UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 10, 2019 at 10:00 a.m.

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1. **19-25568-E-13** **SHANNON GENZEL** **MOTION TO IMPOSE AUTOMATIC STAY**
SDH-1 **O.S.T**
9-4-19 [8]

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 September 4, 2019. The court set the hearing for September 10, 2019. Dckt. 13.

The court required personal service upon the trustee conducting the foreclosure sale by September 6, 2019.

At the hearing, xxxxxxxxxxxxxx.

The Motion to Impose 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 Impose the Automatic Stay is xxxxx.

Shannon Eugena Genzel ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 18-20134 and 18-27137) were dismissed on September 20, 2018, and August 8, 2019, respectively. *See* Order, Bankr. E.D. Cal. No. 18-20134 , Dckt. 28, August 8, 2019,; Order, Bankr. E.D. Cal. No. 18-27137, Dckt. 41. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

ORDER SHORTENING TIME FOR INITIAL HEARING AND IMPOSING INTERIM STAY

On September 5, 2019, the court issued an Order shortening time and imposing an interim stay pending resolution of this Motion at the hearing. Dckt. 13. The Order, noting concerns about whether this case was filed in good faith, made the following findings:

> Debtor Shannon Genzel (Debtor) commenced this Chapter 13 case on September 4, 2019. She is represented by counsel in this case, the same counsel who represented her in her prior two Chapter 13 bankruptcy cases which were pending and dismissed within the one year of the filing of the current case. A summary of the Debtor's two prior cases is summarized below:
>
> Chapter 13 Case 18-27137
>
> Filed.....November 13, 2018
>
> Dismissed.....August 8, 2019
>
> Chapter 13 Plan Confirmed.....January 22, 2019. 18©27137, Dckt. 32
>
> Monthly Plan Payment.....$1,914.00. Id., Plan ¶ 2.01.
>
> Motion to Dismiss filed June 28, 2019. Id., Dckt. 38
>
> Monetary Default.....$3,826.00
> Plan Payments Made by Debtor.....$1,914.00 (one month)
>
> Chapter 13 Case 18-20134
>
> Filed.....January 9, 2018
>
> Dismissed.....September 20, 2018
>
> Chapter 13 Plan Confirmed.....March 19, 2018. 18-20134, Dckt. 32

Monthly Plan Payment.....$1,580.00. Id., Plan ¶ 2.01.

Motion to Dismiss filed June 28, 2019. Id., Dckt. 38

Monetary Default.....$3,160.00

Plan Payments Made by Debtor.....$3,225.76 (two months)

A review of these cases shows that Debtor has made three plan payments during the seventeen (17) months of being in, and having the protections of the Bankruptcy Code, her prior two Chapter 13 cases.

The present Ex Parte Motion (which improperly combines a request for order shortening time and to impose the stay prior to hearing) states the following grounds with particularity for the multiple relief requested:

"4. The home lender in this case will foreclose on September 13, 2019 unless this court imposes a stay at a hearing on September 10, 2019."

"5. Debtor therefor is asking the court to enter an emergency stay that would remain in effect for the entire case. If needed, the stay could be imposed temporarily for the first 60 days of this case pending a continued hearing on the motion."

"7. The debtor is asking that the stay be imposed in this case against all creditors pending the hearing on the motion to impose a stay for the entire length of the case."

"8. The notice of motion and motion to impose a stay are being filed and served today and should be on the docket for the court to review along with the debtor's plan to pay creditors 100 percent of their claims."

Motion, with the quotations identified by Motion paragraph number, Dckt. 8.

A review of the above grounds stated with particularity (Fed. R. Bankr. P. 9013) do not provide the court with any grounds for imposing the automatic stay in light of the multiple prior defaults and there being only three payments made during the seventeen (17) months of the prior bankruptcy case.

Going to the Declaration of Debtor filed in support of the Motion, it appears to provide testimony as to facts other than those stated as grounds in the Motion. The Debtor's testimony includes:

"4. The change of circumstances is as follows: I lost my last job in December of 2018. I appealed the decision because it was a state government job."

"5. I was awarded some bereavement pay because my partner died in November of 2018."

"6. They hired me back but then laid me off again and I have not had any income since about April of 2019."

"7. I was offered a new job by the California Department of Transportation on September 3, 2019. I will be making at least $3,068 a month and there is a possibility I could be making more in the near future. I start my new job on September 16, 2019 and should have a pay check in time to make the first plan payment due on October 25, 2019."

"8. I also obtained a tuition waiver from my son's private Jesuit school. That is a $410.00 monthly expense they agreed to waive because of the unemployment. I have applied to have that extended through December 2019, but even if it is not extended, I believe that I can still afford the new payments because they are lower than in the last case. The payments are lower because all of the debts were overstated in the last case including the arrears on both mortgages."

"9. The last case did not work because I lost my job. Now that I have a new job, I can afford to make the plan payments and keep my home. I filed this bankruptcy on September 4, 2019 because there is a foreclosure sale set for September 13, 2019 and I did not want to lose the equity to a foreclosure."

“10. There has been a significant change since the last case. I have new employment. I would like the opportunity to keep the house and save the equity.”

Declaration, with the quotations identified by Declaration paragraph number, Dckt. 11. The Declaration discusses some "facts" which are not set forth as grounds upon which the relief is requested.

