motion.

ADVERSARY PROCEEDING JUDGEMENT

On November 19, 2012, the U.S. Trustee commenced an Adversary Proceeding against Debtor based on Debtor's numerous filings. Adversary Proceeding, No. 12-02668, Dckt. 1. On January 17, 2013, based on stipulation of the parties, the court entered a Judgement barring Debtor from filing bankruptcy for four (4) years, and thereafter allowing filing of a case only if (1) the filing fee is paid in full and (2) the unpaid filing fees from previous cases amounting to $2,524.50 was paid. *Id.*, Dckt. 14.

Though the four years have passed, there still remains the requirement for the payment of th $2,524.50 of prior unpaid filing fees.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

A review of the docket shows Debtor has filed at 15 bankruptcy cases in this district since 2008. While only 2 cases have been filed in the last 5 years, during which Debtor was enjoined from filing further bankruptcy cases, Debtor's extensive prior filings still suggest Debtor is aware of the requirements of filing. Furthermore, Debtor clearly was aware of the requirement of the Judgement

requiring Debtor to pay the filing fees of the prior cases before filing a new case.

Adversary Proceeding Injunction

The prohibitory injunction prohibits Karen Gingold from filing a bankruptcy case for a period of four years from the entry of the judgment. 12-02668; Judgment, Dckt. 14. The Judgment was entered on the Docket on January 22, 2013. *Id.*; Notice of Entry of Judgment, Dckt. 15. The prohibition on filing expired on January 21, 2017.

Debtor Karen Gingold waited two and one-half years before commencing the filing of bankruptcy cases again. Chapter 13 case No. 19-23826 was filed by Stephen and Karen Gingold on June 17, 2019, and then dismissed a mere twenty-one days later on July 18, 2019. It was dismissed because the two debtors could not file the basic documents required to initially prosecute a bankruptcy case.

Review of Debtor's Statement of Why Extension is Proper

Debtor provides an extensive explanation for the past and current filings. Declaration, Dckt. 12. However, in her declaration she explains the prior case was essentially filed impulsively without actual consideration of what was required. *Id.*, ¶ 3. Despite having filed 13+ prior cases and having a judgement issued based on excessive filings, Debtor believed "this time" things would be fine, even without hiring an attorney. *Id.*

Since the prior case, Debtor explains that two primary changes have been made. First, Debtor has hired counsel. Second, Debtor Stephen Anthony Gingold is in charge of finances, and not Debtor aren Michelle Gingold.

A review of Schedules I and J reflect that Debtor has substantial monthly income, $10,547.11. Schedule I, Dckt. 1 at 42-43. However, Debtor lists an elderly mother as a "dependant" whom Debtor supports. No income is shown on Schedule I as being provided by the mother as her contribution for her expenses included in Schedule J. After withholding for taxes and benefits, and the payment of the expenses on Schedule J (which do not include rent/mortgage), Debtor represents having $3,364.95 to fund a plan. *Id.* at 45.

While appearing to be significant, it is just enough to make the current monthly mortgage payment, the cure payment for the $14,000 pre-petition arrearage on the mortgage, payments on the ($19,213) debt secured by Debtor's new 2019 Hyundai Elantra, ($12,503) debt secured by Debtor's 2017 Toyota Corolla, and ($9,156) secured claim on Debtor's 2013 Toyota Corolla (142,000 miles). Plan § 3.08(d), Dckt. 2. Debtor is unable to provide any dividend to creditors holding general unsecured claims, there being a 0.00% dividend after curing the home mortgage arrearage and for the two Debtor paying for three cars. Plan ¶ 3.14, *Id.*

It is explained that the prior case was allowed to be dismissed because of the Debtor's obligation to pay the past-due filing fees. It appears that though Debtor clearly understood the court's prior injunction barring filing for a limited period of time, Debtor did not "remember" that there was also a money obligation to be paid, as if such would not be documented in the records of the Clerk of the Court..

Debtor Karen Gingold provides testimony in her declaration of why her repeated failures in filing bankruptcy cases were based on her inability to properly prepare the required documents. Dckt. 12. What debtor Karen Gingold does not provide testimony on is why after the first, second, third, ...twelfth, etc., unsuccessful bankruptcy filings she and Stephen Gingold did not understand they needed the assistance of counsel. Rather, it appears that Debtor sought, and reaped the benefit of, multiple bankruptcy filings which they did not attempt to prosecute.

Though no schedules were filed in the prior 2019 case, the Mailing Matrix filed by Debtor does list Westlake Financial (the creditor holding the claim secured by the new 2019 Hyundai). 19-23826, Dckt. 5 at 2. The prior case was dismissed before a proof of claim was filed by Westlake Financial.

In the current case, no proof of claim has been filed by Westlake Financial at this time. Debtor lists Westlake Financial on Schedule D having a ($19,213) claim secured by the 2019 Hyundai Elantra with 7,000 miles on it. It is stated that this obligation was incurred in December 2018.

Though being financially strong enough and confident in their financial stability to purchase a new car in December 2018, Debtor argues that in June 2019, a mere six months later, Debtor's finances had taken such a turn for the worse that it was necessary to obtain the extraordinary relief under the Bankruptcy Code. And now, thorugh this case, Debtor's "plan" to keep three cars and use Debtor's income to pay for a new car at the cost of making no payments to creditors with unsecured claim is obvious.

The use of Chapter 13 allows Debtor to conveniently purchase a new car, pay for three cars, pay the expenses of a parent as a "dependant" (who fails to make any contributions to the household, not even the monies from a Social Security benefit that is to be used by her to pay such expenses), and avoid paying other creditors.

Here, there is a presumption that the case was not filed in good faith. Debtor has failed to rebut that presumption. Based on what Debtor has filed, it appears that there is in question whether the case has been filed in good faith, or as part of a bad faith scheme to borrow money from creditors as unsecured debt, then buy a new car, and jump into bankruptcy to avoid paying those unsecured claims while enjoying the new car and pay for two other cars, providing three cars for these two debtors.

Debtor has not rebutted that presumption of bad faith. The issue of whether this case has been filed in good faith, prosecuted in good faith, and the plan proposed in good faith is an issue to be addressed on another day.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the debtors, Stephen Anthony Gingold and Karen Michelle Gingold ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel,

and good cause appearing,

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

3. 19-23735-E-13 DPC-1 ROBIN/THOMAS HARLAND OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-30-19 [32]

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 Attorney on July 30, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

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

A. the debtors, Robin Arlene Harland and Thomas Scott Harland, are $3,827.54 delinquent in plan payments.

B. Debtor admitted at the Meeting of Creditors that Debtor is receiving $534.00 in income that was not listed.

SUPPLEMENTAL OBJECTION

Trustee filed a Supplemental Objection on August 8, 2019. Dckt. 39. Trustee states that Debtor is now current and Amended Schedules reflect the additional income.

Trustee argues the plan payment should be increased to the Debtor's current disposable income of $5,913.93.

DISCUSSION

While Debtor has addressed the majority of Trustee's concerns, Debtor filed Amended Schedules I and J on July 30, 2019 which reflected an increase in disposable monthly income from $3,777.93 (roughly the proposed plan payment) to $5,913.93.

Trustee argues that in light of Debtor's prior history of delinquency, the plan payment should be larger, which would either result in completing the plan sooner or providing a buffer that would allow Debtor to complete the plan in the event of defaults in plan payments.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

~~The Objection to 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 Robin Arlene Harland and Thomas Scott Harland's ("Debtor") Chapter 13 Plan filed on June 12, 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.~~

4. **19-23036-E-13 FF-2** **SANJANI/VIKASH SINGH** **CONTINUED MOTION TO CONFIRM PLAN**
6-11-19 [21]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, creditors, and Office of the United States Trustee on June 11, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Plan is XXXXXXXXXX.

The debtors, Sanjani Singh and Vikash Singh ("Debtor"), seek confirmation of the Chapter 13 Plan. The Plan proposes monthly payments of $4,475.00 for 60 months, with a 0 percent dividend to unsecured claims totaling $53,986.77. Dckt. 24. 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 July 1, 2019. Dckt. 29. The Trustee notes initially that the Meeting of Creditors is July 11, 2019, only a few days before this hearing, which has limited his ability to assess the plan's confirmability.

Trustee further opposes confirmation of the Plan on the following grounds:

A. Schedule I lists a $250.00 payroll deduction for "advance," which is unexplained and totals $15,000.00 over the plan terms.

B. Debtor is receiving contributions of $1,450.00 monthly. However, no evidence has been provided to show this contribution is reliable.

C. Debtor proposes to pay creditor Avid Acceptance holding a secured claim only $375.00 per month, where the contract provides for monthly payments of $503.09, plus 15.97 percent interest.

D. Debtor has not filed a motion to value the secured claim of Heritage Community Credit Union, which Debtor's Plan proposes to reduce in value to $9,750.00 from $21,042.77.

Trustee requests the court continue the hearing to August 27, 2019 at 3:00 p.m. to allow Trustee time to file a supplemental opposition.

DEBTOR'S RESPONSE

Debtor filed an untimely Response on July 10, 2019, 6 days before the hearing. Dckt. 42. Debtor states the following:

1. Debtor is providing a 100 percent dividend to unsecured claims in the proposed amended plan.

2. The proposed amount to Avid Acceptance (presumably in the amended plan) is for $375.00 a month at 5.25% interest which has been listed in Class 1of the plan.

3. Debtor filed the motion to value the secured claim of Heritage Community Credit Union on July 8, 2019.

4. Debtor's contribution is from Debtor's parent Savitri Devi. The contribution of $1,450.00 is nearly all of Debtor's parent's $1,500.00 monthly income received from social security. No declaration is provided by Debtor's parent.

5. Debtor agrees to continue the hearing to August 27, 2019.

JULY 23, 2019 HEARING

At the July 23, 2019 hearing, both parties agreed to a continuance to allow further analysis of the case and for Trustee to file a Supplemental Opposition.

DISCUSSION

Since the prior hearing, the court issued an Order granting Debtor's Motion To Value and valuing Heritage Community Credit Union's claim at $9,750.00. Dckt. 58.

No supplemental opposition has been filed by the Trustee.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

IT IS ORDERED that the Motion to Confirm the Plan is XXXXXXXXXX

5. 19-23641-E-13 AP-1 ORLANDO CISNEROS

OBJECTION TO CONFIRMATION OF PLAN BY ELIZON MASTER PARTICIPATION TRUST I
7-23-19 [37]

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, and Office of the United States Trustee on July 23, 2019. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Creditor, Elizon Master Participation Trust I , U.S. Bank Trust National Association, as Owner Trustee ("Creditor"), holding a secured claim opposes confirmation of the debtor, Orlando Cisneros's ("Debtor") Plan on the basis that:

A. Debtor's Plan was filed in bad faith because it relies on speculative income. Debtor states he has had no income from his business leading up to filing, and has not provided evidence suggesting contributions from children.

B. Creditor's claim for pre-petition arrears is in the approximate amount of $185,971.08. However, the Debtor's Chapter 13 Plan provides for the cure of only $166,713.21.

C. Debtor will have to increase his monthly dividend arrears payment through the Chapter 13 Plan to Creditor from $2,778.55 to

approximately $3,099.00 in order to cure Creditor's pre-petition arrears.

D. Debtor's plan is not feasible because it does not provide for Creditor's arrearages.

DISCUSSION

Creditor's claim for pre-petition arrears is in the approximate amount of $184,475.93. Proof of Claim, No. 4. However, the Debtor's Chapter 13 Plan provides for the cure of only $166,713.21. Plan, Dckt. 18. Because the Plan does not account for the full amount of arrearages owing on Creditor's claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, Creditor has raised doubts as to the Debtor's stated income. Debtor did not respond to the Objection.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Creditor, Elizon Master Participation Trust I , U.S. Bank Trust National Association, as Owner 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.

6. **19-23641-E-13 DMM-1** **ORLANDO CISNEROS** **OBJECTION TO CONFIRMATION OF PLAN BY CALIFORNIA FRANCHISE TAX BOARD**
8-1-19 [49]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2019. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The California Franchise Tax Board ("FTB") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan omits the FTB's priority claim, estimating all priorty claims at $0.00.

B. Debtor's schedules show nonexempt equity in the amount of $139,868.19 , while the proposed plan provides a 0 percent dividend to unsecured claims.

C. The plan relies son motions to value the secured claims of the FTB and IRS.

D. The plan does not provide all Debtor's projected disposable income.

DISCUSSION

The FTB filed Proof of Claim, No. 1 asserting a secured claim of $65,376.45 and unsecured priority claim of $2,152.28.

The Plan fails to provide for the FTB's secured claim, and is therefore not feasible. 11 U.S.C. § 1325(a)(6). To the extend Debtor wants to value the FTB's secured claim, no motion to value has been filed.

Debtor's plan also fails to provide for any priority claims, including that of the FTB.

