

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 28, 2018 at 2:00 p.m.

1.	<u>18-22003</u> -C-13	OREDA HAGY	CONTINUED MOTION TO DISMISS
	<u>DPC</u> -2	Michael Hays	CASE
			6-18-18 [<u>54</u>]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 18, 2018. Fourteen days' notice is required. That requirement was met.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

A. Debtor is \$2,376.00 delinquent in plan payments. The debtor has paid \$0.00 into the plan to date.

B. Debtor has not provided the Trustee with all required business

documents.

C. Debtors failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required.

D. There is no plan pending.

The court finds the Trustee's objections valid. As the debtor is delinquent and has not complied with all of the requirements under 11 U.S.C. § 1322 and 1325, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee 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 granted and the case is dismissed.

2. [18-24115](#)-C-13 VOLTAIRE VILLAVERDE
[HLG-1](#) Kristy Hernandez

MOTION TO AVOID LIEN OF THE
BEST SERVICE CO, INC.
8-8-18 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. Fourteen days' notice is required. That requirement was met.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Avoid Judicial Lien is granted.

A judgment was entered against the Debtor in favor of The Best Service Co., Inc. ("Creditor") for the sum of \$17,862.73. The abstract of judgment was recorded with Sacramento County on May 29, 2018. That lien attached to the Debtor's residential real property commonly known as 7565 Watson Way Citrus Heights, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$402,560.00 as of the date of the petition. The unavoidable consensual liens total \$290,613.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the

Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of The Best Service Co., Inc., Sacramento County Superior Court Case No. 34-2017-00209150, Document No. 201805290101, recorded on May 29, 2018, with the Sacramento County Recorder, against the real property commonly known 7565 Watson Way Citrus Heights, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. [16-26724](#)-C-13 ADAM LOVAN
[ADR](#)-1 Justin Kuney

OBJECTION TO CLAIM OF
SACRAMENTO COUNTY DEPT. CHILD
SUPPORT SERVICES, CLAIM NUMBER
15
7-10-18 [[37](#)]

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rules 3001-1(b)(1) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's counsel, Ch 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 10, 2018. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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.

<p>The Objection to Proof of Claim of Sacramento County Dept. Child Support Services, Claim Number 15 is sustained.</p>
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Debtor, Adam F. Lovan, objects to the claim of the Sacramento County Department of Child Support Services, Claim #15-1 that is asserted to be a priority claim in the amount \$1,872.13. Objector asserts that the claim for past due support requirements has been forgiven and or terminated. Debtor states in his declaration that he has re-established a relationship with his son's mother and that she terminated and forgave his requirement to pay past due support. Debtor's declaration is also supported with by letter from the

Sacramento County Department of Child Support Services dated June 14, 2018 indicating that "the local child support agency will stop providing collection services" but also notes that "if you are currently ordered to pay child support, you must continue to pay."

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).

No response to the objection to proof of claim was filed. Therefore, the default of the Sacramento County Department of Child Support Services will be entered. The presumption of prima facie validity has been overcome by the debtor.

Based on the evidence before the court, the creditor's claim is disallowed. 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 the Sacramento County Department of Child Support Services, Creditor filed in this case by the 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 objection to Proof of Claim Number 15-1 of the Sacramento County Department of Child Support Services is sustained and the claim is disallowed.

4. [18-20628](#)-C-13 LEON DOTSON
[18-2061](#) Peter Macaluso
DOTSON V. CITY OF SACRAMENTO

MOTION TO DISMISS CAUSE(S) OF
ACTION FROM COMPLAINT
7-11-18 [[13](#)]

No Tentative Ruling Provided

5. [18-21233](#)-C-13 TANESHIA WRAY
[HLG](#)-1 Kristy Hernandez
DEBTOR DISMISSED: 07/13/2018

MOTION TO CONFIRM PLAN
7-10-18 [[52](#)]

Final Ruling: No appearance at the August 28, 2018 hearing is required.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 30, 2018. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan on the basis that:

A. The Trustee believes the Plan is not feasible. The Plan proposes payments over 50 months; however, per the Trustee's calculations it will require 60 months to pay the claims provided for in the Plan.