There is another document filed with the court which is identified as "Exhibit." Dckt. 10. It actually is titled "Motion to Impose Stay." In this second Motion, the "grounds stated with particularity" merely repeat the summary conclusion as stated in the Ex Parte Motion that the stay should be imposed. No other grounds, such as those which would related to the testimony in the Declaration, are asserted as the basis for why relief should be granted.

On Schedules A/B and D Debtor list having only a 50% interest in the Aizenberg Circle Property and that it is subject to a deed of trust securing debt of ($118,309.73). Dckt. 1 at 12, 20. Debtor states that her 50% interest in this property has a value of $337,000.

When Debtor filed her bankruptcy case on January 9, 2018, she stated on Schedules A/B and D that her 50% interest in the above property had a value of $265,000 and was subject to a first deed of trust securing an obligation of ($121,038.00) and a second deed of trust securing an obligation of ($75,759). 18-20134, Dckt. 1 at 11, 19-20.

On Schedule I, the 50% co-owner of the Property, Debtor's mother, is

listed as living in the house with the Debtor and contributing $1,000.00 a month of her Social Security benefits as income for Debtor. Dckt. 1 at 29. Debtor states that she has $2,668.00 a month in income after her taxes and Social Security withholding of ($400) a month, and an additional $1,000 for her mother's Social Security benefits. Id.

In looking at Schedule J Debtor lists having only ($1,952) a month for herself and her teenage child. Id. at 30-31. Debtor lists having $0.00 for home maintenance and repairs for the Property that she has been filing bankruptcy to stop the foreclosure sale. Debtor lists only ($175) a month for gas, vehicle maintenance, and repairs. Id. at 31. On Schedule A/B Debtor lists owning a 2006 Honda Civic with 190,000 miles on it. At this age, it is not unlikely that this vehicle requires significant repairs and maintenance. Assuming ($75) a month for maintenance and repairs (which is only ($900) a year, which could be less than a new set of tires), that leave only ($100) a month for gas. That give Debtor $25 a week for gas. At $3.35 a gallon for gas, Debtor could purchase only forty-three (43) gallons of gas a month. That averages seven and one-half gallons a week. Assuming an average of 25 miles per gallon, debtor would be able to drive only 26 miles per day.

The proposed Chapter 13 Plan requires monthly plan payments of ($1,715.00). Dckt. 7. For Class 1, there is the holding of a first deed of trust with monthly payments of ($798.94) and a monthly arrearage payment of ($216.66). Plan ¶ 3.07, Dckt. 7.

The proposed Chapter 13 Plan discloses that there is another secured obligation to be paid. That is a USAA, FBS obligation that is secured by a second deed of trust. Id. The currently monthly payment on this obligation is stated to be ($286.24) and a monthly arrearage payment of ($33). *Id.*

These mortgage payments total ($1,334.84) a month (including arrearage payment). This is fifty percent (50 %) of Debtor's actual state monthly take-home income of $2,668.00 (not including using the mother's Social Security benefits).

Granting of Interim Stay and Expedited Initial Hearing

As shown above, the court has reservations about the Debtor's ability to perform a Chapter 13 Plan, especially one that will take five years. Plan ¶ 2.03, Dckt. 7.

Taken at face value, Debtor and her mother have a substantial equity in the Property they are trying to save from foreclosure. Given Debtor's income, even if the past defaults were caused by a job loss, it appears highly doubtful that Debtor can perform a plan for five years. The expenses on Schedule J do not appear reasonable for a five year period (especially in light of Debtor driving a fourteen model year old vehicle with 190,000 miles on it).

Rather it appears that Debtor's strategy is one likely to result in the loss

of the Property to foreclosure and the lost of exempt equity for Debtor and Debtor's mother.

Conspicuously absent is any testimony from Debtor's mother. Not only about her ability to give up her $1,000 a month Social Security benefit to try and fund the plan, but as to why she has not and is not making her share of the mortgage payment. Possibly it is intended that giving up her Social Security benefit is intended to be for that amount. However, Debtor's Mother is living in the house, so the question arises as to what other household expenses she should be paying.

11 U.S.C. Section 362(c)(4)(B) allows the court to impose the stay provided in 11 U.S.C. Section 362(a) if the debtor demonstrates that the case then before the court has been filed in "good faith." The burden is on the Debtor to overcome the presumption of bad faith arising from the multiple cases dismissed in the one year preceding the then pending case. Though it appears questionable that the Debtor can prosecute a plan, there is, based on Debtor's statement of value, a significant equity to be salvaged, the court concludes that for purposes of imposing an Interim Stay and conducting further hearings, and only those limited purposes at this time, the presumption has been nudged over the rebuttal line.

Notwithstanding these shortcoming, the court imposes the stay on an interim basis to afford Debtor the opportunity to explain how a plan would appear to be feasible or how she and her mother will save their exempt equity in the Property through a commercially reasonable sale of the Property. Debtor's counsel can also address the evidence to be presented concerning possible feasibility, which includes the reasonableness of the expenses listed on Schedule J.

It appears that the two creditors with secured claim have a sufficient equity cushion, which would erode Debtor's and her mother's homestead exemptions by the delay. This is not a "free stay" for Debtor and her mother.