The court notes that Debtor, represented by other counsel than in this case, has filed four prior cases, three unsuccessfully prosecuted Chapter 13 cases that were dismissed and one Chapter 13 case that was converted to one under Chapter 7.

As to the FTB, Debtor's Schedules on their face disclose that there is $139,868.19 in non-exempt equity. Schedule D lists the G Street Property having a value of $650,000; it being encumbered by liens securing claims for ($95,752.10) and ($339,379), leaving an equity of $214,871. Dckt. 17 at 15-17. Then, on Schedule C Debtor claims an exemption of ($75,000) in the G Street property. *Id.* at 13. That would leave $139,871 in non-exempt equity.

However, though Debtor appears to be very experienced in filing his personal bankruptcy cases and is represented by a very experienced counsel in representing consumer debtors, they have filed a 0.00% dividend for general unsecured claims. Plan, ¶ 3.14; Dckt. 18.

Debtor's plan is to be funded with $6,477.56 a month for sixty months. Plan ¶ 2.10, ¶ 2.03. This will be used to pay Debtor's counsel ($2,845), the Chapter 13 Trustee's dividend (estimated to be ($388 a month), the currently monthly mortgage payment of ($2,968.29), the monthly cure payment of ($2,778.55) for the ($166,713.21) pre-petition arrearage (in the amount asserted by Debtor), and a ($203.48) current monthly payment on the obligation secured by he second deed of trust secured by the G Street property. *Id.*, ¶ 3.07(c).

Without taking into account an amortization of the ($2,845) for Debtor's counsel, subtracting the Trustee's fee and the required current and arrearage payments for the mortgage, that would leave $139.00 a month in excess thereof. Amortizing the ($2,845) over 60 months, that would be an additional $48 a month.

The Plan affirmatively states that the claims of the Internal Revenue Service and California Franchise Tax Board are "$0.00." *Id.* ¶ 3.08.

While Debtor lists nothing for tax claims, the Franchise Tax Board has filed a secure and priority tax claim of ($67,656.95) and the Internal Revenue Service has filed its secured and priority tax claim for ($187,696.67).

It appears that a significant question exists as to whether Debtor, with the assistance of counsel, is filing and prosecuting these various, unsuccessfully prosecuted, bankruptcy cases.

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

7. 19-23641-E-13 DPC-2 ORLANDO CISNEROS OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-30-19 [41]

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 30, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor has not commenced plan payments, and is delinquent $6,477.56.

B. Debtor lists the Class 1 claim of Chase with a monthly arrearage payment of $0.00, but admitted at the Meeting of Creditors Debtor has missed four months of payments on that claim.

C. The plan relies on lien avoidance motions which have not been filed.

D. Debtor has $140,118.19 in non-exempt equity but the plan is a 0 percent plan.

E. The Plan relies on income contributions from Debtor's children, but no

evidence supports those contributions.

F. The Plan does not state the monthly amount to be paid to Debtor's attorney.

G. Debtor has filed three prior cases, and has not explained why this case will be successful.

DISCUSSION

The majority of Trustee's grounds for objection suggest the plan is not feasible. Debtor has not explained why this case will be successful where he has had 3 prior cases; Debtor does not provide for the arrearage on Chase's Class 1 claim; Debtor has not commenced the plan payments; Debtor's plan relies on lien avoidance motions that have yet to be filed; Debtor has not presented evidence concerning speculative income; and Debtor does not state amounts to be paid monthly to his attorney. The proposed plan is simply not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, Trustee presented evidence that Debtor's non-exempt assets total $140,118.19, while the Plan provides a dividend of 0 percent to unsecured claims. Declaration, Dckt. 43. Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

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.

8. **19-23641-E-13 DPC-1** **ORLANDO CISNEROS** **OBJECTION TO DISCHARGE BY DAVID CUSICK**
7-22-19 [33]

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 and Debtor's Attorney on July 22, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

The Chapter 13 Trustee, David Cusick ("Objector") objects to the debtor, Orlando Cisneros's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on April 25, 2018. Case No. 18-22528. Debtor received a discharge on January 9, 2019. Case No. 18-22528, Dckt. 99.

The instant case was filed under Chapter 13 on June 6, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on January 9, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 18-22528, Dckt. 99. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-23641), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the Chapter 13 Trustee, David Cusick ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-23641, the case shall be closed without the entry of a discharge.

9. 17-24755-E-13 CYB-2 ROBBIE/CHRISTI HOLCOMB CONTINUED MOTION TO MODIFY PLAN
5-28-19 [53]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Robbie and Christi Holcomb ("Debtor"), seek confirmation of the Modified Plan to cure a delinquency in plan payments that occurred when Debtor could not find employment as quickly as anticipated. Declaration, Dckt. 56. The Modified Plan proposes step payments, with $15,230.00 paid into the Plan as of the July 2019 payment, and monthly payments of $1,065.00 beginning in August 2019 and continuing for the duration of the Plan. Modified Plan, Dckt. 58. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick (Trustee"), filed an Opposition on June 17, 2019. Dckt. 63. The Trustee raises the following grounds for opposition:

A. To reach $15,230.00 paid through July 201, Debtor's would have to pay an additional $1,065.00.

B. The plan provides for and Debtor has paid $4,000.00 in attorney's fees. It is unclear what additional fees may be sought.

C. Section 7 projects payments to Class 2 Creditors through July, 2019 that do not appear to be accurate. To date Trustee has disbursed a total of:

i. $1,987.11 to RC Willey, where Debtor states RC Willey shall have received $1,376.53 through July, 2019.

ii. $542.12 to Celtic Bank, where Debtor states Celtic Bank shall have received $342.90 through July, 2019.

D. The Plan includes the IRS in Class 2 with $0.00 claimed by creditor, but then refers to the additional provisions, which do not include any reference to the IRS, for a monthly dividend. The IRS' claim is $31,136.38.

JULY 2, 2019 HEARING

At the July 2, 2019 hearing, the court continued the hearing to allow Debtor to address the Trustee's grounds for opposition.

TRUSTEE'S STATUS UPDATE

Trustee filed a Status Update on August 12, 2019. Dckt. 73. Trustee notes the following:

1. Debtor is delinquent $1,065.00 under the plan.

2. Debtor's counsel filed an Application for attorney's fees set for hearing August 27, 2019. Trustee estimates the plan is feasible given the requested fees.

3. Debtor has not addressed unauthorized payments made by Trustee to RC Willey and Celtic Bank.

4. Debtor has not addressed the IRS's claim. The IRS filed Proof of Claim, No. 5 on August 17, 2017 asserting $28,493.18 in a priority claim and $2,643.20 unsecured.

DISCUSSION

The Trustee's objections are well-taken.

While Debtor has filed an application for attorney's fees resolving Trustee's concern over

additional fees, and a motion to value the claim of the IRS has been filed, other concerns have not been addressed. Debtor is delinquent in plan payments and the plan provides less to the claims of to RC Willey and Celtic Bank than what has been paid.

Based on the foregoing, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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 debtors, Robbie and Christi Holcomb ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

10. 17-24755-E-13 CYB-3 ROBBIE/CHRISTI HOLCOMB

MOTION FOR COMPENSATION FOR CANDACE Y. BROOKS, DEBTORS ATTORNEY(S)
8-6-19 [67]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Candace Brooks, the Attorney ("Applicant") for Robbie Allan Holcomb and Christi Anna Holcomb, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Applicant requests fees in the amount of $2,275.00 for the period from February 5, 2019 through August 6, 2019.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

> (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's for the Estate include prosecution of a modified plan, motion to value, and opposition to Trustee's motion to dismiss the case. The Chapter 13 Trustee filed a Statement of non-opposition to the Motion on August 14, 2019. Dckt. 81. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

. . .

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 38. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v.*

Fitzsimmons (In re Yermakov), 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a summary of the services provided as follows:

1. Preparation and prosecution of a modified plan after Debtor defaulted in plan payments.

2. Communications with Debtor.

3. Preparation and prosecution of a motion to value secured claim of the IRS.

4. Preparation and prosecution of opposition to the Chapter 13 Trustee's motion to dismiss the case.

Applicant states in the Motion that the fees requested are generated by multiplying the billing rate of $300 by the substantial and unanticipated hours, 9.15. However, that equation results in a fee of $2,745.00 and not the $2,775 requested.

Furthermore, in reviewing the Billing Statements attached as Exhibits B and C (Dckt. 70), it is unclear how Applicant is arriving at 9.15 hours. The entries parsed out into Exhibit C as the "substantial and unanticipated" portion of work performed adds up to 7.55 hours.

However, in reviewing all the billing entries, and work performed in this case that was after

the first Chapter 13 Plan was confirmed on December 14, 2017, it is clear more valuable services were performed than charged by Applicant, whom is only seeking $2,775.00.

FEES ALLOWED

The unique facts surrounding the case, including the necessity of a modified plan, motion to value, Trustee's filing of a motion to dismiss the case , raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $2,775.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay the fees allowed by the court.

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

Fees $2,775.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Candace Brooks ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Candace Brooks is allowed the following fees and expenses as a professional of the Estate:
>
> Candace Brooks, Professional Employed by the debtors, Robbie Allan Holcomb and Christi Anna Holcomb ("Debtor")
>
> Fees in the amount of $2,775.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

11. 17-24755-E-13 CYB-4 ROBBIE/CHRISTI HOLCOMB MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 8-12-19 [76]

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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion filed by the debtors, Robbie Allan Holcomb and Christi Anna Holcomb ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 78. The Motion stats that the IRS has a lien on all personal and real property of the Debtor, which property is listed on Debtor's Schedules A/B ("Property"). Debtor seeks to value the Property at a replacement value of $0.00 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).

Creditor filed Proof of Claim No. 5 on August 17, 2017. The Proof of Claim asserts a priority unsecured claim of $28,493.18 and general unsecured claim of $2,643.20.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Upon review of the evidence and consistent with the Proof of Claim filed by the IRS, the value of the Property, and therefore the IRS' secured claim, is $0.00.

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 Value Collateral and Secured Claim filed by the debtors, Robbie Allan Holcomb and Christi Anna Holcomb ("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 the Internal Revenue Service ("IRS" or "Creditor") secured by an asset described as all Debtor's personal and real property listed on Debtor's Schedules A/B (Dckt. 1) is determined to be a secured claim in the amount of $0.00, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

12. 19-24768-E-13 MMP-1 LARRY BELLANI

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
8-6-19 [13]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2019. By the court's calculation, 21 days' notice was provided. The court issued an Oder shortening the time for notice on the Motion on August 5, 2019. Dckt. 10.

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

The Motion to Extend the Automatic Stay is granted.

The debtor, Larry James Bellani ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-21107) was dismissed on May 6, 2019, after the Trustee brought a dismissal motion based on Debtor's plan payment delinquency and failure to provide 4 years of tax returns. *See* Order, Bankr. E.D. Cal. No. 19-21107, Dckt. 48, May 29, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Debtor argues substantial changes have been made since the dismissal of the prior case, including Debtor having secured all necessary tax returns and Debtor taking on two rent-paying roommates bring in $1,750.00 monthly. Declaration, Dckt. 15.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11

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

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

A. Why was the previous plan filed?

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Larry James Bellani ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

13. 19-24887-E-13 MOH-1 ELIZABETH CORTEZ

MOTION TO EXTEND AUTOMATIC STAY
8-12-19 [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 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Elizabeth Cortez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-25880) was dismissed on August 8, 2019, after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 17-25880, Dckt. 31, August 8, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that since the prior case, her income has increased $174.00 monthly, and that she should therefore be able to make the proposed $165.00 monthly plan payment. Declaration, Dckt. 18.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the**

bankruptcy case when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

A. Why was the previous plan filed?

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Elizabeth Cortez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

14. 16-23888-E-13 KPO-1 **ALFREDO RODRIGUEZ** **MOTION TO VACATE DISMISSAL OF CASE**
6-28-19 [86]

DEBTOR DISMISSED: 04/26/2019

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and creditors on March 15, 2016. Dckt. 89. While there was clearly an error in the execution of the Proof of Service, the court is left without any evidence that service was effectuated.

The Motion to Vacate 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 Vacate is denied.

Alfredo A Rodriguez ("Debtor") filed the instant case on June 16, 2016. Dckt. 1. A plan was confirmed on June 20, 2017. Dckt. 72.

On March 21, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to a $1,650.00 delinquency in plan payments. Dckt. 73. On April 24, 2019, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 77. The ruling was final because Debtor did not file any opposition.

On June 28, 2019, Debtor filed this instant Motion to Vacate seeking to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. Debtor's case was dismissed on April 26, 2019

2. Debtor stopped making his plan payments because he mistakenly thought he had made all the required payments. When the Debtor found out that his plan payments were not complete and that he was required to

make payments for 60 months, he immediately submitted the payments on April 16, 2019 (please see exhibit "A").