B. The terms of Section 2.01 through 2.03 of the Plan are inconsistent. Specifically, the monthly plan payments are listed as differing amounts in the various Sections and the term of the Plan also varies between sections.

C. The Plan does not represent the Debtor's best efforts. Debtor's income does not appear to be accurately reported on Form 122C-1, that an accurate Form 122C-1 would indicate the Debtor is above the median income, and that the Plan should be for 60 months not 50 months.

D. The Debtor cannot make payments under the Plan. The Debtor

states at the July 23, 2018 Meeting of the Creditors, that her business, a care home facility, is operated out of leased property. The property lease is not reported on Schedule G and the lease is rejected in the Plan.

E. The Plan does not provide for the Class 1 arrears totaling \$67,000.

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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

NO Tentative Ruling: The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 25, 2018. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-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 Value secured claim of Specialized Loan Servicing, LLC, "Creditor," is xxxxxxxx.

The Motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject realproperty commonly known as 6944 Gold Run Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$256,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

Debtor states that there are two creditors holding secured liens senior to the Creditor. Debtor first lists "Mr. Cooper" with a balance of \$175,884.00 and "Keep Your Home California" with a balance of \$97,500.00. Debtor's Motion is not accompanied with any evidence supporting the existence of the secured lien holders or the amounts listed. The court recognized if Creditor's claim is secured by a junior deed of trust would be completely under-collateralized.

Chapter 13 Trustee's Opposition:

The Chapter 13 Trustee's Opposition states that no claims were filed at that time and that the Trustee did not have sufficient information to determine which creditor holds senior liens or security interests.

On August 22, 2018, U.S. Bank National Association Nationstar Mortgage, LLC d/b/a Mr. Cooper filed Claim No. 4-1 asserting a secured claim of \$174,678.05. The court notes that the deadline to file a claim is October 29, 2018.

Specialized Loan Servicing, LLC's failure to respond to Debtor's Motion permits the court to enter a default against it and accept the well pleaded facts as true.

At the hearing -----

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

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

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is **xxxxxxx** and the claim of Specialized Loan Servicing, LLC secured by a **xxxxx** deed of trust recorded against the real property commonly known as 6944 Gold Run Avenue, Sacramento, California, is determined to be a secured claim in the amount of **\$xxxxx**, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan. The value of the Property is **\$xxxxxx**.

Thru #9

Final Ruling: No appearance at the August 28, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 5, 2018. 28 days' notice is required. This requirement was met.

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 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

The Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on July 5, 2018. Dckt. 19.

The Objector argues that Kelly L Timothy ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 13 bankruptcy case on May 5, 2016 Case No. 16-22958. The case was converted to Chapter 7 on April 25, 2017. Dckt. 76. The Debtor received a discharge on August 1, 2017. Case No. 16-22958, Dckt. 103.

The instant case was filed under Chapter 13 on June 19, 2018.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on August 1, 2017, which is less than four-years preceding the date of the filing of the instant case. Case No. 16-22958, Dckt. 103. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 18-23839), 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 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.

IT IS FURTHER ORDERED that, upon successful completion of the instant case, Case No. 18-23839, the case shall be closed without the entry of a discharge.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 30, 2018. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to XXXXXX the Objection.

The Trustee opposes confirmation of the Plan on the basis that:

A. The Trustee believes that the Debtor has the ability to increase payments by \$310.46 to account for the insufficient fund disbursements in months 3 through 6 of the Plan.

The Trustee states that the Debtor has offered to increase their Plan payments for months 2 through 6 to \$6,749.60, and amount sufficient to rectify the deficient payment amounts. The Trustee further stated that the Debtor will be able to make the increased payment by reducing expenses for: voluntary retirement; recreation; and dry cleaning.