Order, Dckt. 13.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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.

DISCUSSION

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 Impose the Automatic Stay filed by Shannon Eugena Genzel ("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 xxxx

2.	**18-27801-E-13** **PGM-1**	**ROBERT SCOTT** **Peter Macaluso**	**CONTINUED MOTION TO CONFIRM PLAN** **5-27-19 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 27, 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Plan is denied.

The debtor, Robert C. Scott ("Debtor"), seeks confirmation of the First Amended Chapter 13 Plan. The Plan provides for $1,550.00 to be paid through May 2019, and for monthly payments of $100.00 during June 2019, and $15,000 July 2019. Dckt. 59. The plan provides a 0 percent dividend to unsecured creditors. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 6, 2019. Dckt. 68. Trustee opposes confirmation on the grounds the claims to be paid from the lump sum total $17,650.00 and not $15,000.00. Trustee further opposes confirmation on the basis there was no prayer for relief in the Motion.

DEBTOR'S RESPONSE

Debtor filed a Reply to Trustee's Opposition on June 25, 2019. Dckt. 74. Debtor proposes

increasing the lump sum payment to $17,650.00 in the order confirming the plan.

PRIOR HEARINGS

At the July 2 and July 30 2019 hearings, the court continued the hearing on the Motion to allow Debtor to sell property to fund the plan. Civil Minutes, Dckts 79 and 87. No explanation given for why the untimely opposition should be considered.

In the Opposition, Creditor opposes confirmation on the grounds that the plan is not feasible given Debtor's limited income, reliance on third-party contributions, and because Debtor may not be able to sell real property which he currently proposes selling to fund the plan.

CREDITOR'S OPPOSITION

On August 27, 2019, roughly 3 months after the Motion was filed and nearly 2 months after the first hearing on the Motion, creditor Patelco Credit Union ("Creditor") filed an Opposition. Dckt. 94.

Creditor also filed a Motion For Relief From Automatic Stay set for hearing the same day as this Motion. Dckt. 88.

DISCUSSION

Debtor's Motion To Sell (Dckt. 62) was heard July 16, 2019 and denied. Civil Minutes, Dckt. 85; Order, Dckt. 86. Since the prior hearing, no new motion to sell has been filed. No other status update has been filed.

Additionally, Creditor filed a Motion seeking relief from stay as to the property Debtor proposes selling, and Creditor asserts Debtor may not have the ability to sell the Property.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

3.	**19-24003-E-13** **DWE-1**	**MARITZA CRUZ** **Tom Gillis**	**OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE CORPORATION** **8-8-19 [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 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 August 8, 2019. By the court's calculation, 33 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.

Freedom Mortgage Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that its claim is listed as a Class 4 where that claim is actually in default. Creditor does not oppose its claim being provided for outside the plan, but opposes any possible modification of its rights.

DISCUSSION

Creditor's objections are well-taken. Creditor's claim is provided for as a Class 4 in the Chapter 13 Plan. Dckt. 4. As to those claims, the plan states:

Class 4 includes all secured claims paid directly by Debtor or third party. **Class 4**

> **claims** mature after the completion of this plan, **are not in default**, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Id. (emphasis added).

Debtor has not filed any response to the Objection.

By its terms, 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 Freedom Mortgage 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.

4.	**19-21310-E-13** **RJ-2**	**WANDA COLLIER-ABBOTT** **Richard Jare**	**OBJECTION TO CLAIM OF REAL TIME RESOLUTIONS, INC., CLAIM NUMBER 4** **8-8-19 [80]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 8, 2019. By the court's calculation, 33 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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.

Opposition was filed.

The Objection to Proof of Claim Number 4 of Real Time Resolutions, Inc. is overruled.

Wanda Collier-Abbott, the Chapter 13 debtor ("Objector") requests that the court disallow the claim of Real Time Resolutions, Inc., ("RTR") as agent or RRA CP Opportunity Trust 1("RRA, CPO" (collectively referenced as "Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $221,536.60.

Objector argues that the documentation supporting the Claim does not show unbroken chain of title as to the Deed of Trust, and therefore should be disallowed.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on September 3, 2019. Dckt. 94. Creditor explains that an assignment of the Deed of Trust was erroneously recorded May 1, 2006, but that a corrective Assignment was later executed and recorded July 2, 2019.

Creditor argues the following:

1. Debtor does not contest the liability or amount of the Claim.

2. Under California law a complete chain of assignment is not required for foreclosure, and therefore is not required for the enforcement of a deed of trust.

3. Merely raising a question about the chain of title does not constitute substantial evidence to rebut the Claim.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence 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). 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. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). 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.

The Objection is very brief. In its entirety, the Objection states:

1. The Claim, which is an Exhibit served herewith, which also appears on the Court's Claims Register in this case as claim number 4, does not contain an unbroken chain of transfer by the original beneficiary of the Deed of Trust to claimant Real Time Resolutions Inc., as agent for RRA CP Opportunity Trust 2.

2. During a previous court hearing on in this same case, the court warned counsel for claimant to provide proof of assignment. As of today, neither the debtor nor counsel for the debtor has received proof of assignment to the claimant. The Declaration of the debtor filed herewith states that she has not ever been provided proof of assignment to the Real Time Resolutions Inc., as agent for RRA CP Opportunity Trust 2.