3. The payments were not submitted timely and the case was dismissed on April 26, 2019.

4. The debtor received a refund of payments submitted prior to the dismissal of the case in the amount of $3,088.80.

5. Debtor has the funds on hand and can immediately submit to the Trustee upon the granting of this motion.

Motion, Dckt. 86. Debtor's Declaration presents testimony supporting the allegations made in the Motion. Dckt. 88.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is

a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

Debtor's explanation that he thought plan payments were complete, and that he made the payments before the date of the hearing, does not explain why there was no response to the motion to dismiss.

Debtor at no time was unrepresented by counsel. However, there is no explanation for why counsel let a dismissal motion go unopposed, and the case get dismissed for delinquency in plan payments where the delinquency was cured before the date of that hearing.

Even more significantly, no evidence is provided as to how or why Debtor and Debtor's counsel would be "mistaken" as to the payments being in default or why Debtor thought he did not have to make the plan payments.

Debtor's Amended Plan (Dckt. 22) was written by the Debtor and his counsel. The Plan is signed by the Debtor. The Plan expressly states that the monthly plan payments will continue for sixty (60) months. Plan ¶ 1.03, Dckt. 22.

The Trustee's Motion to Dismiss clearly states that the Plan payments are in default. Dckt. 73. The Motion to Dismiss and supporting pleadings were served on Debtor and Debtor's counsel. Dckt. 76. No bona fide reason or showing of allowable mistake is presented for not filing an opposition to the Motion to Dismiss.

Debtor's arguments state that only after the case was dismissed and Debtor received a refund from the Trustee did Debtor "realize" that he had not made the required payments and that he should have responded to the Motion to Dismiss.

Debtor's counsel in this case is an active attorney practicing in this court. As of the court's August 24, 2019 review of the State Bar website, said counsel, Peter Lago, continues to be shown as being an active member of the California Bar.

The Trustee's Final Report states that Debtor's counsel Peter Lago was paid $3,435.00 through the Plan by the Trustee, in addition to the $2,525.00 paid by the Debtor prior to the case for Mr. Lago's attorney's fees through the entire case. No explanation is provided by Mr. Lago, whom has already received the $6,000 to represent Debtor through the end of this case, why no opposition was filed to the Motion to Dismiss, what mistake arose, and why the dismissal of this case should be vacated.

Though a Substitution of Attorney has been filed, the court has not authorized Mr. Lago to withdraw from his representation of Debtor in this case.

The Motion does not state what mistake, inadvertence, surprise, or excusable neglect there is here, other than "Debtor did not know the payments were due." Debtor and Debtor's counsel received notice on March 21, 2019, via the Trustee's dismissal motion, that payments were due. Dckt. 76. Debtor actually made the payments on April 16, 2019, before the date of the hearing. Declaration, Dckt. 88.

Debtor does not explain how, with assistance of counsel, he was mislead to believe that payments had completed less than three years into the case.

At the hearing, xxxxxxxxxxxxxx.

Debtor has not shown sufficient grounds for relief pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024.

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 Vacate filed by Alfredo A Rodriguez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

15. 19-23690-E-13 DPC-1 MONIQUE MORENO

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-19 [21]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 30, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor, Monique Angelina Moreno ("Debtor") is delinquent $2,050.00 in plan payments.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $2,050.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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.

16. 19-23292-E-13 PLC-4 THOMAS PEARSON MOTION TO CONFIRM PLAN 7-16-19 [64]

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 16, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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 ~~granted.~~

The debtor, Thomas Pearson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $925.00, a dividend of 64 percent on unsecured claims totaling $75,972.00, and $3,500.00 monthly payments to the Class 4 claim of Chase. Amended Plan, Dckt. 67. 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. 73. Trustee opposes confirmation on the grounds that no business expenses or budget were attached to Schedule I for Debtor's non-filing spouse's business, Floors Too.

DEBTOR'S REPLY

Debtor filed a Reply on August 22, 2019. Dckt. 79. Debtor states Amended Schedules were filed with the requested business information.

DISCUSSION

Debtor filed Amended Schedule I on August 22, 2019 attaching a business expense and budget statement for "Floor Too" the non-filing spouse's business.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on July 16, 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.~~

17. 19-23796-E-13 DPC-1 SHARON LOCKETT

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-19 [23]

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 30, 2019. By the court's calculation, 30 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained .

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

A. The debtor, Sharon Kay Lockett ("Debtor") is $200.00 delinquent in plan payments.

B. The proposed plan relies on valuing the secured claim of Elite Acceptance.

DISCUSSION

The Debtor's Motion To Value was heard on July 30, 2019, and granted. Dckts. 27, 28.

However, Debtor is $200.00 delinquent in plan payments. Delinquency suggests the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

18. 17-22333-E-13 PGM-2 THOMAS WARREN AMENDED MOTION FOR OMNIBUS RELIEF 8-12-19 [118]

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)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on July 23, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion For Omnibus Relief is denied.

The debtor, Thomas Edward Warren ("Debtor"), commenced this case on April 4, 2017. Dckt. 1. Debtor's sister Susan Rose ("Debtor's Sister"), through her counsel Peter Macaluso, filed this Motion seeking to have Debtor's Sister appointed as a representative due to alleged incapacity, and to waive the 11 U.S.C. §1328 requirement for Debtor. While an Amended Motion was filed August 12, 2019 (Dckt. 118), the Amended Motion and Motion (Dckt. 94) are carbon copies of each other.

PRIOR ATTEMPTS AT APPOINTING DEBTOR'S SISTER AS REPRESENTATIVE

The first time the court was alerted to potential capacity issues was at a hearing on Trustee's Motion to Dismiss the case on October 10, 2018 (very nearly a year ago). Civil Minutes, Dckt. 49.

The first motion seeking to appoint Debtor's Sister as representative was not filed until

several months later, on January 29, 2019. Dckt. 52. At the first hearing on that motion, February 12, 2019 (Dckt. 59), the court noted that no testimony was provided other than that of Debtor's Sister, and continued the hearing to allow counsel for the Debtor to provide the court with independent professional testimony (such as Debtor's doctor) of the appropriateness and need for such appointment.

At the continued hearing, the Motion for Appointment was denied. The denial of the Motion for Appointment of the proposed personal representative was due to the abject failure of the proposed personal representative and Debtor's counsel to present credible evidence of Debtor's mental health condition. The findings of the court from that denial include:

> At the insistence of the court, Debtor's counsel and the Proposed Personal Representative have been given the "opportunity" to provide the court with the necessary evidence of independent professional testimony for the court to make the competency determination. In its prior tentative ruling the court provided the above description of competency and determination thereof under applicable state law. However, the best that counsel and Proposed Personal Representative could produce was the following "To Whomever It May Concern" Doctor's Note:
>
> > To Whom It May Concern:
> >
> > Thomas Warren was seen in my office today. It is my professional opinion that my patient is not capable of making complex, legal and financial decisions due to his medical condition.
> >
> > Please feel free to contact my office, if you have any further questions.
>
> Exhibit, Dckt. 62. The Note does not provide testimony under penalty of perjury.
>
> Debtor's attorney has prepared a declaration for Proposed Personal Representative in which she purports to "authenticate" the Note, presumably as some attempt to make it admissible, credible evidence. At best, this is hearsay, in which the sister is purporting to repeat what is in the Note, which purports to be statements made out of court by the Doctor. FN. 1.
>
> The deficiencies in the purported "Doctor's Note" are many. First, by it being generically added "To Whom It May Concern," it appears that the Doctor had no idea why he was being asked to consider the competency of the Debtor. The Doctor was not aware of the significance in what he was saying or that it would be used to limit the Debtor's ability to access the federal courts. One questions the validity of such a "medical opinion" that is written in such a way that it could be used for any and every purpose to limit or deprive the Debtor of rights.
>
> Second, merely stating his conclusion that "my patient is not capable of making complex, legal and financial decisions due to his medical condition,"

without providing the information based on his professional training and experience is of little, if any, assistance to the court in making the necessary determination. See Fed. R. Evid. 702.

Third, this "medical opinion" merely states that the Debtor is not capable of making "complex, legal and financial decisions." Some would say that the average least sophisticated consumer who is a party in bankruptcy court every day might suffer from such "complex decision" limitation. The Doctor offers no indication as to what is meant by "complex" or whether Debtor, represented by independent counsel, is capable of making the normal and usual decisions in his bankruptcy case.

Fourth, there is only a general reference to "medical condition." This could be a permanent and significant cognitive impairment. Or it may be that Debtor is suffering from a temporary medical condition from which he could recover sufficiently in the near future. The Doctor fails to provide, or withholds, such critical information.

Fifth, the Doctor offers no statement of how he has come to this "Opinion," the examinations of the Debtor, and how such "Opinion" has been reached after providing adequate medical professional due diligence in conformity with the standards of practice.

The Doctor does not state how long the Debtor has been his "patient," his consultation with other doctors who have provided medical services to Debtor, or a review of Debtor's medical history. Rather, based on the Proposed Personal Representative's testimony, it is she who selected the Doctor who has issued this "To Whom It May Concern" Note.

. . .

In her Supplemental Declaration (after the court did not grant the request for appointment of a personal representative), the Proposed Personal Representative qualifies her prior testimony, stating that Debtor could actually care for himself physically and carry on a conversation, but could become confused "from time to time" and could not keep schedule appointments. Supplemental Declaration, ¶ 3; Dckt 63. These statements under penalty of perjury are not consistent with the personal representative's prior statements under penalty of perjury.

In the Supplemental Declaration the Proposed Personal Representative also states that she took the Debtor to an attorney to obtain a power of attorney. The attorney is not identified (though a law firm is named on the power of attorney). It is not stated whether the attorney was the Debtor's attorney or the Proposed Personal Representative's attorney.

With respect to the Doctor's Note, the Proposed Personal Representative states that she selected a doctor who is 222 miles from Debtor's residence.

> Nothing is stated about Debtor's long time doctor(s) in the Auburn area where he has resided. In her Declaration, the personal representative states that Debtor was released to her custody in the Summer of 2018 after a law enforcement intervention. That was after this case was filed, and Debtor may have moved, may have new doctors, and may no longer reside in Auburn, California. But such testimony is not provided. And again, the Doctor issuing the "To Whom It May Concern" Doctor's Note does not disclose any investigation with prior doctors of Debtor or review of Debtor's medical history.

Civil Minutes, Dckt. 64.

In concluding the ruling and having identified serious shortcomings by those who owe fiduciary duties to the Debtor, including those seeking to be his personal representative, the court's findings and conclusions state:

> Debtor's counsel appeared at the hearing, advising the court that he recognized the shortcomings in the pleadings, but requested additional time to work with the proposed personal representative and the doctor who provided the Doctor's Note. Given that the matter has been continued and the evidence presented to be a generic one sentence Note" for which no testimony was provided, the court is reluctant to allow these three to proceed further.
>
> Rather than referring this matter to Adult Protective Services, the U.S. Attorney, and U.S. Trustee, Debtor's counsel was able to convince to allow the Debtor one more chance to have a representative appointed before bringing in Adult Protective Services.

Id. at 8. The court further noted that in light of the failures of these various persons to act to protect the rights of the Debtor:

> The court denies this Motion without prejudice to allow Debtor's sister, the proposed personal representative, to be considered for the position. However, Debtor must obtain special counsel who is experienced in federal court and comes with a solid reputation in this federal court. That attorney will be the one who will assemble the motion and supporting evidence for the appointment of a personal representative and then effectively prosecute such a Motion.
>
> Debtor's current counsel proposed going back to Dr. Zaheen to have her now provide for detailed testimony. The court finds that proposition untenable. The court finds the Doctor's credibility to be so compromised by providing a "To Whom It May Concern Note" that might be used for who knows what purpose to deprive the Debtor of his rights in this case, that Dr. Zaheen cannot be a witness to provide testimony to the court. (See discussion above of the "To Whom It May Concern" one sentence Note declaring the Debtor not competent.)

Id. at 9. To afford these various persons with fiduciary duties to the Debtor to step up and make sure that his rights and interests were not damaged/lost/forfeited, the court instructed the Clerk of the Court to Serve informational copies of the order and the Civil Minutes on:

Rokhshana Zaheen, M.D.
Community Medical Providers Medical Group
Community Foundation CMP, Reedly North
748 Manning Ave
Reedley, California 93654-2232

and

The Attorney Who Provided Legal Services to Thomas Warren
Jeppson & Griffin, LLP
1478 Stone Point Drive, Ste 100
Roseville, California 95661;

each of whom have independent professional obligations to Thomas Warren, the Chapter 13 Debtor in this bankruptcy case.

Id.