Debtor's Response:

Debtor's response claims, without a supporting declaration or evidence, that:

through 6. A. The Debtor agrees to the payment increase for months 2

B. That the Debtor will be able to make the increased monthly payments by eliminating or reducing the expenses identified by the Trustee.

At the hearing -----.

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

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is ~~xxxxxx~~ and the proposed Chapter 13 Plan is ~~xxxxxxxx~~.

Final Ruling: No appearance at the August 28, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2018. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by Chapter 13 Trustee or the creditors.

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

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

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

The Motion to Confirm the Chapter 13 Plan
filed by the 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,
Debtor's Chapter 13 Plan filed on August 2,
2013 is confirmed, and counsel for the 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.

Thru #12

No Tentative Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on July 24, 2018. Twenty-eight days' notice is required. That requirement was met.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Loan Modification is ~~xxxxxxx~~.

The Motion to Approve Loan Modification filed by Marcos Reyes Evangelista ("Debtor") seeks court approval for Debtor to incur post-petition credit. FHLMC/Navy Federal Credit Union ("Creditor"), whose claim the plan provides for in Class 3, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,673.45 a month to \$1,204.86 a month. The modification will include the pre-petition arrears into the new principal balance. If approved the plan will need to be modified to provide for the Creditor in Class 4.

The Motion is supported by the Declaration of Marcos Reyes Evangelista. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration filed in this matter provides much of the information.

The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

Chapter 13 Trustee's Response:

The Trustee raises a concern regarding the loan modification signature page, specifically that the name Annabella Evangelista is listed and crossed out. The Trustee notes that the property is listed in only the Debtor's name on his Schedules and the individual is not the Debtor's spouse as listed on Schedule H. The Trustee is concerned whether another party may have interest in the subject property.

The Chapter 13 Trustee notes in his response that there is an interest rate reduction in the modification from 5.5% to 4.125%.

At the hearing -----.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve the Loan Modification filed by Marcos Reyes Evangelista 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 court ~~xxxxxxx~~ Marcos Reyes Evangelista's Motion to amend the terms of the loan with FHLMC/Navy Federal Credit Union, which is secured by the real property commonly known as 12 Graywood Court, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit [A] in support of the Motion, Dckt. 17.

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that:

A. The Trustee is uncertain of the treatment of Citimortgage, Inc. The Debtor's modified Plan moves this creditor from Class 3 to Class 1 and provides for pre-petition arrear in the amount of \$30,000.00. The Trustee is not sure whether there is a second deed of trust requiring post-petition payments in Class 1 or if the entire claim has come due and should be provided for in Class 2. Further the Trustee notes, that this creditor has not filed a proof claim and the Trustee is uncertain whether the Debtor is proposing the Trustee pay the creditor without a proof of claim being filed.

B. The Debtor does not provide an explanation for the modification.

C. The Debtor filed Supplemental Schedules I and J as attachments to the proposed Plan rather than filing them separately with the court.

D. The Debtor's Supplemental Schedule J adjusts expenses without explanation. Most notably an increase in mortgage payments by \$1,360.00.

E. The Debtor's Motion and Declaration are inconsistent with the terms of the proposed Plan, specifically with respect to the monthly payment amounts and Plan term regarding Navy Federal Credit Union and Springleaf Financial Services.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 13, 2018. Fourteen days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Extend the Automatic Stay is granted, and the automatic stay is extended in this case.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-24131) was filed on March 18, 2013 and dismissed without discharge on September 12, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of

bad faith may be rebutted by clear and convincing evidence. *Id.* at § 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, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, the Debtors claim that they were unable to make the required payments in their previous bankruptcy due inability to obtain a loan modification in connection with their personal residence and debtor Joseph Ersiey was laid off. In support of the success of their present plan, the Debtors claim that they intend to sell their personal residence. Debtors also claim that the debts are nearly identical except for the addition of medical debts incurred due debtor Paige Ersiey's cancer treatment.

The Chapter 13 Trustee filed a statement of non-opposition to the Debtor's Motion for Stay Relief,

Debtors have 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, unless terminated by 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 the Chapter 13 Plan filed by the 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 further order of this court or subsequent operation of law.