WHEREFORE Debtor prays that the Court issue an order Sustaining the Objection to the claim of Real Time Resolutions Inc., as agent for RRA CP Opportunity Trust 2, and disallowing the claim.

Objection, Dckt. 80.

Noticeably absent is any legal authority (case law, statutory, rule, etc), in support of the Objection. The court is told Creditor failed to demonstrate a chain of title, and that "the court warned counsel for claimant to provide proof."

With respect to the paraphrasing of some comments of the court, the matter to which it relates, the court's civil minutes, and where the court can put those alleged comments in context is unidentified. Debtor testifies that she has not received a notice that the deed of trust has been assigned to Creditor. Declaration, Dckt. 82. Conspicuously absent from the declaration is any testimony about the note, the assignment of the note, and who holds the note.

As this court has previously addressed in years past in ruling on matters in which it was alleged that the deed of trust was severed from the debt by transferring it to someone other than who then held the note - California law is clear, the security follows the debt as a matter of law.

A "Person entitled to enforce" an instrument means: (a) the holder of the instrument, (b) a non-holder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to 3309 or 3418(d). Cal. Com. Code § 3301 (2010); *In re Lee*, 408 B.R. 893 (Bankr. C.D. Cal. 2009), *In re Vargas*, 396 B.R. 511 (Bankr. C.D. Cal. 2008).

A holder of a note can enforce that note, even if it is in wrongful possession of the note (i.e., they found or stole the note), when that note has been endorsed in blank or to bearer. Cal. Com. Code §§ 3205(b), 3301. Also, a person may be a holder of a note (and so have standing to do things like bringing a relief from stay motion) even if that person already sold the loan to someone else. *In re Hwang,* 438 B.R. 661 (C.D. Cal. 2010); Cal. Com. Code § 1201(b)(21).

In 2011, the Ninth Circuit Court of Appeals addressed this note-deed of trust issue in *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034 (9th Cir. 2011). The court addressed the general proposition that notes and deeds of trust remain together as a matter of law, with it being the right of the note owner to exercise the power under the deed of trust.

It is well-established law in California that a deed of trust does not have an identity separate and apart from the note it secures. "The note and the mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); *accord Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. Therefore, if one party receives the note and another receives the deed of trust, the holder of the note prevails regardless of the order in which the interests were transferred. *Adler v. Sargent*, 109 Cal. 42, 49-50 (Cal. 1895).

It is left for the court to actually research what the law is on this issue (or left to Creditor to provide the law through its Opposition). The court declines the opportunity to perform this work for the Objector.

The Creditor has responded to provide Opposition and evidence in response to the Objection. Dckts. 94, 95. The evidence is that RRA CP, the principal for whom Creditor provides the loan servicing, holds the note that is the subject of the Objection. Veronica Guterrez, who identifies herself as a Director for RTR testifies as to the computerized books and records of RRA CP. Dckt. 95. What

she does not explain is how she, an employee of RTR, has personal knowledge of the books and records of RRA CP, how they are maintained, and what is in possession of RRA CP - other than possibly somebody at RRA CP told her, and now she is asking the court to allow her to say what she heard a person not before the court say.

The witness does provide further testimony to authenticate the assignment of the deed of trust for the claim at issue to RRA CP. Exhibit B, Dckt. 95 (This exhibit is improperly buried at the end of the declaration, and not filed as part of a separate exhibit document in this Contested Matter as required by the Local Bankruptcy Rules.)

There is no dispute as to the identity of the Creditor, it having been identified on the Schedules as RTR. Schedule D, Dckt. 24 at 11-12. Debtor specifically identifies creditor as RTR as having the claim secured by the second deed of trust.

Furthermore, the burden of presenting substantial evidence to overcome the *prima facie* validity of a proof of claim is on the Objector. *In re Holm,* 931 F.2d at 623. The only evidence presented was Objector's testimony that he has not received a copy of an assignment of Deed of Trust. Declaration, Dckt. 82. That testimony is essentially that "Creditor has not proved its claim to me."

Based on the evidence before the court, the Objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Real Time Resolutions, Inc. ("Creditor"), filed in this case by Wanda Collier-Abbott, the Chapter 13 debtor ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 4 of Creditor is overruled.
>
> 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.

5. **19-24215-E-13 JHK-1** | **DENNIS/JOANNA GAELA** Scott Johnson | **OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES-BENZ FINANCIAL SERVICES USA, LLC 7-29-19 [16]**

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 29, 2019. By the court's calculation, 43 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.

Mercedes-Benz Financial Services USA, LLC DBA Daimler Truck Financial ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the debtor, Joanna Sarrah Gaela's ("Debtor") plan lists Creditor's claim as secured where the vehicle securing the debt, a 2015 Mercedes-Benz, is not an asset of the Debtor or the Estate.

The Objection states that the Debtor is a guarantor of an obligation of her limited liability company, with the asset that secures the obligation. Creditor provides evidence in clearly stated declarations as to the underlying financial transactions. Declarations, Dckts. 18, 19. The transactional documents upon which Creditor's claim is based are provided as Exhibits B, C, and D. Dckt. 20. This includes the California Title Certificate for the Vehicle showing that it is the limited liability company that owns the vehicle.