PRELIMINARY OVERVIEW OF THE OMNIBUS MOTION

At the July 30, 2019 hearings on a motion for relief and motion to dismiss, the court review and made the following findings as to this Motion:

> Since the July 16 hearing, a Motion to Employ Michael Snell as a real estate broker (Dckt. 91) was filed , and granted on July 22, 2019. Dckt. 93.
>
> On July 23, 2019, a Motion For Omnibus Relief Upon Incapacitation of Debtor was filed. Dckt. 94. The Motion For Omnibus Relief seeks to substitute Susan Rose as successor-in-interest, waive the requirement of 11 U.S.C. § 1328 for Debtor, and for the Chapter 13 case to proceed as though Debtor were not incapacitated.
>
> In support of the proposition that Debtor lacks capacity, the Omnibus Motion states the following:
>
> 1. As stated in the declaration of Susan Rose, the debtor is being cared by a care facility as directed by Susan Rose, after executing the power of attorney.
>
> 2. As states in the declaration of Susan Rose, the location is presently in Los Angeles, but upon the sale of the real property is intended to be used to move the debtor to Fresno to be closer to his sisters.
>
> 3. As stated in the declaration of Susan Rose, the deceasing [sic] ability of the debtor to care for himself.

4. As stated in the declaration of Susan Rose, the preceding year the debtor has been removed from his home, relocated to a Fresno care home, and now to a care home in Los Angeles.

5. As stated in the declaration of Susan Rose, the debtor does not have the capacity to manage his own affairs, and resist fraud or undue influence.

While the Omnibus Motion references a declaration of Debtor's current doctor, no declaration is on file currently.

The Declaration of Susan Rose presents some odd testimony–which testimony is purported to be within Rose's personal knowledge. Some of the peculiar testimony is as follows:

1. The intent of this document is to comply with and serve as an Affidavit under California Probate Code Section 13100 and pursuant to California Code of Civil Procedure §377.32(a). Declaration ¶ 1, Dckt. 97.

Here, Rose is referencing code sections which she almost certainly does not have personal knowledge of.

2. I am the successor in interest to Thomas Edward Warren, as defined in Section 377.11 of the Code of Civil Procedure, and succeed to their interest in the above-entitled proceeding. *Id.*, ¶ 4.

Here, Rose offers her legal conclusion that she is a successor in interest as defined by Section 377.11 of the Code of Civil Procedure. This is not credible personal knowledge testimony from someone without a legal education.

3. No other person has a superior right to commence the above-entitled proceeding or to be substituted for Thomas Edward Warren in the above-entitled proceeding. *Id.*, ¶ 4.

This is another legal conclusion without explanation.

4. The current gross fair market value of the **decedent**'s real and personal property in California, excluding the property described in the California Probate Code Section 13050, does not exceed $150,000.00. *Id.*, ¶ 7(emphasis added).

Here, Rose concludes that Debtor has died. Since Debtor has not actually passed away (as reflected in all other pleadings), this testimony further demonstrates

Rose is testifying as to things not within her personal knowledge. Or, Rose possibly did not read the declaration she signed.

Also here, Rose is providing her lay opinion as to the value of Debtor's property. While the owner of property is deemed to have competency to make such expert testimony, it is unclear what basis Rose has to make such testimony.

> 5. An inventory and appraisement of the personal property in the **decedent's** estate is specified on Schedule B of the bankruptcy petition. *Id.*, ¶ 8(emphasis added).

Again Rose addresses Debtor as "decedent."

> 6. A description of the property to be paid, transferred, or delivered to the undersigned under the provisions of California Probate Code Section 13100 are included in the previously filed Chapter 13 petition, amendments, and Chapter 13 plan.
>
> The undersigned requests that the described property be paid, transferred, or delivered to the undersigned. *Id.*, ¶¶ 9-10.

Here Rose addresses herself as "the undersigned."

Civil Minutes, Dckts. 112, 113.

SUPPLEMENTAL DECLARATIONS

Three Supplemental Declarations were filed on August 20, 2019. Dckts. 123-125.

The Declaration of Debtor's Sister provides testimony that, now, Debtor is actually doing better, but that Debtor has short term memory issues. Dckt. 124.

The Declaration of Peter Macaluso presents testimony that he, as special counsel, spoke with Debtor on August 19, 2019. Dckt. 123. The Debtor stated "he was calling at the request of his sister." *Id*., ¶ 4. Macaluso asked Debtor a series of questions (it is not indicated if Debtor answered the questions), and then verified that Debtor wanted Debtor's Sister to "help make his decisions." Dckt. 123 at ¶ 6.

Most interesting of the three Declarations filed is that of Thomas Warren, the Debtor who has been for 10 months held out to be lacking mental capacity. Dckt. 125. The Debtor purports to testify:

> 1. I am doing better but my short-term memory is not doing well, and many things I discuss this week I have a hard time remembering next week.
>
> 2. Today, I called my Sister, Susan Rose, and we discussed the status of my

bankruptcy case and the condo.

3. I was then asked him to call Mr. Macaluso on his cell-phone, which I did.

4. Mr. Macaluso asked me if I knew that I was in bankruptcy.

5. Mr. Macaluso discussed with me that the house was to be sold to help me meet my needs.

6. Mr. Macaluso asked me if this is what I wanted and I asked him to help me by having my Sister, Susan Rose make my decisions and sign the required documents in my place.

7. I understand and pray that the Court approve this request.

Declaration, Dckt. 125. None of the above demonstrates Debtor's mental capacity, showing what Debtor does and does not understand. If anything, there is an implication Debtor does understand everything told to him, but that he might have trouble recalling some things later on.

In the (purported) declaration of the Debtor , what screams in its absence is the missing reference to seeing a doctor, missing reference to any medical treatment, and missing reference to how his diagnosed schizophrenia, bipolar condition, and anxiety disorders are being treated and managed.

DISCUSSION

What has been demonstrated over the past 10 months is that Debtor's Sister, Debtor's counsel Lucas Garcia, and Debtor's Sister's special counsel Peter Macaluso, are incapable of prosecuting a motion to appoint a representative. The court has provided clear, simple direction for 10 months.

Debtor's Sister and Debtor's counsel are adamant that Debtor lacks capacity. The court has consistently insisted on evidence supporting that Debtor lacks capacity. A very simple doctor's note explaining Debtor's condition would have sufficed. Testimony from a disinterested party would also have been helpful. Neither was provided.

Instead, Debtor's Sister provided a note from a doctor concluding (and not explaining why) Debtor cannot make "complex, legal and financial decisions." But, no testimony under penalty of perjury was provided, no explanation of Debtor's condition, and no conclusion that Debtor lacks capacity.

Debtor's Sister also repeatedly files her own declarations. Dckts. 54, 63, 97, 106, and 124. Debtor's Sister testimony under penalty of perjury includes the following:

3. In the summer of 2018, my brother, Thomas Warren, was released to my care after an altercation between him and Ms. Childe resulted in a law enforcement intervention.

4. My observation of my brother, Thomas Warren, at that time was that his mental health had deteriorated to some degree but he was functional and aware most of the time.

> 5. As the fall of 2018 progressed, I notice more reason to be concerned that he was unable to care for himself physically, financially, and legally.

Declaration, Dckt. 54. At that point, in the Fall of 2018, Debtor's sister took Debtor to an attorney (who has not appeared in this court or discussed the scope of his representation of Debtor) to have a power of attorney drafted to give Debtor's sister control over Debtor and Debtor's legal and financial affairs. *Id.*, ¶¶ 6, 7.

Interestingly, though Debtor's Sister states under penalty of perjury that she observed the Debtor's deteriorating condition, she did not take him to the doctor, but instead ran out to get a durable power of attorney so she could get control over his legal and financial affairs. Furthermore, Debtor's Sister is careful to say that, though she only took her brother to get a durable power of attorney after seeing his deteriorating condition, that "yes, Debtor had a lucid moment just long enough for the power of attorney to be valid."

Debtor's Sister further testified that she understood, was capable, and would fulfill her duties as a fiduciary of the Estate. *Id.*, ¶ 8. This testimony did not age well. A Motion For Relief from Stay is pending as to Debtor's home based on a modest delinquency in post-petition payments. At stake is Debtor's home, which has substantial exempt equity.

Debtor's sister then provides further testimony as to the Debtor's incapacity and the "need" for her to be in charge of his interests in this bankruptcy case.

> 8. At the prior hearing the court asked for independent corroboration of my opinion that Thomas Warren cannot manage his legal and financial affairs adequately.
>
> 9. I took Mr. Warren to see Dr. Zaheen and asked that he make a medical evaluation of Mr. Warrens ability to handle legal and financial affairs at present date. I can confirm that the exhibit marked as Supplemental Exhibit is the note I was given and I saw be faxed separately to Mr. Warrens attorney on February 28, 2019.

Declaration, Dckt. 63.

Interestingly, the Dr. Zaheen never was brought forward to testify and provide the court with any expert opinion the Debtor's actual mental health condition. The best that the Debtor's sister, having fiduciary obligations under the purported power of attorney, and Debtor's attorney could do was generate a "Too Whom It May Concern" letter purporting to be signed by a person identified as "Rokhshana Zaheen, MD" in a "note" which consists of, in its entirety, the following:

> To Whom It May Concern:
>
> Thomas Warren was seen in my office today. It is my professional opinion that my patient is not capable of making complex, legal and financial decisions due to his medical condition.

> Please feel free to contact my office, if you have any further questions.

Exhibit, Dckt. 62. Other than this "To Whom It May Concern" note, nothing else is provided. Debtor's sister, owing a fiduciary duty under the power of attorney, and Debtor's counsel, who is licensed to practice law in the State of California and currently admitted to practice law in the Eastern District of California, failed to provide the court with a declaration of the identified doctor. They also failed to provide the court with expert testimony to assist the court in making the required findings. They, especially Debtor's counsel, chose to ignore the Federal Rules of Evidence and just "slip a note under the door" and avoid providing real, credible testimony.

After the repeated failures and the court becoming increasingly stronger in pointing out the gross deficiencies in what the sister, with her fiduciary duties, and Debtor's counsel were doing, Debtor's sister obtained another attorney to assist her. With the assistance of a second attorney, Debtor's sister provided further testimony under penalty of perjury, which includes:

> 1. My brother, Thomas E. Warren, was admitted into Lakeview Terrace Convalescent on April 18, 2019 due to several conditions including schizophrenia, bipolar disorder, and anxiety disorder. These conditions are ongoing.

Declaration, Dckt. 106.

Debtor's sister tells the court that the Debtor is schizophrenic, the Debtor suffers from bipolar condition, and the Debtor suffers from anxiety disorder. Further, that all of these conditions are continuing. This is provided to get the court to put Debtor's sister in control of Debtor's rights, interests, and property in this bankruptcy case.

While it is true that this is "merely" Debtor's sister stating this under penalty of perjury, and that Debtor's sister, Debtor's sister's attorney, and Debtor's attorney have continued to work to keep from the court any actual, expert medical testimony, Debtor's sister states these as the disabling conditions rendering the Debtor incapable of prosecuting this case.

As the court's patience with the perceived incompetence of Debtor's sister in fulfilling her fiduciary duties under the power of attorney and the attorneys in presenting the court with competent, admissible third-party testimony of Debtor's mental health condition and competency, one final hearing was set of these issues.

Now, after the "legal noose" is tightening and the day of reckoning nigh, Debtor's sister, Debtor's sister's counsel, and Debtor's counsel seek to spin a different story. First, Debtor's sister now changes her testimony under penalty of perjury to include the following:

> 1. My brother, Thomas E. Warren, Debtor is doing better but his short-term memory is not doing well, as he can discuss things but not remember a week later.

Declaration, ¶ 124. It must be remembered that just a short while ago Debtor's sister testifies under penalty of perjury, supporting her efforts to take control of this case away from Debtor that: (1) Debtor has been diagnosed schizophrenic, (2) Debtor has been diagnosed bipolar, and (3) Debtor has been diagnosed with an anxiety disorder. No testimony is provided by a doctor. No testimony is provided as

to any treatment for these very serious mental heath conditions. No testimony is provided by a doctor of the outcome of the treatments for these very serious mental health conditions and the limitations on the abilities of the Debtor.

Rather, Debtor's sister, Debtor's sister's attorney, and Debtor's attorney appear to want to have the court treat these very serious mental health conditions as something akin to a hangnail, which has gotten better. Debtor's sister then delivers her "medical opinion" of Debtor's "stability," stating:

> 2. As he has been stable lately, I received a phone call from Thomas today, August 19, 2019 in which we discussed the status of his case, and I then asked him to call Mr. Macaluso on his cell-phone.

Id.

Debtor's sister's counsel then states that he spoke directly with the Debtor. Declaration, Dckt. 123. Debtor's sister's counsel then talks about discussing with the Debtor (who we have been told under penalty of perjury by Debtor's sister is diagnosed as schizophrenic, bipolar, and suffering from anxiety disorder) that it is Debtor's sister who is supposed to be in charge of all of Debtor's legal and financial affairs. Absent from the call was Debtor's counsel - the attorney who clearly and directly has legal duties and obligations to the Debtor.