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that:

A. The Trustee received information, supported by evidence attached as Exhibit A, indicating that Debtor's domestic support obligation was modified, reducing the payments by \$1,500 a month which can be contributed to the Plan.

Further, the Trustee notes that amended Plan's proposed payments that have been paid at higher rate for two months. As such, the Plan should reflect the correct total payments or the Debtor has can skip two payments through the life of the plan.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 30, 2018. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan on the basis that:

A. The Debtors' Plan payments are insufficient to fund the plan. Debtors' provide monthly payments of only \$1,369.86 for Bayview Financial Loan, a Class 1 creditor, when the listed ongoing mortgage is \$2,411.43.

B. Creditor Golden One Credit Union is incorrectly classified as a Class 1 creditor rather than in Class 4, because Debtors stated at the Meeting of Creditors that they intended pay this creditor outside of the plan.

C. The Plan includes expenses for a lease with Volkswagen Credit Inc that the Trustee believes has been rejected. If so, the Debtors have an additional \$300.00 a month to contribute to the Plan.

D. The Plan calls for payment of attorneys fees of \$1,500.00 but does not propose a monthly dividend to administer such an expense.

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 having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

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

16. [18-24079](#)-C-13 VALAREE ST. MARY
[KWS](#)-1 Kyle Schumacher

OBJECTION TO CLAIM OF CAVALRY
INVESTMENTS, LLC, CLAIM NUMBER
1
7-11-18 [[9](#)]

DEBTOR DISMISSED: 07/27/2018

Final Ruling: No appearance at the August 28, 2018 hearing is required.

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

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

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

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

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

17. [17-25981](#)-C-13 DAVID/SHERYL TEEGARDEN
[SLH](#)-1 Seth Hanson

MOTION TO AVOID LIEN OF CAVALRY
SPV I, LLC
7-19-18 [[22](#)]

Final Ruling: No appearance at the August 28, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on July 19, 2018. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

A judgment was entered against the Debtor in favor of Cavalry SPRV I, LLC as Assignee of Wells Fargo/Beutler Corporation ("Creditor") for the sum of \$8,477.28. The abstract of judgment was recorded with Sacramento County on July 5, 2013. That lien attached to the Debtor's residential real property commonly known as 11137 Noatak River Ct., Rancho Cordova, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$375,981.00 as of the date of the petition. The unavoidable consensual liens total \$408,731.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.140(b)(1) in the amount of \$1,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Cavalry SPRV I, LLC as Assignee of Wells Fargo/Beutler Corporation, Sacramento County Superior Court Case No. 34-2013-00141753, recorded on July 5, 2013, with the Sacramento County Recorder, against the real property commonly known 11137 Noatak River Ct., Rancho Cordova, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

18. [18-23485](#)-C-13 BETTY WALKER
[MET](#)-1 Mary Ellen Terranella

MOTION TO EMPLOY COLDWELL
BANKER RESIDENTIAL REAL ESTATE
SERVICES AS REALTOR(S)
8-9-18 [[25](#)]

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

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 9, 2018. Fourteen days' notice is required. That requirement was met.

The Motion to Employ 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 Employ is granted.

Betty Walker ("Debtor") seeks to employ Coldwell Banker pursuant to Local Bankruptcy Rule 9014-1(f) (1) and Bankruptcy Code Sections 328(a) and 330. The Debtor seeks the employment of Coldwell Banker to serve as a real estate for the purpose of marketing and selling the property listed on Debtor's Schedules as 747 Tuolumme Street, Vallejo, California.

Debtor argues that Coldwell Banker's appointment and retention is necessary to assist Debtor in establishing the fair market value of the subject property and sell the subject property. Coldwell Banker will receive a 5.5% commission upon the completion of any sale.