What the Objection fails to provide is any legal analysis or authority of what constitutes a secured claim in bankruptcy. While righteously arguing that it should not be a secured claim, Creditor cannot say why, legally, it is not under the Bankruptcy Code a secured claim.

DISCUSSION

Based on the evidence presented, the vehicle securing the Creditor's debt is an asset of DDD Shuttle Service, LLC, and not the Debtor or the Estate. Debtor's obligation arises from the personal guaranty of the limited liability company's obligation to Creditor. The limited liability company has secured its obligation to Creditor with the Vehicle the limited liability company owns.

The missing legal piece of the puzzle not provided by Creditor is 11 U.S.C. § 506(a), which provides (emphasis added),

> § 506. Determination of secured status
>
> (a)
>
> (1) An allowed claim of a creditor secured by a **lien on property in which the estate has an interest**, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest **in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

Here, the evidence presented is that the Debtor did not personally have an interest in the Vehicle, but that it was owned by the limited liability company in which she is a member. She is not the limited liability company and the limited liability company is not her. Thus, there is no interest in the bankruptcy estate in the vehicle arising as of the commencement of this case or thereafter. 11 U.S.C. § 541(a).

In the current Plan, Debtor seeks to modify an obligation of a third-party through the Chapter 13 Plan. An assertion that the limited liability company is really just the Debtor and there is no "real" legal difference between the two would constitute a fraud on the State of California, creditors, and now this court.

The limited liability company will pay its secured obligation to creditor from its assets. The limited liability company will make the proper distributions of profits to Debtor and she will fund her plan. If the limited liability company defaults, then Creditor can exercise its remedies against it and then look to its unsecured claim based on the personal guaranty in this case (which is a 0.00% dividend on general unsecured claims).

If the limited liability company needs relief under the Bankruptcy Code, it can file its own

case. It cannot use one of its members as its proxy debtor.

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 Mercedes-Benz Financial Services USA, LLC DBA Daimler Truck Financial ("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.

6. **19-24120-E-13 DPC-1** **JOSE MORAN Steele Lanphier** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 8-6-19 [19]**

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 August 6, 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 and the Plan is not confirmed.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Debtor has $27,173.43 in nonexempt equity, where the plan only proposes a 25 percent dividend, equating to $17,282.20 paid.

DEBTOR'S REPLY

Debtor filed a Reply on August 12, 2019. Dckt. 23. Debtor's counsel argues that the plan provides for "no less than a 25 percent return," and therefore allows $28,193.40, or 38 percent to be paid given the claims to be paid and the amount of payments over the plan term.

DISCUSSION

Debtor argues in his Reply the plan by its terms can provide for $28,193.40 to unsecured claims, which exceeds the Debtor's $27,173.43 in nonexempt equity. The language of the order

confirming plan could provide that no less than a 38 percent dividend by provided to unsecured claims.

One of the express rules governing filing of pleadings is Federal Rule of Bankruptcy Procedure 9011. This provides that when counsel and parties file pleadings, they certify, among other things, that the information is accurate, based on appropriate investigation, supported by law, and not presented for an improper purpose.

Here, computing the non-exempt equity is a very simple computation. The amount of claims to be paid in Class 7 is based, for purposes of the plan filed by Debtor at the start of the case (which is before the claims filing deadline has expired). Thus, it is quite easy for Debtor and Debtor's counsel to have a good faith projected percentage "conservatively computed."

The court does not allow the filing of "pot plans" (the pot reference is in the nature of a metal pot into which all of the ingredients for a recipe are placed, not one which could be a mellow plan) in which a debtor can say, "whatever is left is what unsecured claims get." The Debtor and Debtor's counsel must make a good faith representation of what the creditors with general unsecured claims can reasonably expect.

Here, Debtor offers no explanation for a simple, clerical error or miscalculation. Rather, Debtor's counsel argues that a "mere" fifty-two percent (52%) under deviation in the number is inconsequential. It is not.

The court is concerned that such "inconsequential" deviation might have been attempted as a device for Debtor to make a 25% dividend and then say - "Mission Accomplished, nothing else has to be paid, I'll just pocket that non-exempt equity that I slipped by the court."

At the hearing, xxxxxxxxxxxxxx.

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 is sustained and Jose Antonio Moran's ("Debtor") Chapter 13 Plan filed on June 28, 2019, is not confirmed.

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

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 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 Objection to Confirmation is XXXXXXXXX

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 for medical 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.

AUGUST 27, 2019 HEARING

At the August 27, 2019, hearing the court continued the hearing to allow Debtor to appear at the continued Meeting of Creditors and provide more detailed financial information. Civil Minutes, Dckt. 41.

DISCUSSION

On September 3, 219, a Trustee Report was entered on the docket indicating the Debtor appeared at the continued Meeting of Creditors, and that the Meeting was concluded.

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 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 is **XXXXXXXXX**.

8. **19-21344-E-13 BLG-1** | **ANNE FORD** **Chad Johnson** | **MOTION TO EMPLOY RE/MAX GOLD AS BROKER(S) 8-27-19 [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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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.

The debtor, Anne Klein Ford ("Debtor") seeks to employ Re/Max Gold ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to market Debtor's real property commonly known as 1688 Duluth Lane, Suisun

City, California (the "Property").

