

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

September 11, 2018 at 2:00 p.m.

1.	18-22403 -C-13	NEWALOW/LINDA WEEKES	OBJECTION TO CLAIM OF LVNV
	BLG-1	Chad Johnson	FUNDING, LLC, CLAIM NUMBER 11
			7-27-18 [39]

INSUFFICIENT NOTICE PROVIDED.

Local Rule 3007-1 Objection to Claim

Insufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2018. **However, creditor LVNV Funding, LLC was not properly served by its registered agent listed by the California Secretary of State or other person as required by Federal Rule of Bankruptcy Procedures 7004 and 9014. The Certificate of Service states that “service” on LVNV Funding, LLC was made on its loan servicer listed on the Proof of Claim as a post office box to be used for “notices.” Service for a contested matters, as opposed to merely providing a notice, must be made in the same manner as required for a summons and complaint under Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 9014(b).** Forty-four 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). That requirement was met.

The Objection to Proof of Claim Number 11 of LVNV Funding, LLC is denied without prejudice.

Newalow Weekes and Linda Weeks, the Debtors, (“Objectors”) request that the court disallow the claim of LVNV Funding, LLC’s (“Creditor”), Proof of Claim No. 11 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$2,203.76. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was August 24, 2007. The date of last payment on the Statement of Account Information attached to the Proof of Claim states January 24, 2007.

DISCUSSION

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

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

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

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

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

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 11 lists the charge off date as August 24, 2007. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

Debtors' unsigned declaration states that no payment or other transaction occurred after January 24, 2007. Thus, the four-year statute of limitations expired on January 24, 2011. This bankruptcy case was filed on April 21, 2018 – 4,105 days after the statute of limitations expired.

The court also notes that Debtors' counsel did not make a request for attorneys' fees and costs pursuant to Federal Rule of Civil Procedure 54(d) and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Based on the evidence before the court, the creditor's claim is denied 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 LVNV Funding, LLC (“Creditor”) filed in this case by Newalow Weekes and Linda Weeks, the Debtors, (“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 11 of LVNV Funding, LLC is denied without prejudice.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Plan.

The Chapter 13 Trustee responds to Debtor's Motion to Confirmation Plan not for the purposes of objecting to the Plan, but to flagging potential issues for the court. The Trustee seeks to ensure that the court addresses the feasibility of the Plan because Debtor's previous Plan was not confirmed, in part, due to feasibility concerns. (Dckt. 44). The Trustee notes that the prior Plan proposed monthly payments of \$3,695.00 for the first twelve months followed by forty-eight monthly payments of \$4,409.00. While the current plan proposes payments of \$11,189.12 for the first three months followed by fifty-seven monthly payments of \$4,399.00. The Trustee states that the Debtor is current in plan payments.

In support of his income, Debtor provided two declarations from family members living in Debtor's household, Janet Mims, Debtor's mother, (Dckt. 50) and Isis Grayson, Debtor's sister, (Dckt. 51). Both family members state that they will contribute funds each month to assist Debtor in making plan payments because they desire to continue living in Debtor's property commonly known as 1899 Bramblewood Drive, Fairfield, California. Both of the family members state that they consider the home to be "their home" causing the Trustee to question if the property is rental property and whether Debtor is receiving fair market rental payments from its tenants. Trustee suggests that additional testimony from the Debtor may be necessary to determine whether the proposed Plan is feasible. The court is persuaded that the

property is being utilized as a family center and not a rental property.

At the hearing -----.

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

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

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

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

~~**IT IS ORDERED** that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan is confirmed.~~

* * * *

Final Ruling: No appearance at the September 11, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 6, 2018. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral of Wells Fargo Auto Finance, Inc. is granted.

The motion is accompanied by the Debtors' declaration. The Debtors state that they are the owners of a 2013 Chevrolet Malibu. The Debtors seek to value the property at \$6,000.00, Debtors' opinion of the vehicle's value on the date of the petition. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtors note, as does the Trustee in his statement of Non-Opposition, that the creditor, Wells Fargo Auto Finance, Inc., has not yet filed a claim. The bar date for filing a claim is September 13, 2018. (Dckt. 11).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$11,715.00. Therefore, the creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,000.00. *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 for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and any future claim of Wells Fargo Auto Finance, Inc. secured by a purchase-money loan secured against the Debtors' 2013 Chevrolet Malibu, is determined to be a secured claim in the amount of \$6,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

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

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

The Motion to Incur Debt is denied.