Next, the Declaration of the Debtor is provided. Dckt. 125. This declaration has been prepared by the attorney for Debtor's sister, not the attorney who owes direct legal duties and obligations to the Debtor (though given that Debtor's sister has her fiduciary duties under the power of attorney and Debtor's sister's attorney purports to be representing her in her fiduciary capacity, Debtor's sister's attorney may well have duties and obligations that flow through to Debtor).

Debtor provides no testimony about his very serious mental health conditions. He does not speak of talking with his attorney. Rather, he talks about his conversations with his sister's attorney about disposing of his, the Debtor's, assets.

Denial of the Omnibus Motion

At this point in this case, the patience of the court has come to an end. Debtor's sister, Debtor's sister's attorney, and Debtor's counsel are presenting conflicting testimony under penalty of perjury. For the August 27, 2019 final hearing, Debtor's Sister now tries to paint Debtor as being competent - ignoring that he is diagnosed as schizophrenic, bipolar, and with an anxiety disorder. No expert testimony is provided. No testimony is provided as to treatment. No testimony is provided as to the Debtor's true mental health condition.

Rather, there has been a series of statements under penalty of perjury made to serve the ends of getting Debtor's sister in control -without regard to whether they are truthful or not. It is beyond the possibility that two licensed attorneys could not get the testimony of a doctor as to the Debtor's mental heath condition since October 2018. Rather, that testimony has been consciously avoided or hidden.

It is shocking, and the court has expressly noted this before, that the attorney for the Debtor who prepared the power of attorney by which Debtor ceded control over his legal and financial affairs to his sister, is nowhere to be found. That attorney has not provided testimony as to how that attorney

believed that Debtor was legally competent to execute a power of attorney. That attorney has not come forward to address whether he also represented Debtor's sister.

The historic arc of this case goes something like: "Debtor's Sister insists she must have control of the Estate because Debtor lack capacity - Debtor's sister testifies Debtor is diagnosed schizophrenic, bipolar, and has an anxiety disorder - Debtor is incapable of fulfilling his legal duties and sister must be in change - no competent medical testimony will be provided - and when the court calls on Debtor's Sister and the various attorneys to provide competent evidence - Debtor's Sister, Sister's counsel, and Debtor's attorney say "it's all ok, the Debtor can do it, and the court should not 'look behind the curtain' as to who is making the legal and financial decisions for the Debtor in this case (which includes all assets and rights of the Debtor, see 11 U.S.C. § 541)."

Debtor's Sister presents testimony that Debtor was admitted to a convalescent home in April 2019, and there was diagnosed with several mental conditions. April 2019 was half a year after the court had been requesting evidence as to Debtor's condition. Still, Debtor's Sister did not request a doctor's report while Debtor was admitted. The absence of medical expert testimony as to Debtor's condition throughout these proceedings is a deafening silence.

Notwithstanding the Debtor's capacity, Debtor's Sister has clearly demonstrated that she lacks the ability to fulfill her fiduciary duties to Debtor and to the Estate. Debtor's Sister could not prosecute (with Debtor's counsel and her own special counsel) a simple motion to appoint a representative. Furthermore, Debtor's Sister failed to ensure Debtor's mortgage was being paid, risking the loss of thousands of dollars in equity for Debtor.

The Motion is denied.

Referral To Adult Special Protective Services For Appointment Of Special Representative

The court has several times expressed concerns over the possibility of Debtor being caught in an elder abuse situation.

From the testimony provided, Debtor appears to have capacity to understand what is told to him. However, he may not have the capacity to be able to resist undue influence as he is being told what to do–told to call Debtor's Sister's special counsel, told about the bankruptcy case that is his case, told he must sell his home, told his sister must be in control of his Estate.

The appointment of a representative is necessary. The court shall refer this Matter to Adult Protective Services for recommendation of 3 proposed representatives.

One of the factors necessitating the appointment of a personal representative has been the efforts of Debtor's Sister and Debtor's counsel in these proceedings to take over control of the Estate. Those two persons strung this case along for nearly a year while they struggled to prosecute a simple motion. During that time, the Chapter 13 Trustee's dismissal motion and a motion for relief from stay have been pending.

To ensure the Debtor and Estate are protected, the court shall require Debtor's Sister and Debtor's counsel bore the costs of the personal representative. Debtor's Sister, and Debtor's counsel

Lucas Garcia, and each of them, shall deposit $10,000.00 into a trust account to be held to cover the cost of Debtor's personal representative.

Referral of this Matter to the U.S. Attorney

Debtor's sister, Debtor's sister's counsel, and Debtor's attorneys have filed various pleadings, provided testimony, made representations to the court, and have attempted to use federal law in putting sister in charge of the Debtor's bankruptcy estate and all of his assets. The court refers this case and the conduct of the parties to the U.S. Attorney for the Eastern District of California for his independent review of these parties and their conduct.

ORDERS TO SHOW CAUSE

Allocation of Expenses to Persons Who Failed to Act Consistent With Their Obligations and Fiduciary Duties

The court shall issue separate Orders to Show Cause why Debtor's Sister and Debtor's attorney, and each of them, should not deposit $10,000 with the clerk of the court to be applied to the costs and expenses of the court appointed representative, and conservator if that is determined necessary, for the Debtor. Given the conduct of these two person who have legal and fiduciary obligations to the Debtor during this case, they should pay the costs and expenses of obtaining such services, not the Debtor.

Conversion to Chapter 7

The inability/failure of the Debtor's Sister, Debtor's counsel, and now Debtor's Sister's attorney to obtain the appointment of a personal representative for the Debtor who Debtor's Sister has recently testified has been diagnosed as schizophrenic, bipolar, and suffering from an anxiety disorder, causes the court great concern. With each passing day, it appears that Debtor's Sister is controlling the assets of the Debtor.

The court has no idea how long it will take adult protective services to act in light of Debtor's Sister moving him from the Roseville, California area to Fresno, California, and then to Los Angles California. During this time, as during the past ten months, it appears that this Debtor is helpless against those who fail to act for him.

While not a perfect solution, conversion of the case to one under Chapter 7 puts an independent fiduciary Chapter 7 trustee in control. This includes over any post-petition claims of the estate concerning the assets of the bankruptcy estate.

The court will issue a separate order to show cause why this case should not be immediately converted 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

The court by separate orders shall refer this matter to Adult Protective Services for their consideration, and for their recommendation of three (3) proposed personal representatives and possible conservator for the debtor, Thomas Edward Warren ("Debtor"); the U.S. Attorney concerning the conduct of the persons purporting to represent the Debtor and having obligations to the Debtor, and the U.S. Trustee for conversion, identification of a personal representative, and such other action in light of the conduct of the persons in this case having duties flowing to the Debtor and the Bankruptcy Estate.

19. 17-22333-E-13 DPC-2 THOMAS WARREN

CONTINUED MOTION TO DISMISS CASE
9-10-18 [40]

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

Local Rule 9014-1(f)(1) Motion—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 September 10, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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).

The Motion to Dismiss is denied.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Thomas Warren ("Debtor") is $671.00 delinquent in plan payments, which represents slightly more than one month of the $650.00 plan payment. Before the hearing, another plan payment will have become due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues further that Debtor is in material default under the Plan. Approximately $14,185.00 remains to be paid under the confirmed plan (excluding future monthly contract installment amounts), which would require 70 months of the $205.00 payment (net of Trustee fees and monthly contract installments). Debtor will complete the Plan in 86 months, not the 60 months proposed. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to resolve these issues puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition to Trustee's Motion on September 26, 2018. Dckt. 44. In Debtor's Opposition, Debtor's counsel asserts:

> 1. Every reasonable effort has been made to fulfill the filing requirements of this case. There may have been delays, but these were not unreasonable or foreseeable.

2. The debtors live-in Roommate who contributes all of her income to the household (her name is Lori Childe), lost her IHSS income in June and was unable to gain more income (from Disability) until early September.

a. Due to recuperating income payments sufficient to catch up will be submitted on or before this hearing.

3. Finally, the trustee raises the fact that their calculations project an over extension of the plan time frame. This calculation has not been confirmed by counsel and will also take reviewing of all claims in further detail to ensure that no objections to claim or portion of claim needs to be filed.

Debtor requests the court deny this motion if Debtor becomes current, and allow for at least three weeks for a modified Chapter 13 Plan.

Debtor's Opposition is supported by the Declaration of Lori Childe, Debtor's roommate. Dckt. 45. Childe states she lost her IHSS income for service rendered to Debtor, but has since been approved for disability. Childe states further that a payment, using her disability and Debtor's social security income) will be made on or about October 6, 2018, which will be sufficient to cure all arrears that will have accrued by that time.

OCTOBER 10, 2018 HEARING

At the October 10, 2018, hearing Debtor's counsel reported that disagreement had broken out between Debtor and Ms. Childe, that her status as caregiver had been terminated, that she had not been paying rent, and that Debtor's sister (Susan Rose) had obtained counsel and was asserting that she now held the power of attorney for Debtor.

Debtor's counsel further reported that he now believed that Debtor's ability to prosecute this case on his own was impaired.

The court issued an Order continuing the hearing to November 14, 2018 and ordering the following parties to appear in person at the continued hearing:

1. Susan Rose, identified as Debtor's sister and current holder of a power of attorney;

2. Eric Jeppson, Esq., attorney for Ms. Rose;

3. Lori Childe, identified as Debtor's former care giver, holder of power of attorney, and roommate; and

4. Thomas Warren, the Debtor

Order, Dckt. 47. To be determined at the continued hearing is who the actual real party in interest is for the Debtor–whether it is the Debtor or a person with a power of attorney who must be appointed as a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025, 9014, and 1004.1.

Additionally, the court ordered that any supplemental pleadings be filed on or before October 30, 2018. *Id*.

NOVEMBER 14, 2018 HEARING

At the hearing counsel for the Debtor stated that he met with his client the morning of the hearing. Counsel believes that what appears to be his current condition, a personal representative under Rule is appropriate.

Counsel for the Debtor's sister reported that the sister concurs with the need for an appointment of a personal representative.

The court continued the hearing on the Motion to Dismiss to afford Debtor and his Counsel the opportunity to file a motion for appointment of a personal representative.

FEBRUARY 20, 2019 HEARING

At the hearing, the court continued the hearing to March 20, 2019 to be heard alongside the Debtor's Motion to Approve Nomination of Debtor's Representative.

MARCH 20, 2019 HEARING

At the March 20, 2019 hearing the court heard and denied Debtor's Motion to Approve Nomination of Debtor's Representative that was set for hearing that day. Civil Minutes, Dckt. 65. The court continued this hearing to afford Debtor one final opportunity to demonstrate the Debtor's competency impairment and obtain the appointment of a personal representative.

The denial of the Motion for Appointment of the proposed personal representative was due to the abject failure of the proposed personal representative and Debtor's counsel to present credible evidence of Debtor's mental health condition. The findings of the court from that denial include:

> At the insistence of the court, Debtor's counsel and the Proposed Personal Representative have been given the "opportunity" to provide the court with the necessary evidence of independent professional testimony for the court to make the competency determination. In its prior tentative ruling the court provided the above description of competency and determination thereof under applicable state law. However, the best that counsel and Proposed Personal Representative could produce was the following "To Whomever It May Concern" Doctor's Note:
>
> > To Whom It May Concern:
> >
> > Thomas Warren was seen in my office today. It is my professional opinion that my patient is not capable of making complex, legal and financial decisions due to his medical condition.
> >
> > Please feel free to contact my office, if you have any further

questions.

Exhibit, Dckt. 62. The Note does not provide testimony under penalty of perjury.

Debtor's attorney has prepared a declaration for Proposed Personal Representative in which she purports to "authenticate" the Note, presumably as some attempt to make it admissible, credible evidence. At best, this is hearsay, in which the sister is purporting to repeat what is in the Note, which purports to be statements made out of court by the Doctor. FN. 1.

The deficiencies in the purported "Doctor's Note" are many. First, by it being generically added "To Whom It May Concern," it appears that the Doctor had no idea why he was being asked to consider the competency of the Debtor. The Doctor was not aware of the significance in what he was saying or that it would be used to limit the Debtor's ability to access the federal courts. One questions the validity of such a "medical opinion" that is written in such a way that it could be used for any and every purpose to limit or deprive the Debtor of rights.

Second, merely stating his conclusion that "my patient is not capable of making complex, legal and financial decisions due to his medical condition," without providing the information based on his professional training and experience is of little, if any, assistance to the court in making the necessary determination. See Fed. R. Evid. 702.

Third, this "medical opinion" merely states that the Debtor is not capable of making "complex, legal and financial decisions." Some would say that the average least sophisticated consumer who is a party in bankruptcy court every day might suffer from such "complex decision" limitation. The Doctor offers no indication as to what is meant by "complex" or whether Debtor, represented by independent counsel, is capable of making the normal and usual decisions in his bankruptcy case.

Fourth, there is only a general reference to "medical condition." This could be a permanent and significant cognitive impairment. Or it may be that Debtor is suffering from a temporary medical condition from which he could recover sufficiently in the near future. The Doctor fails to provide, or withholds, such critical information.