Eric Pangilinan, real estate agent with of Re/Max Gold, testifies that he is a licensed real estate salesperson. Declaration, Dckt. 43. Eric Pangilinan testifies further he and the firm 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.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker 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 Broker on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 44. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee 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 debtor, Anne Klein Ford ("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 Re/Max Gold as Broker for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 44.
>
> **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.

9. 19-20047-E-13 BLG-2 JULIUS/CHRISTINA JARVIS Chad Johnson MOTION TO CONFIRM PLAN 7-24-19 [46]

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 July 24, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtors, Julius T Jarvis and Christina M Jarvis ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for $14,663.00 to be paid as of June 2019, and for payments of $2,967.00 from month 6 through 34, and $3,352.00 for the remainder of the plan term. Amended Plan, Dckt. 50. 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 16, 2019. Dckt. 58. Trustee opposes confirmation on the basis that Debtor is $767.00 delinquent in plan payments, and that no monthly payment was specified as to the Class 2A claim of Exeter Finance.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $767.00 delinquent in plan payments, which represents slightly less than one month of the $2,967.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, no monthly payment was specified as to the Class 2A claim of Exeter Finance. Tat omission also demonstrates the plan is not feasible.

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

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

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

10. **19-25057-E-13** **ARACELY RIVAS** **MOTION TO IMPOSE AUTOMATIC STAY**
PGM-1 **Peter Macaluso**
8-26-19 [12]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, and Office of the United States Trustee on August 26, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Impose 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 Impose the Automatic Stay is denied.

Aracely Rivas ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's fourth bankruptcy petition pending in the past year with the prior three cases having been dismissed (and a fourth case having been dismissed shortly outside the 1 year window). Debtor's prior bankruptcy cases (Nos. 19-21747; 18-26945; and 18-24425) were dismissed on June 24, 2019; February 25, 2019; and October 10, 2018, respectively. *See* Order, Bankr. E.D. Cal. No. 19-21747, Dckt. 67, June 24, 2019; Order, Bankr. E.D. Cal. No. 18-26945, Dckt. 51, February 25, 2019; Order, Bankr. E.D. Cal. No. 18-24425, Dckt. 34, October 10, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. §

362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
>
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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.

DISCUSSION

In reviewing the Motion, very little is given to explain what happened in the four prior dismissed cases, what has changed, why the present case was filed in good faith, and why the present case would be successful.

The Motion states with particularity (FED. R. BANKR. P. 9013) that Debtor filed this case to prevent losing her vehicles, that the prior case was dismissed because Debtor did not have consistent

income, and that now Debtor has consistent income for a successful plan. Motion, Dckt. 12.

Two of Debtor's recently dismissed cases were dismissed for failure to pay the filing fee installments. 19-21747, Dckt. 67; 18-24425, Dckt. 34. Another case was dismissed for delinquency in plan payments, and another for failure to provide 11 U.S.C. § 521 documents. 18-26945, Dckt. 51; 18-20502, Dckt. 33.

In Debtor's Declaration in support of the Motion, Debtor provides the following testimony under penalty of perjury:

> 1. I filed my previous Chapter 13 bankruptcy case because I lost my house and business so I was trying to keep my cars, and find a job, going to school (college). My financials dropped a lot. Had to relocate home, and find job as well.

This testimony is misleading because it makes it seems Debtor lost her house and business right before the prior bankruptcy. In reviewing Debtor's Schedules in all five of her recent cases, her assets do not include a home or business, but rather are roughly the same. Possibly Debtor means she lost these assets before filing the first of five recent bankruptcy cases.

> 2. I am refiling bankruptcy due to financial hardship. I had bankruptcy in the past hoping they would be follow through. The first one I file I had a job that was on commission only. So it became hard financially. The other filings I was working a different job and because they took a month later to get paid it made me late and it was dismissed.

Debtor's first recent Chapter 13 case was actually dismissed for failure to provide 11 U.S.C. § 521 documents. 18-20502, Civil Minutes, Dckt. 31.

> 3. Since my previous case was dismissed, my circumstances have changed. Now I consistently get paid on the 1st of the month and on the 16th of the month. So I am able to have consistent pay.

In the present case and the prior 3 cases (but not Debtor's fifth most recent case), Debtor reported having roughly $1,700.00 in monthly income. The expenses in each case were roughly the same as well. With the same amounts going in and coming out every month, it is unclear why the timing of payment should have an effect on the success of the case.

> 4. I have acquired any new debt since my previous case was dismissed.

In Debtor's prior case, her debt to the IRS was listed to be $1,451.25. 19-21747, Schedule E/F, Dckt.1. In the present case, the debt is now listed to be $25,551.44. Dckt. 1.

> 5. I have hired attorney, Peter Macaluso, and I am confident of his ability to represent me and propose a solid Chapter 13 Plan that will allow me to pay my creditors to the best of my ability.

Peter Macaluso has been the attorney in this and the prior 3 dismissed cases. For Debtor to state she is

"confident" at this point does not ring credible, but instead reads as template language stuck in the declaration by counsel.

> 6. I am pleading that my case be accepted in order that I may stay protected under bankruptcy laws and reorganize my debts, keep my cars, and pay my creditors to the best of my ability.