Donetta M. Collins ("Debtor") seeks permission to purchase real property commonly known as 2216 Betty Mae Court, Stockton, California, with a total purchase price of \$402,000.00. Debtor seeks permission to obtain a loan of \$394,718.00 with monthly payments of \$2,868.93 to Freedom Mortgage Company over 30 years with a 5.00% fixed interest rate. In addition to the monthly payments, Debtor anticipates contributing \$2,000.00 toward the down payment, with the balance of the down payment, approximately \$12,000.00, to be financed by CALHFA with financing that provides for deferred payment. Debtor states that the loan is ready to close and seeks a waiver of the (14) day stay period pursuant to Bankruptcy Rule 6004(g).¹

In addition to providing the court with a description of the loan, Debtor details several changes in financial status. First, Debtor states that she has increased her income by working more overtime. Second, Debtor details various household changes: (1) Debtor's daughter and grandchild no longer reside in Debtors

¹ Debtor requests a waiver of the (14) days to avoid changes in the interest rate. The court notes that the terms of the "Loan Estimate", purportedly prepared on August 17, 2018, expired on August 31, 2018. (Dckt. 52)

home; (2) Debtor no longer receives \$300.00 in monthly family contributions; and (3) Debtor's expenses for caring for an elderly mother and daughter have increased. Debtor's declaration does not inform the court when these occurred. Debtor also notes that, the Chapter 13 Plan completes in November 2018.

The Trustee filed a response noting a significant increase in monthly gross wages as shown on an exhibit titled "Current Schedule I." (Dckt. 47, Exhibit B) Specifically, Debtor's "Current Schedule I," reflects \$10,875.00 in monthly gross wages as of 8/25/2017 while Debtor's filed Schedule I, filed on November 9, 2015, reflects \$5,860.12 in monthly gross wages (Dckt. 1). The Trustee flags for the court that Debtor's Plan contains a requirement that Debtor notify the Trustee in writing of any change in employment. The Trustee states that there are no records indicating that the Trustee was notified of Debtor's increased wage income. Moreover, the Trustee highlights that Debtor's Plan only provides for a 1% payment to unsecured claims that total \$4,411.88. The court notes that Debtor has not actually filed a Supplemental I by virtue of filing Exhibit B contemporaneously with the Motion to Incur Debt.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable, assuming that the Debtor has paid into the Plan all required disposable income. However, the court is concerned that Debtor did not notify the Trustee about the monthly wage increase of approximately \$5,000.00 and is without sufficient information to determine if and when Debtor could have increased Plan payments. It is incumbent on the court to determine whether the Debtor's statements regarding saving up money from overtime in order to purchase real property was done in good faith.

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 Incur Debt filed by Donetta M. Collins ("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, and Donetta M. Collins is not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 47.

Thru #6

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

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

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

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

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 20, 2018. Fourteen days' notice is required. That requirement was met. **The form of the notice provided does not comply with Local Bankruptcy Rules because the notice information regarding pre-hearing disposition, required under Local Bankruptcy Rule 9014-1(d)(3)(B)(iii), was not included.**

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

The court's decision is to sustain the Objection.

Creditor, Capital One, N.A., opposes confirmation of the Plan based on the following:

A. Debtor obtained a loan for a 2007 Dodge Truck within 910 days of the petition date and Debtor's Plan does not provide for the full payment of the claim or the applicable prime plus interest rate.

Further, the Creditor requests that the court either deny confirmation of the Chapter 13 Plan or in the alternative convert the case under Chapter 7 of the Bankruptcy Code.

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 Capital One, N.A., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 13, 2018. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor did not appear at the First Meeting of Creditors on September 13, 2018. The court notes, per the Trustee's August 10, 2018 Trustee Report, that on August 9, 2018 the Debtor did not appear for the Continued Meeting of Creditors, only Debtor's counsel appeared.

B. Debtor is \$1,889.00 delinquent in Plan payments and the Debtor has paid \$0.00 into the Plan.

C. Debtor cannot make the proposed Plan payments. Debtor proposes to value two secured claims but has not filed motions to value collateral. Debtor's Plan does not have sufficient funds to pay the those claims in full.

D. Debtor's Plan is not the Debtor's best efforts, specifically on Schedule J Debtor deducts

\$351 for California Franchise Tax Board that the Trustee believes is an expense the Debtor will pay post-petition and should not be listed on Schedule J. This is because Debtor's Schedules E/F list \$7,000 owed to the California Tax Franchise Board and the Plan lists \$7,000 in priority claims for the California Tax Franchise Board.

E. Debtor may not have listed all of his assets on Schedules A/B, specifically a 2005 Honda TRX450 RS.

F. Debtor's Plan lists two creditors that are not listed on Debtor's schedules.

G. Debtor may have new employment, per statements of Debtor's counsel, but has not provided the Trustee with information regarding this income.

H. Debtor lists owning real property 605 Shawn Way, Susanville, CA but lists 620 Gem Dr., Susanville, CA as his residence. The Trustee is uncertain whether Debtor has rental property for which income and expenses are not reported.

I. Debtor has not provided the Trustee with copy of his most recent Federal Income Tax Return, or a statement that no such return was required.