Fifth, the Doctor offers no statement of how he has come to this "Opinion," the examinations of the Debtor, and how such "Opinion" has been reached after providing adequate medical professional due diligence in conformity with the standards of practice.

The Doctor does not state how long the Debtor has been his "patient," his consultation with other doctors who have provided medical services to Debtor, or a review of Debtor's medical history. Rather, based on the Proposed Personal Representative's testimony, it is she who selected the Doctor who has issued this

"To Whom It May Concern" Note.

. . .

In her Supplemental Declaration (after the court did not grant the request for appointment of a personal representative), the Proposed Personal Representative qualifies her prior testimony, stating that Debtor could actually care for himself physically and carry on a conversation, but could become confused "from time to time" and could not keep schedule appointments. Supplemental Declaration, ¶ 3; Dckt 63. These statements under penalty of perjury are not consistent with the personal representative's prior statements under penalty of perjury.

In the Supplemental Declaration the Proposed Personal Representative also states that she took the Debtor to an attorney to obtain a power of attorney. The attorney is not identified (though a law firm is named on the power of attorney). It is not stated whether the attorney was the Debtor's attorney or the Proposed Personal Representative's attorney.

With respect to the Doctor's Note, the Proposed Personal Representative states that she selected a doctor who is 222 miles from Debtor's residence. Nothing is stated about Debtor's long time doctor(s) in the Auburn area where he has resided. In her Declaration, the personal representative states that Debtor was released to her custody in the Summer of 2018 after a law enforcement intervention. That was after this case was filed, and Debtor may have moved, may have new doctors, and may no longer reside in Auburn, California. But such testimony is not provided. And again, the Doctor issuing the "To Whom It May Concern" Doctor's Note does not disclose any investigation with prior doctors of Debtor or review of Debtor's medical history.

Civil Minutes, Dckt. 64.

In concluding the ruling and having identified serious shortcomings by those who owe fiduciary duties to the Debtor, including those seeking to be his personal representative, the court's findings and conclusions state:

Debtor's counsel appeared at the hearing, advising the court that he recognized the shortcomings in the pleadings, but requested additional time to work with the proposed personal representative and the doctor who provided the Doctor's Note. Given that the matter has been continued and the evidence presented to be a generic one sentence Note" for which no testimony was provided, the court is reluctant to allow these three to proceed further.

Rather than referring this matter to Adult Protective Services, the U.S. Attorney, and U.S. Trustee, Debtor's counsel was able to convince to allow the Debtor one more chance to have a representative appointed before bringing in Adult Protective Services.

Id. at 8. The court further noted that in light of the failures of these various persons to act to protect the rights of the Debtor:

> The court denies this Motion without prejudice to allow Debtor's sister, the proposed personal representative, to be considered for the position. However, Debtor must obtain special counsel who is experienced in federal court and comes with a solid reputation in this federal court. That attorney will be the one who will assemble the motion and supporting evidence for the appointment of a personal representative and then effectively prosecute such a Motion.
>
> Debtor's current counsel proposed going back to Dr. Zaheen to have her now provide for detailed testimony. The court finds that proposition untenable. The court finds the Doctor's credibility to be so compromised by providing a "To Whom It May Concern Note" that might be used for who knows what purpose to deprive the Debtor of his rights in this case, that Dr. Zaheen cannot be a witness to provide testimony to the court. (See discussion above of the "To Whom It May Concern" one sentence Note declaring the Debtor not competent.)

Id. at 9. To afford these various persons with fiduciary duties to the Debtor to step up and make sure that his rights and interests were not damaged/lost/forfeited, the court instructed the Clerk of the Court to Serve informational copies of the order and the Civil Minutes on:

> Rokhshana Zaheen, M.D.
> Community Medical Providers Medical Group
> Community Foundation CMP, Reedly North
> 748 Manning Ave
> Reedley, California 93654-2232
>
> and
>
> The Attorney Who Provided Legal Services to Thomas Warren
> Jeppson & Griffin, LLP
> 1478 Stone Point Drive, Ste 100
> Roseville, California 95661;
>
> each of whom have independent professional obligations to Thomas Warren, the Chapter 13 Debtor in this bankruptcy case.

Id.

Since March 20, 2019, the file in this case has become silent as to these various persons with duties to the Debtor, including his sister who sought to be appointed his personal representative.

This lack of action causes the court great concern.

Now, the creditor having a claim secured by Debtor's residence is seeking relief from the stay to foreclose. In the Motion for Relief, the basic allegations include: (1) Debtor's monthly payment is $237.07; (2) since the filing of this bankruptcy case Debtor has defaulted in payments totaling

$1,715.39; and (3) the only legal basis for seeking the relief is that the Defaulted in post-petition payments - 11 U.S.C. § 362(d)(1) "for cause" grounds.

MAY 29, 2019 HEARING

At the May 29, 2019 hearing, the court continued the hearing to July 30, 2019 at 3:00 p.m. to allow the parties to submit evidence in support of their repeatedly unsubstantiated claims that Debtor is legally incompetent.

SUPPLEMENTAL RESPONSE

A Supplemental Response to the Motion was filed July 23, 2019. Dckt. 99. The Response states a Motion for Omnibus Relief Upon Incapacitation of Debtor was filed, along with a Motion To Employ realtor to market Debtor's property.

MOTIONS TO EMPLOY AND FOR OMNIBUS RELIEF

Since the July 16 hearing, a Motion to Employ Michael Snell as a real estate broker (Dckt. 91) was filed , and granted on July 22, 2019. Dckt. 93.

On July 23, 2019, a Motion For Omnibus Relief Upon Incapacitation of Debtor was filed. Dckt. 94. The Motion For Omnibus Relief seeks to substitute Susan Rose as successor-in-interest, waive the requirement of 11 U.S.C. § 1328 for Debtor, and for the Chapter 13 case to proceed as though Debtor were not incapacitated.

In support of the proposition that Debtor lacks capacity, the Omnibus Motion states the following:

1. As stated in the declaration of Susan Rose, the debtor is being cared by a care facility as directed by Susan Rose, after executing the power of attorney.

2. As states in the declaration of Susan Rose, the location is presently in Los Angeles, but upon the sale of the real property is intended to be used to move the debtor to Fresno to be closer to his sisters.

3. As stated in the declaration of Susan Rose, the deceasing [sic] ability of the debtor to care for himself.

4. As stated in the declaration of Susan Rose, the preceding year the debtor has been removed from his home, relocated to a Fresno care home, and now to a care home in Los Angeles.

5. As stated in the declaration of Susan Rose, the debtor does not have the capacity to manage his own affairs, and resist fraud or undue influence.

While the Omnibus Motion references a declaration of Debtor's current doctor, no

declaration is on file currently.

The Declaration of Susan Rose presents some odd testimony–which testimony is purported to be within Rose's personal knowledge. Some of the peculiar testimony is as follows:

> 1. The intent of this document is to comply with and serve as an Affidavit under California Probate Code Section 13100 and pursuant to California Code of Civil Procedure §377.32(a). Declaration ¶ 1, Dckt. 97.

Here, Rose is referencing code sections which she almost certainly does not have personal knowledge of.

> 2. I am the successor in interest to Thomas Edward Warren, as defined in Section 377.11 of the Code of Civil Procedure, and succeed to their interest in the above-entitled proceeding. *Id.*, ¶ 4.

Here, Rose offers her legal conclusion that she is a successor in interest as defined by Section 377.11 of the Code of Civil Procedure. This is not credible personal knowledge testimony from someone without a legal education.

> 3. No other person has a superior right to commence the above-entitled proceeding or to be substituted for Thomas Edward Warren in the above-entitled proceeding. *Id.*, ¶ 4.

This is another legal conclusion without explanation.

> 4. The current gross fair market value of the **decedent**'s real and personal property in California, excluding the property described in the California Probate Code Section 13050, does not exceed $150,000.00. *Id.*, ¶ 7(emphasis added).

Here, Rose concludes that Debtor has died. Since Debtor has not actually passed away (as reflected in all other pleadings), this testimony further demonstrates Rose is testifying as to things not within her personal knowledge. Or, Rose possibly did not read the declaration she signed.

Also here, Rose is providing her lay opinion as to the value of Debtor's property. While the owner of property is deemed to have competency to make such expert testimony, it is unclear what basis Rose has to make such testimony.

> 5. An inventory and appraisement of the personal property in the **decedent's** estate is specified on Schedule B of the bankruptcy petition. *Id.*, ¶ 8(emphasis added).

Again Rose addresses Debtor as "decedent."

> 6. A description of the property to be paid, transferred, or delivered to the undersigned under the provisions of California Probate Code Section 13100 are included in the previously filed Chapter 13 petition, amendments, and Chapter 13 plan.

> The undersigned requests that the described property be paid, transferred, or delivered to the undersigned. *Id.*, ¶¶ 9-10.

Here Rose addresses herself as "the undersigned."

JULY 30, 2019 HEARING

At the July 30, 2019 hearing the court continued the hearing light of the efforts to appoint a representative. Civil Minutes, Dckt. 111.

DISCUSSION

OMNIBUS MOTION

In reviewing the Omnibus Motion set for hearing in August 2019, the court has grave concerns. At the prior Motion To Appoint Representative (Dckt. 52), the court was presented only with testimony of Debtor's sister Rose and a power of attorney. The Omnibus Motion presents essentially the same, if not less, information. At the hearing on the Motion to Appoint Representative, the court stated the following:

> Here, there is no allegation that Debtor lacks capacity to represent himself. From the evidence presented, it appears Sister determined Debtor's mental state was declining and convinced Debtor to give Sister power of attorney (though Debtor had capacity enough for the grant of power of attorney to be valid). Dckt. 54. Sister now seeks to represent Debtor in this bankruptcy case, in what appears to be a precautionary rather than necessary measure.
>
> No evidence is presented as to Debtor's mental state, such as an expert medical opinion. Sister does not explain what qualifications she has to assess Debtor's mental state.

Civil Minutes, Dckt. 59.

The court still has not been presented with expert medical testimony. Rose and her counsel seem to argue that the court should look to the facts suggesting incapacity over a medical conclusion. However, the court has not been provided with any facts as to Debtor's condition.

The first time the court was alerted to potential capacity issues was at a hearing on Trustee's Motion to Dismiss the case on October 10, 2018 (very nearly a year ago). Civil Minutes, Dckt. 49. In nearly a year's time, the court has essentially only been presented with the following information:

1. Debtor had a dispute with his home care provider which resulted in his arrest.

2. Debtor was released to the custody of Susan Rose, his sister.

3. Susan Rose concluded that Debtor lacked capacity.

4. Debtor then, while not having capacity, signed a durable power of attorney.

5. Debtor is, in the professional opinion of a medical doctor (based on an unexplained evaluation technique), not capable of making complex, legal and financial decisions due to his (unexplained) medical condition.

The court has at each hearing since October 2018 insisted on being presented with evidence enough to make a determination of Debtor's possible incapacity. Despite the court's guidance and insistence, the Debtor's counsel and Rose's counsel again seem to be coming up short.

What has been made clear to the court is that these default have occurred either as part of a coordinated plan to have Debtor's sister take and exercise Debtor's legal and financial rights, or the gross incompetence of those who owe the Debtor legal and fiduciary obligations.

The court has referred this matter to adult protective services for appointment of a representative in this case and possibly a conservator, as well as the referral to the U.S. Attorney.

Debtor should not be punished for the intentional shortcomings and the failings of others.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied.

20. 17-22333-E-13 JCW-1 THOMAS WARREN

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-19 [71]

SELECT PORTFOLIO SERVICING, INC. VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, interested parties, and parties requesting special notice on May 24, 2019. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxxxxxx.

Select Portfolio Servicing, Inc., servicing agent for U.S. Bank National Association, as trustee, on behalf of the holders of the Home Equity Asset Trust 2005-4 Home Equity Pass Through Certificates, Series 2005-4 ("Movant") seeks relief from the automatic stay with respect to the debtor, Thomas Edward Warren's ("Debtor"), real property commonly known as 11563 Quartz Drive Unit 3, Auburn, California (the "Property"). Movant has provided the Declaration of Kendall Proeun to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Kendall Proeun Declaration provides testimony that Debtor has not made 8 post-petition payments, with a total of $1,715.39 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $30,735.56, as stated in the Kendall Proeun Declaration, while the value of the Property is determined to be $78,000.00, as stated in Schedules B and D filed by

Debtor.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 11, 2019. Dckt. 78. Trustee notes Debtor is delinquent $6,521.00 under the confirmed plan, and that there is a pending motion to dismiss the case.