There may be an explanation of why Debtor wants the stay imposed, but not for all that has occurred up to this point. The explanation provided here is "I have been struggling financially, but now I am stable," which is the same explanation that was provided in the prior case (19-21747, Motion, Dckt. 10), and the case before that. 18-26945, Motion, Dckt. 9.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

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 Impose the Automatic Stay filed by Aracely Rivas ("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.

11.	**19-23160-E-13 MBW-1**	**SHIRLEAN MOORE-JORDAN & KENNETH JORDAN Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY SAFE CREDIT UNION 7-16-19 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on July 16, 2019. By the court's calculation, 56 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.

Safe Credit Union ("Creditor") objects to confirmation of the plan because it does not provide for the full value of its claim, does not provide adequate interest, and does not propose pre-confirmation adequate protection payments.
`

Creditor also expresses concern that Debtor Kenneth Bernard Jordan, whom has passed away, was the sole obligor on the claim and owner of the vehicle securing the claim.

DISCUSSION

Creditor's arguments are well taken. The Creditor's claim was a debt incurred within 910 days of filing (on June 22, 2017, 693 days prior to filing) and cannot be value. Therefore, if the plan does not provide for the full secured claim, the plan is not feasible.

Creditor's Proof of Claim, No. 15, states the claim is only secured in the amount of

$11,568.00 and that its unsecured claim is $6,502.79, with the total claim being $18,070.79. It is settled law in the Ninth Circuit that the proof of claim is prima facie evidence of the 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).

Debtor's plan only provides for Creditor's claim in the amount of $11,263.53, which is a minor difference for which the plan payment can be adjusted over the thirty six months of the plan (approximately $9 a month).

However, the plan does not provide any interest on Creditor's claim, or on the secured claim of Nationstar Mortgage LLC.

In reviewing the claim of Nationstar Mortgage LLC, $2,324.89 if proposed to pay the monthly payment and the arrearage of $22,207.77 is proposed to be paid through $100.00 monthly payments. Such a plan would take over 200 months to cure the arrearage.

The plan on its face is not feasible. 11 U.S.C. § 1325(a)(6).

Non-Eligible Deceased Debtor

One of the bigger problems in this case to address is that Debtor Kenneth Bernard Jordan has allegedly passed away. No substitution has been filed–rather, Debtor Shirlean Sparkle Moore-Jordan is just proceeding in her deceased husband's shoes. No determination has been made by the court as provided in Federal Rule of Bankruptcy Procedure 1016 that this case may continue notwithstanding the passing of one of the debtors.

At the hearing on the Chapter 13 Trustee's Motion to Dismiss the case on August 21, 2019, the court continued the hearing to allow Debtor to obtain counsel. Civil Minutes, Dckt. 36. However, no counsel has substituted in to date.

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 Safe Credit Union ("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.

12. **19-25084-E-13 RJ-1** **TONI HAMILTON** **Richard Jare** **MOTION TO VALUE COLLATERAL OF AMERICAN CREDIT ACCEPTANCE, LLC.** **8-27-19 [20]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, and Office of the United States Trustee on August 27, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of American Credit Acceptance, LLC., ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $3,600.00.

The Motion filed by Toni Y. Hamilton ("Debtor") to value the secured claim of American Credit Acceptance, LLC., ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 22. Debtor is the owner of a 2013 Chrysler 200("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,600.00 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).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on August 28, 2019. Dckt. 24. Trustee notes that the plan proposed valuing the Creditor's claim at $4,000.00, and that Debtor's Declaration has interlineations and differing dates.

Trustee requests the court consider the above, but expresses no position.

SUPPLEMENTAL FILING

Debtor's counsel filed a collection of documents signed by the Debtor named "Scribbled Signatures In Case Filing" on August 29, 2019. Dckt. 27.

A review of the "Scribbled Signatures" document reflects that some signatures may be legible and some are clearly not. Given the "Scribbled" reference, it appears that counsel may not appreciate the need to have clear, identifiable signatures, and that parties signing pleadings and other documents are mere "technicalities" of little legal significance. Such is not accurate.

DISCUSSION

When an electronic signature is used, Local Bankruptcy Rule 9004-1(c)(1)(D) provides that upon request by a party, the party filing the electronically signed document must provide the original "wet" signature document. Trustee has not made such a request.

The lien on the Vehicle's title secures a purchase-money loan incurred on more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $24,355.00. Declaration, Dckt. 22. 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 $3,600.00, 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 Toni Y. Hamilton ("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 American Credit Acceptance, LLC., ("Creditor") secured by an asset described as 2013 Chrysler 200 ("Vehicle") is determined to be a secured claim in the amount of $3,600.00, 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 $3,600.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

13. **18-27720-E-13** **DAVID RYNDA** **CONTINUED MOTION TO CONFIRM**
TLW-5 **Tracy Wood** **PLAN**
6 Thru 7 **5-21-19 [213]**

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 May 22, 2019. By the court's calculation, 69 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, David Jerome Rynda ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $1,987.00 for 1 month, $2,197.19 for 1 month, and $2,470.52 for 58 months. Amended Plan, Dckt. 216. 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 July 9, 2019. Dckt. 225. Trustee argues Debtor is $1,814.35 delinquent in plan payments under the proposed plan, and notes that the plan contains a summary of state court litigation in the additional provisions.