Don Jordan, a employee of Coldwell Banker Residential Real Estate Services, testifies that he is willing to and able to market and sell the subject property for a 5.5% commission. Don Jordan testifies he and the Coldwell Banker Residential Real Estate Services do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals,

including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Taking into account all of the relevant factors in connection with the employment and compensation of Coldwell Banker , considering the declaration demonstrating that Coldwell Banker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Don Jordan as a real estate agent for the purpose of selling the subject property on the terms and conditions set forth in the Exclusive Authorization and Right to Sell filed as Exhibit A, Dckt. 28. Approval of the commission is subject to the review of the fees at the time of final allowance of fees for the professional.

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 Employ filed by Betty Walker ("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 Employ is granted, and Debtor is authorized to employ Don Jordan as real estate agent on the terms and conditions as set forth in the Exclusive Authorization and Right to Sell filed as Exhibit A, Dckt. 28.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that:

A. The Plan may fail the Chapter 7 liquidation analysis, Debtor's Plan proposes a 100% dividend to unsecured creditors over 60 months but does not propose to pay interest, despite Debtor's non-exempt equity totaling \$996,631.00.

B. The Debtor may not be able to make all required payments because the Plan proposes a lump sum payment in month 6 of \$30,000.00 that Debtor has not provided evidence to support being able to make. This payment appears to be connection with receiving a distribution from an entity that Debtor owns a 51% interest. Debtor states that the entity anticipates receiving a payment pursuant to an arbitration agreement but has not supported this contention.

C. The additional provisions in Debtor's proposed Plan create an administrative burden on the Trustee, specifically requesting additional monthly calculations by the Trustee for specific creditors.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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.

20. [18-23694](#)-C-13 JEANNE RENNERT
[DPC](#)-2 Marc Carpenter

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
7-23-18 [[21](#)]

DEBTOR DISMISSED: 07/30/2018

Final Ruling: No appearance at the August 28, 2018 hearing is required.

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

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

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

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

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

21. [17-27895](#)-C-13 THOMI MANZANO
[MTM](#)-3 Michael McEnroe

MOTION TO MODIFY PLAN
7-20-18 [[48](#)]

Final Ruling: No appearance at the August 28, 2018 hearing is required.

Thomi Dior Manzano ("Debtor") having filed a Notice of Withdrawal of Motion, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 20, 2018, Dckt. 48; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Chapter 13 Trustee; **the Ex Parte Motion is granted, Debtor's Motion to Modify Plan is dismissed without prejudice, the court removes this Motion from the calendar.**

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Modified Plan.

The Trustee opposes confirmation on the basis that:

A. The Plan cannot be complete within 60 months and would require an increase of \$142.00 per month to be completed within the required 60 months.

B. The Debtors' reason for requesting a modification is not satisfactory.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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.

Final Ruling: No appearance at the August 28, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2018. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. The Chapter 13 Trustee withdrew his opposition on August 16, 2018. Dckt. 32. No other opposition to the Motion was filed by the creditors.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed
by the 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,
Debtor's Chapter 13 Plan filed on August 2, 2013
is confirmed, and counsel for the 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.

24. [18-24999](#)-C-13 MELANIE PAULY MONTERROSA
[MET](#)-1 Mary Ellen Terranella

MOTION TO EXTEND OR REINSTATE
AUTOMATIC STAY
8-14-18 [[8](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 14, 2018. Fourteen days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Extend the Automatic Stay is granted, and the automatic stay is extended in this case.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 17-23780) was filed on June 15, 2017 and dismissed without discharge on June 13, 2018. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c) (3) (B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa). The presumption of

bad faith may be rebutted by clear and convincing evidence. *Id.* at § 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, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, the Debtors claim that they were unable to make the required payments in their previous bankruptcy because her husband was injured resulting in reduced income. In support of the success of their present plan, the Debtor's husband has been cleared to return to work and Debtor will be employed starting sometime in August.

The Chapter 13 Trustee filed a statement of non-opposition to the Debtor's Motion for Stay Relief,

Debtors have 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, unless terminated by 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 the Chapter 13 Plan filed by the 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 further order of this court or subsequent operation of law.