JUNE 25, 2019 HEARING

At the June 25, 2019 hearing, the court continued the hearing to provide Debtor's Counsel the opportunity to address the deficiencies in the evidence (or lack thereof) provided in support of Debtor's sister's assertion that Debtor is legally incompetent. The court is considering referring the case to Adult Protective Services for the appointment of both a personal representative and recommended appointment of a conservator. The court is also considering the issuance of an order to show cause as to why Debtor's sister and counsel should not pay all of the costs and expenses of a conservator and personal representative out of the Debtor's remaining assets. The court is also considering referral of this case to the U.S. Attorney and the Federal Defender for the Eastern District of California for recommendations as to the available resources for incompetent parties in federal judicial proceedings.

DECLARATION IN RESPONSE TO MOTION FOR RELIEF FROM AUTOMATIC STAY

On July 7, 2019 Debtor's Counsel filed a Declaration in response to Select Portfolio Servicing's motion for relief from automatic stay. Dckt. 83. The Declaration states the following:

A. Peter Macaluso was retained as Debtor's Counsel on July 1, 2019.

B. Debtor's Counsel has drafted a Declaration of Susan Rose and a Declaration for the attending Doctor to sign, attesting to Debtor's "condition". Debtor's Counsel anticipates a Motion for Omnibus/Nomination of Representative will be filed prior to the continued hearing on the matter, and requested this matter be further continued.

C. The Property of Debtor has been listed for sale and a Motion to Employ Realer will be filed on or before the continued hearing date. Exhibit A, Dckt. 84

JULY 16, 2019 HEARING

At the July 16, 2019 hearing, the court again continued the hearing to allow for the appointment of a personal representative. Civil Minutes, Dckt. 90.

SUPPLEMENTAL RESPONSE

A Supplemental Response to the Motion was filed July 23, 2019. Dckt. 99. The Response states a Motion for Omnibus Relief Upon Incapacitation of Debtor was filed, along with a Motion To

Employ realtor to market Debtor's property.

MOTIONS TO EMPLOY AND FOR OMNIBUS RELIEF

Since the July 16 hearing, a Motion to Employ Michael Snell as a real estate broker (Dckt. 91) was filed , and granted on July 22, 2019. Dckt. 93.

On July 23, 2019, a Motion For Omnibus Relief Upon Incapacitation of Debtor was filed. Dckt. 94. The Motion For Omnibus Relief seeks to substitute Susan Rose as successor-in-interest, waive the requirement of 11 U.S.C. § 1328 for Debtor, and for the Chapter 13 case to proceed as though Debtor were not incapacitated.

In support of the proposition that Debtor lacks capacity, the Omnibus Motion states the following:

1. As stated in the declaration of Susan Rose, the debtor is being cared by a care facility as directed by Susan Rose, after executing the power of attorney.

2. As states in the declaration of Susan Rose, the location is presently in Los Angeles, but upon the sale of the real property is intended to be used to move the debtor to Fresno to be closer to his sisters.

3. As stated in the declaration of Susan Rose, the deceasing [sic] ability of the debtor to care for himself.

4. As stated in the declaration of Susan Rose, the preceding year the debtor has been removed from his home, relocated to a Fresno care home, and now to a care home in Los Angeles.

5. As stated in the declaration of Susan Rose, the debtor does not have the capacity to manage his own affairs, and resist fraud or undue influence.

While the Omnibus Motion references a declaration of Debtor's current doctor, no declaration is on file currently.

The Declaration of Susan Rose presents some odd testimony–which testimony is purported to be within Rose's personal knowledge. Some of the peculiar testimony is as follows:

1. The intent of this document is to comply with and serve as an Affidavit under California Probate Code Section 13100 and pursuant to California Code of Civil Procedure §377.32(a). Declaration ¶ 1, Dckt. 97.

Here, Rose is referencing code sections which she almost certainly does not have personal knowledge of.

California Probate Code § 13100 relates to the estate of a decedent - a dead person. California Code of Civil Procedure § 377.32(a) also relates to a decedent's - dead person's - successor.

Here, we are presented with the reasonably "simple" issue of appointing a successor in interest when there is an incompetent or deceased debtor as provided in Federal Rule of Civil Procedure 25, Federal Rules of Bankruptcy Procedure 1016 and 7025.

> 2. I am the successor in interest to Thomas Edward Warren, as defined in Section 377.11 of the Code of Civil Procedure, and succeed to their interest in the above-entitled proceeding. *Id.*, ¶ 4.

Here, Rose offers her legal conclusion that she is a successor in interest as defined by Section 377.11 of the Code of Civil Procedure. This is not credible personal knowledge testimony from someone without a legal education.

> 3. No other person has a superior right to commence the above-entitled proceeding or to be substituted for Thomas Edward Warren in the above-entitled proceeding. *Id.*, ¶ 4.

This is another legal conclusion without explanation.

> 4. The current gross fair market value of the **decedent**'s real and personal property in California, excluding the property described in the California Probate Code Section 13050, does not exceed $150,000.00. *Id.*, ¶ 7(emphasis added).

Here, Rose concludes that Debtor has died. Since Debtor has not actually passed away (as reflected in all other pleadings), this testimony further demonstrates Rose is testifying as to things not within her personal knowledge. Or, Rose possibly did not read the declaration she signed.

Also here, Rose is providing her lay opinion as to the value of Debtor's property. While the owner of property is deemed to have competency to make such expert testimony, it is unclear what basis Rose has to make such testimony.

> 5. An inventory and appraisement of the personal property in the **decedent's** estate is specified on Schedule B of the bankruptcy petition. *Id.*, ¶ 8(emphasis added).

Again Rose addresses Debtor as "decedent."

> 6. A description of the property to be paid, transferred, or delivered to the undersigned under the provisions of California Probate Code Section 13100 are included in the previously filed Chapter 13 petition, amendments, and Chapter 13 plan.
>
> The undersigned requests that the described property be paid, transferred, or delivered to the undersigned. *Id.*, ¶¶ 9-10.

Here Rose addresses herself as "the undersigned."

JULY 30, 2019 HEARING

At the July 30, 2019 hearing, Debtor agreed to make adequate protection payments of $400 beginning with July 2019, to Movant while Debtor worked on getting the personal representative appointed and the property that secures Movant's claim marketed and sold. Civil Minutes, Dckt. 110. The process has been delayed, in part, due to Debtor's former roommate refusing to vacate the premises and turn control of it to the Debtor as the representative of the bankruptcy estate in this case.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

INCOMPETENCY OF DEBTOR

This court has been barraged with ineffective attempts by Debtor's sister, Susan Rose, and Debtor's attorney to have a personal representative appointed due to Debtor being mentally incompetent. *See* Civil Minutes, Dckt. 64, for discussion of latest efforts. This has been sought notwithstanding Debtor's sister asserting that the Debtor was legally competent to sign a post-petition power of attorney in favor of the sister on September 27, 2018.

On Schedule A/B Debtor, to the extent he was competent when the case was filed, states that the property securing Movant's claim has a value of $78,000.00. Dckt. 11 at 3. Movant's claim is only $30,000, meaning that this incompetent debtor is looking at losing $50,000 because his sister and counsel cannot prosecute a motion for appointment of a personal representative.

As discussed in the Civil Minutes (Dckt. 64) referenced above, the court was not impressed with the two line expert "to whom it may concern" note (not testimony) from a person identified as an "MD" that the Debtor "is not capable of making complex, legal and financial decisions. . . ." Dckt. 62 at 2. This could be said of many "least sophisticated consumer debtors" who seek relief in the bankruptcy court.

In her latest Declaration (Dckt. 54) Debtor's sister testifies under penalty of perjury that the Debtor was "released to my [Sister's] care" in the summer of 2018. Declaration ¶ 3; Dckt. 54. She continues to testify that while in her "care," Debtor's sister noted a deterioration in the Debtor's mental

health. *Id.*, ¶¶ 4, 5.

Because of his deteriorating mental health, Debtor's sister took him to an attorney to obtain a power of attorney in favor of the sister. She testifies that both she and the attorney concluded that Debtor had sufficient competency to give the power of attorney so his sister could act for him in his legal and financial dealings. *Id.*, ¶¶ 6, 7.

With the power of attorney, sister owes fiduciary duties to Debtor. Debtor's counsel owes duties to his client.

Unfortunately, sister and Debtor's counsel, in fulfilling their duties to the Debtor, have only given the court "sister wants to" and "here is a two line note (not expert testimony under penalty of perjury) saying Debtor cannot handle complex legal matters" explanations. While the court has no doubts about Debtor's counsel's ethics, the rules and fulfilling of duties cannot be selectively applied and counsel be given a pass because "he's a good guy."

In reality Debtor's sister and counsel have given the court nothing more than, "sisters says put her in charge, you don't need to see the debtor, you don't need any expert testimony, just give the sister the keys to the Debtor's kingdom."

Now the court sees that Debtor's case is crumbling and those responsible for, and having fiduciary duties to, Debtor are allowing Debtor's rights, interests, and property to be lost.

Though a simple motion, supported by simple expert (independent) doctor testimony, presented by a special counsel (whose credibility on this issue had not been squandered as it has by Debtor's current counsel) to show this is all on the up and up, could have been filed to get a personal representative appointed, none has been done.

OMNIBUS MOTION

In reviewing the Omnibus Motion set for hearing in August 2019, the court has grave concerns. At the prior Motion To Appoint Representative (Dckt. 52), the court was presented only with testimony of Debtor's sister Rose and a power of attorney. The Omnibus Motion presents essentially the same, if not less, information. At the hearing on the Motion to Appoint Representative, the court stated the following:

> Here, there is no allegation that Debtor lacks capacity to represent himself. From the evidence presented, it appears Sister determined Debtor's mental state was declining and convinced Debtor to give Sister power of attorney (though Debtor had capacity enough for the grant of power of attorney to be valid). Dckt. 54. Sister now seeks to represent Debtor in this bankruptcy case, in what appears to be a precautionary rather than necessary measure.
>
> No evidence is presented as to Debtor's mental state, such as an expert medical opinion. Sister does not explain what qualifications she has to assess Debtor's mental state.

Civil Minutes, Dckt. 59.

The court still has not been presented with expert medical testimony. Rose and her counsel seem to argue that the court should look to the facts suggesting incapacity over a medical conclusion. However, the court has not been provided with any facts as to Debtor's condition.

The first time the court was alerted to potential capacity issues was at a hearing on Trustee's Motion to Dismiss the case on October 10, 2018 (very nearly a year ago). Civil Minutes, Dckt. 49. In nearly a year's time, the court has essentially only been presented with the following information:

1. Debtor had a dispute with his home care provider which resulted in his arrest.

2. Debtor was released to the custody of Susan Rose, his sister.

3. Susan Rose concluded that Debtor lacked capacity.

4. Debtor then, while not having capacity, signed a durable power of attorney.

5. Debtor is, in the professional opinion of a medical doctor (based on an unexplained evaluation technique), not capable of making complex, legal and financial decisions due to his (unexplained) medical condition.

The court has at each hearing since October 2018 insisted on being presented with evidence enough to make a determination of Debtor's possible incapacity. Despite the court's guidance and insistence, the Debtor's counsel and Rose's counsel again seem to be coming up short.

Continuance or Denial of Motion

Given Debtor's stated incompetency, the court cannot issue an effective order against him. Movant consented to a continuance of this hearing rather than denial to avoid the cost and expense of having to file a new motion.

In light of the apparent equity cushion, continuing the hearing should not have a negative financial consequence on Movant.

The court has appointed a limited purpose special representative and a broker for the marketing and sale of the property securing Movant's claim.

At the hearing, **xxxxxxxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Select Portfolio Servicing, Inc., servicing agent for U.S. Bank National Association, as trustee, on behalf of the holders of the Home Equity Asset Trust 2005-4 Home Equity Pass Through Certificates, Series 2005-4 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Relief From the Automatic Stay is **XXXXXXXXXXXX**.

FINAL RULINGS

21. 19-23562-E-13 NFS-1 — SHERAZ/TERRA KHAN — OBJECTION TO CONFIRMATION OF PLAN BY ROUNDPOINT MORTGAGE SERVICING CORPORATION 7-24-19 [17]

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

Local Rule 9014-1(f)(2) Objection—Hearing Not 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, and Office of the United States Trustee on July 24, 2019. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

RoundPoint Mortgage Servicing Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the debtors, Sheraz Ahmed Khan and Terra Elaine Khan's ("Debtor") plan fails to The Debtors' Plan fails to provide for the cure of the pre-petition arrears owed to RoundPoint. The total amount of pre-petition arrears due and owing to RoundPoint total approximately $1,487.98.

DEBTOR'S REPLY

Debtor filed a Reply on August 13, 2019 stating only that a new plan will be filed prior to the hearing date. Dckt. 20.

DISCUSSION

Subsequent to the filing of this Objection, Debtor filed an Amended and corresponding Motion to Confirm on August 22, 2019. Dckts. 22, 28. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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 RoundPoint Mortgage Servicing Corporation ("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.