MACHADO'S OPPOSITION

Elina Machado filed an Opposition on July 16, 2019. Dckt. 228. Machado argues:

1. Debtor is delinquent in plan payments.

2. Debtor includes a statement regarding litigation in the plan.

3. The plan was not proposed in good faith because it does not provide specific courses of action in the event Debtor loses or wins in the dispute of ownership of real property.

4. Debtor is paying the claims of Erika Leyva and John Rynda $100.00 monthly.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $1,814.35 delinquent in plan payments, which represents less than one month of the $2,470.52 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 court has raised, in the hearings on motions to avoid the lien of David Hicks, that creditors Erika Leyva and John Rynda had liens recorded on the eve of bankruptcy. Such secured claims would appear to be fraudulent conveyances or preferential transfers that the Chapter 13 Debtor has the fiduciary duty of a trustee to avoid for the benefit of the bankruptcy estate and creditors pursuant to 11 U.S.C. §§ 547 and 548.

Where those claims are treated as a Class 1 and receiving monthly payments, this plan potentially discriminates against other unsecured creditors. 11 U.S.C. § 1322(b)(1).

At the hearing, **xxxxxxxxxxxxxx**

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

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

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

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

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

14. **18-27720-E-13 DAVID RYNDA**
19-2023 ASM-2 Tracy Wood
RYNDA V. MACHADO ET AL

CONTINUED MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT AND/OR MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT
7-13-19 [54]

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 Plaintiff-Debtor on July 19, 2019. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Adversary Proceeding is xxxxx.

The defendant in this Adversary Proceeding, Elina Machado ("Defendant") moves for the court to dismiss all claims against it in the plaintiff David Rynda's ("Plaintiff-Debtor") Complaint according to Federal Rule of Civil Procedure 12(b)(6).

This Motion was filed July 13, 2019. Dckt. 54. Rather than file a responsive pleading to this Motion, the Plaintiff-Debtor filed a Request for Entry Of Default the next day, July 14, 2019. Dckt. 56. No other pleadings have been filed in this Adversary Proceeding.

In the related bankruptcy case, no. 18-27720, Plaintiff-Debtor's counsel appeared at a July

30, 2019, Chapter 13 plan confirmation hearing and reported that their was a proposed settlement which would resolve this Adversary Proceeding. 18-2772, Civil Minutes, Dckt. 236.

On August 5, 2019, the court issued an Order setting a Status Conference hearing on the Motion To Dismiss for September 10, 2019. Dckt. 61. [FN. 1.]

FN. 1. The court notes that on July 30, 2019, the Plaintiff-Debtor's counsel filed a Motion To Withdraw As Counsel. 18-2772, Dckt. 230. The Declaration of Plaintiff-Debtor's counsel accompanying the motion details significant difficulties in working with Plaintiff-Debtor. 18-2772, Dckt. 232. However, the Notice did not actually set a hearing date, and the withdrawal motion has not been calendared. 18-2772, Dckts. 233, 235. Debtor's counsel continues to serve in that capacity in the bankruptcy case.

At the hearing, xxxxxxxxxxxxxx.

APPLICABLE LAW

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *see also Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Federal Rule of Civil Procedure 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) ("[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.").

In ruling on a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the

court "required to"accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994) (citations omitted).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

DISCUSSION

Much of the Motion focuses on the name used for the relief sought - quieting title. Movant accurately states that a "quiet title" is generally not the proper vehicle for enforcing equitable rights against legal rights, though some cases have allowed it when fraud or other bases are clearly pleaded.

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 Dismiss Adversary Proceeding filed by Elina Machado ("Defendant") 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 xxxx.

FINAL RULINGS

15.	**19-23966-E-13** **DPC-1**	**ALVIN/MICHELLE HAYMON** **Chad Johnson**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-6-19 [21]**

Final Ruling: No appearance at the August 6, 2019 hearing is required.

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection was dismissed without prejudice, and the matter is removed from the calendar.**

16.	**18-27289-E-13** **TOG-2**	**SALVADOR CARABEO** **Thomas Gillis**	**MOTION TO CONFIRM PLAN** **7-24-19 [58]**

Final Ruling: No appearance at the September 10, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 24, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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, Salvador Pina Carabeo ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Non-Opposition on August 16, 2019. Dckt. 69. 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, Salvador Pina Carabeo ("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 24, 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. **14-31903-E-13 DPC-4** **MARK GARCIA** **Peter Macaluso** **OBJECTION TO CLAIM OF FINANCIAL PACIFIC LEASING, INC., CLAIM NUMBER 8 7-15-19 [85]**

Final Ruling: No appearance at the September 10, 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, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 15, 2019. By the court's calculation, 57 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 8 of Financial Pacific Leasing, Inc. is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Trustee, David Cusick ("Objector") requests that the court disallow the claim of Financial Pacific Leasing, Inc. ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $71,828.52. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is December 23, 2014. Notice of Bankruptcy Filing and Deadlines, Dckt. 13.

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).

The deadline for filing a proof of claim in this matter was December 23, 2014. Dckt. 13. Creditor's Proof of Claim was filed on January 26, 2018. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety as untimely. 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 Financial Pacific Leasing, Inc. ("Creditor") filed in this case 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 the Objection to Proof of Claim Number 8 of Creditor is sustained, and the claim is disallowed in its entirety.