22. 19-23540-E-13 DPC-1 — LINDSAY CANNADAY — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-23-19 [24]

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

Local Rule 9014-1(f)(2) Objection—Hearing Not 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 23, 2019. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation is continued to September 10, 2019 at 3:00 p.m.

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

A. The debtor, Lindsay Martine Cannaday ("Debtor") failed to appear at the Meeting of Creditors on July 18, 2019.

B. Debtor's plan relies on a motion to avoid lien.

C. Debtor's Schedule J lists monthly expenses of $75 for charity, $210 for telephone, and $4,724.00 for taxes.

D. Debtor is anticipated to receive a $12,667.00 tax refund for 2018. No tax refund is committed through the plan.

E. Debtor's bank records indicate Debtor is receiving income through Venmo. This income is not explained or listed on Debtor's Schedules.

F. Debtor has not provided information as to the non-filing spouse's income.

DECLARATION OF DEBTOR'S SPOUSE

Jerimiah M. Cannaday, Debtor's non-filing spouse ("Debtor's Spouse"), filed a Declaration in response to the Objection on August 13, 2019. The Declaration provides the following testimony:

1. Debtor's Spouse provides the income for Debtor's household.

2. Debtor failed to appear at the Meeting of Creditors because she was admitted to a blackout center for alcoholism treatment.

3. Debtor's lien avoidance motion was granted.

4. Debtor has been donating to St. Jude's hospital $75 monthly for well over a year.

5. Debtor's higher than average cell phone cost is due to Debtor's Spouse's work requirements.

6. Debtor's Spouse is uncertain whether future tax refunds will exist, but is amenable to contributing future refunds above $2,000.00.

7. Debtor's Spouse did not file his income because it is listed on Schedule I and elsewhere; however, Debtor's Spouse is amenable to filing an Amended Statement of Financial Affairs with that information.

TRUSTEE'S SUPPLEMENT

Trustee filed a Reply to Debtor's Spouse's Declaration on August 19, 2019. Dckt. 37. The Reply in large part summarizes the information provided through the Debtor's Spouse's Declaration. Of note, Trustee argues Debtor's Spouse did not respond to whether there was a $12,667.00 tax refund from the 2018 tax year.

DISCUSSION

Debtor did not appear at the Meeting of Creditors on July 19, 2019. Many of the Trustee's grounds for objection relate to uncertainty over the financial affair of the Debtor and Debtor's Spouse.

The court shall continue the hearing on the Objection to September 10, 2019 at 3:00 p.m. to allow Debtor to appear at the continued Meeting of Creditors and Trustee to obtain a fuller picture of Debtor's financial affairs.

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 hearing on the Objection to Confirmation is continued to September 10, 2019 at 3:00 p.m.

23. 19-23883-E-13 DPC-2 WALTER/DENISE COOK

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-19 [20]

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

Local Rule 9014-1(f)(2) Objection—Hearing Not 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 30, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled as moot, the plan already having been confirmed on August 20, 2019. Dckt. 30.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor, Walter Douglas Cook, III and Denise Cook's ("Debtor") plan fails the liquidation test.

Since the Objection was filed, a proposed order was submitted by Debtor, which was approved by Trustee. The court issued that Order Confirming the Chapter 13 Plan on August 20, 2019. Dckt. 30.

The Plan having been confirmed, the Objection is overruled 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 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 as moot, the plan already having been confirmed on August 20, 2019. Dckt. 30.

24. 19-23883-E-13 DPC-1 WALTER/DENISE COOK

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-30-19 [24]

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 and Debtor's Attorney on July 30, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), objects to Walter Douglas Cook, III, and Denise Cook's ("Debtor") claimed exemptions as to SAFE Credit Union checking and savings accounts under California Code of Civil Procedure § 704.115(b). Trustee argues that code section applies to retirement private retirement funds, and not Debtor's bank account.

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

unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Debtor filed Amended Schedule C on August 6, 2019. Dckt. 28. However, the Matter is not mooted where the Debtor can freely make further amendments to add the exemption back in.

Here, Debtor attempted to claim bank accounts exempt under the code section applicable to private retirement funds. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions 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 Objection is sustained, and the claimed exemptions for SAFE Credit Union checking and savings accounts under California Code of Civil Procedure § 704.115(b) listed on Schedule C (Dckt. 1) are disallowed in their entirety.

25. 18-24142-E-13 MS-1 DENISE BARKER

OBJECTION TO CLAIM OF PINNACLE CREDIT SERVICES, LLC, CLAIM NUMBER 7
7-4-19 [25]

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

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 4, 2019. By the court's calculation, 54 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 7 of Pinnacle Credit Services, LLC is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Debtor, Denise Barker ("Objector") requests that the court disallow the claim of Pinnacle Credit Services, LLC ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $860.75. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was March 15, 2007. The date of last payment on the Statement of Account Information attached to the Proof of Claim states the same date.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting

to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 7 lists the charge off date as October 31, 2007. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after March 15, 2007. Thus, the four-year statute of limitations expired on March 15, 2011.

This bankruptcy case was filed on July 1, 2018—several years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Pinnacle Credit Services, LLC ("Creditor") filed in this case by the Chapter 13 Debtor, Denise Barker ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 7 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

26. 18-24142-E-13 MS-2 DENISE BARKER

OBJECTION TO CLAIM OF PINNACLE CREDIT SERVICES, LLC, CLAIM NUMBER 2
7-4-19 [29]

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

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 4, 2019. By the court's calculation, 54 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 2 of Pinnacle Credit Services, LLC is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Debtor, Denise Barker ("Objector") requests that the court disallow the claim of Pinnacle Credit Services, LLC ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $852.25. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was March 15, 2007. The date of last payment on the Statement of Account Information attached to the Proof of Claim is same date.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting

to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 2 lists the charge off date as September 29, 2007. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after March 15, 2007. Thus, the four-year statute of limitations expired on March 15, 2011.

This bankruptcy case was filed on July 1, 2018—several years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Pinnacle Credit Services, LLC ("Creditor") filed in this case by the Chapter 13 Debtor, Denise Barker ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 2 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

27. 18-24142-E-13 MS-3 DENISE BARKER

OBJECTION TO CLAIM OF NCB MANAGEMENT SERVICES, INC., CLAIM NUMBER 1
7-4-19 [33]

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

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 4, 2019. By the court's calculation, 54 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 1 of NCB Management Services, Inc. is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Debtor, Denise Barker ("Objector") requests that the court disallow the claim of NCB Management Services, Inc. ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,019.66. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date was March 14, 2007, and charge off date was November 8, 2007.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie

validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 1 lists the charge off date as November 8, 2007. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after March 14, 2007. Thus, the four-year statute of limitations expired on March 14, 2011.

This bankruptcy case was filed on July 1, 2018—several years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of NCB Management Services, Inc. ("Creditor") filed in this case by the Chapter 13 Debtor, Denise Barker ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number1 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

28. 18-24142-E-13 DENISE BARKER
MS-4

OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 3
7-4-19 [37]

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

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 4, 2019. By the court's calculation, 54 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 3 of Merrick Bank is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Debtor, Denise Barker ("Objector") requests that the court disallow the claim of Merrick Bank ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $808.59. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date was March 14, 2007 and charge off date was November 6, 2007. The date of last payment on the Statement of Account Information attached to the Proof of Claim states March 14, 2007.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting

to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 3 lists the charge off date as November 6, 2007. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after March 14, 2007. Thus, the four-year statute of limitations expired on March 14, 2011.

This bankruptcy case was filed on July 1, 2018—several years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Merrick Bank ("Creditor") filed in this case by the Chapter 13 Debtor, Denise Barker ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 3 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

29. 18-24142-E-13 DENISE BARKER
MS-5

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 6
7-4-19 [41]

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

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 4, 2019. By the court's calculation, 54 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 6 of LVNV Funding, LLC is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Debtor, Denise Barker ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,667.06. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date was March 15, 2007 and the charge off date was October 30, 2007. The date of last payment on the Statement of Account Information attached to the Proof of Claim states March 15, 2007.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie

validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 6 lists the charge off date as October 30, 2007. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after March 15, 2007. Thus, the four-year statute of limitations expired on March 15, 2011.

This bankruptcy case was filed on July 1, 2018—several years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of LVNV Funding, LLC ("Creditor") filed in this case by the Chapter 13 Debtor, Denise Barker ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 6 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

30. 19-22727-E-13 MGG-2 SALATHIA WILLIAMS MOTION TO CONFIRM PLAN 7-22-19 [34]

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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Salathia Williams ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Non-Opposition on August 5, 2019. Dckt. 44. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Salathia Williams ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on July 22, 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.

31. 18-25901-E-13 MS-1 RICHARD CAMP AND JACQULYN BELL — MOTION TO MODIFY PLAN 7-15-19 [39]

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

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2019. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Richard Camp and Jacqulyn Bell ("Debtor"), have filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on August 9, 2019 opposing confirmation unless language was added clarifying amounts paid to Class 1 claim Caliber Home Loan. Dckt. 47. After Debtor filed a Reply proposing to address the issue in the confirmation order (Dckt. 50), Trustee filed a Supplemental Response on August 19, 2019 indicating non-opposition. Dckt. 53.

Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Richard Camp and Jacqulyn Bell ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 15, 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 Trustee will submit the proposed order to the court.

32. 19-21995-E-13 JMM-2 **NEKESHIA JOHNSON** **MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES 7-17-19 [39]**

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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 22, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Dealer Services ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,600.00.

The Motion filed by the debtor, Nekeshia Nekicon Johnson ("Debtor") seeks to value the secured claim of Wells Fargo Dealer Services ("Creditor"). Debtor is the owner of a 2011 Nissan Altima, VIN ending in 0478 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,600.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d

1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 9, 2019 based on Debtor's failure to file a supporting declaration. Dckt. 52.

Subsequently, on August 12, 2019, Debtor filed a Declaration supporting the factual allegations made in the Motion. Dckt. 55.

CREDITOR'S PROOF OF CLAIM

Creditor filed a Proof of Claim, No. 12 ("Claim") on June 10, 2019. The Claim states Creditors claim is secured in the amount of $8,150.00 (the value of the Vehicle) and unsecured in the amount of $1,691.63

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor has provided her testimony in which she asserts her opinion of the value of the Vehicle being $5,600.00. Dckt. 55. Debtor's opinion was formed with knowledge of the Vehicle and after reviewing Kelly Blue Book and Edmonds valuations.

The lien on the Vehicle's title secures a purchase-money loan incurred on February 1, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,841.63. Proof of Claim, No. 12. 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 $5,600.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by the debtor, Nekeshia Nekicon Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wells Fargo Dealer Services ("Creditor") secured by an asset described as 2011 Nissan Altima, VIN ending in 0478 ("Vehicle") is determined to be a secured claim in the amount of $5,600.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,600.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

33. 19-23455-E-13 WLG-2 KARINA HUCKABAY MOTION TO CONFIRM PLAN 7-15-19 [26]

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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2019. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Karina Lyn Huckabay ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Non-Opposition on July 23, 2019. Dckt. 34. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Karina Lyn Huckabay ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on July 15, 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.

34. 19-22258-E-13 DBJ-1 LELAND PAPA MOTION TO MODIFY PLAN 6-25-19 [17]

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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 25, 2019. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Leland Phillip Papa ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on August 12, 2019. Dckt. 23. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the

debtor, Leland Phillip Papa ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 25, 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 Trustee will submit the proposed order to the court.

35. 19-23966-E-13 BLG-1 ALVIN/MICHELLE HAYMON MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION 7-30-19 [17]

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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Schools Financial Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,000.00.

The Motion filed by the debtor, Alvin James Haymon and Michelle Bobbi Haymon ("Debtor") to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 19. Debtor is the owner of a 2012 Hyundai Genesis ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $12,000.00 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).

CREDITOR'S PROOF OF CLAIM

Creditor filed Proof of Claim, No. 8 ("Claim") on July 11, 2019. The Claim states Creditor's claim is secured in the amount of $12,000.00 (the value of the Vehicle) and unsecured in the amount of $7,408.00.

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor and Creditor both asserts the value of the Vehicle is $12,000.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on December 17, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $19,408.01. Proof of Claim, No. 8. 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 $12,000.00, 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, Alvin James Haymon and Michelle Bobbi Haymon ("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 Schools Financial Credit Union ("Creditor") secured by

an asset described as 2012 Hyundai Genesis ("Vehicle") is determined to be a secured claim in the amount of $12,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $12,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

36. 16-25812-E-13 GEL-1 — BARRY MORRIS AND VICTORIA LUCENA — MOTION TO MODIFY PLAN 7-23-19 [20]

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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 23, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Barry Russell Morris and Victoria Anne Lucena ("Debtor"), have filed evidence in support of confirmation. The modification reduces the plan term from 60 to 40 months due to scheduled claims being less than anticipated. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on August 12, 2019. Dckt. 26. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Barry Russell Morris and Victoria Anne Lucena ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of

counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 23, 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 Trustee will submit the proposed order to the court.