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

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

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

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

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

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

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

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

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

The Motion to Incur Debt is denied.
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Dewayne Latrall Williams ("Debtor") seeks permission to refinance real property commonly known as 7937 Dersingham Drive, Sacramento, California, with a loan amount of \$310,000.00 and monthly payments of \$2,608.37 to Elite Norcal Corporation over 30 years with a 7.75% variable interest rate. The Debtor claims that the refinance will fully pay claims of the secured creditors and the allowed claims of the unsecured creditors. The court notes, as does the Trustee his response, that Debtor's declaration was filed without a signature.

The Trustee filed a response noting several items that require clarification. First, the refinancing requires the Debtor to provide to Elite Norcal Corporation a "0X30 plan payment history," however, insufficient information was provided by the Debtor to inform the Trustee, and the court, whether the Debtor can comply with this requirement. Second, the Debtor does not state the exact amount of funds the transaction will produce, as such, Trustee is uncertain if the transaction will generate sufficient funds to pay off the claims as stated by the Debtor. However, assuming the Debtor can demonstrate at least \$60,000.00 will be paid to the Trustee, the Trustee does not oppose the refinance.

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

Ky. 2007).

The court must find that the proposed refinance, based on the unique facts and circumstances of this case, is reasonable. Absent admissible testimony from the Debtor that clarifies the terms of the refinance and demonstrates that the transaction will generate sufficient proceeds to pay off both the secured and allowed unsecured claims, 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 Incur Debt filed by Dewayne Latrall Williams (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and Dewayne Latrall Williams is not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 88.

Final Ruling: No appearance at the September 11, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First Amended Plan has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the Motion to Confirm the Plan to November 20, 2018 at 2:00 p.m.

The Chapter 13 Trustee objects to the confirmation of the Debtor's Plan for the following reasons:

A. Debtor's Plan exceeds (60) months because it requires (68) months to complete. The Trustee claims that Plan payments should be \$14,899.70, instead of the proposed payments of \$11,635.00, and a monthly dividend to the IRS in Class 2 must be \$1,721.05, instead of the proposed payment of \$1,596.34.

Debtor's Counsel responded on September 10, 2018 that due to a recent hospitalization and continuing health concerns he has been unable to respond to the Trustee's Opposition and cannot properly attend the hearing. The Trustee filed a statement of non-opposition to the continuance.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to November 20, 2018 at 2:00 p.m.

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

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

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

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

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

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

The court's decision is to xxxxxx the Objection.

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

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

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

Debtor's Response:

Debtor's counsel responds, without a supporting declaration from the Debtor or evidence, that:

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

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

At the August 28, 2018 hearing the court continued the hearing allowing the parties additional time to determine if Trustee's reasons for opposing confirmation could be resolved.

At the hearing -----.

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

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is **xxxxxxx** and the proposed Chapter 13 Plan is **xxxxxxxxx**.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 13, 2018. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.
--

The Trustee opposes confirmation of the Plan because Debtor's Plan is not the Debtor's best efforts. Debtor is below the median income and proposes Plan payments of \$175.00 per month for 36 months, with a 2% dividend to the unsecured creditors. Debtor deducts on Schedule J, \$400.00 a month for "Pet Care and Food." The Debtor admitted to having a collie and house cat at the Meeting of Creditors held on August 9, 2018. Debtor's proposes to pay \$6,300.00 over the next 36 months, while the pet care over the next 36 months is \$14,400.00, which is \$8,100.00 more than what Debtor proposes to pay through the Plan.

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

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

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

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

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

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

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

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

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

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

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

The court's decision is to sustain the Objection.

PNC Bank, N.A., a secured creditor, opposes confirmation of the Plan because Debtors' Plan does not provide for the payment arrearages owed to PNC Bank, N.A. in the total amount of \$959.61.

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 Capital One, N.A., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

No Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2018. **The form of the notice provided does not comply with Local Bankruptcy Rules because the notice information required under Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) was not included.** Twenty-eight days' notice is required. That requirement was met.

The Motion to Confirm the Plan has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Value Collateral of Consumer Portfolio Services is granted.~~

The motion is accompanied by the Debtors' declaration. The Debtors are the owners of a 2007 Chevy Avalanche. The Debtors seek to value the property at \$10,500.00, Debtors' opinion of the replacement value of the vehicle. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2015, more than 910 days prior to the filing of the petition, with a balance of approximately \$15,291.00. Therefore, the creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$10,500.00. *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 for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Consumer Portfolio Services secured by a purchase-money loan secured against the Debtors' 2007 Chevy Avalanche, is determined to be a secured claim in the amount of \$10,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.~~

~~****~~

Final Ruling: No appearance at the September 11, 2018 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

A judgment was entered against the Debtor Juanita Chochla in favor of Midland Funding, LLC for the sum of \$2,282.37. The abstract of judgment was recorded with the County of Sacramento on October 17, 2017. That lien attached to the Debtor's personal property located in the county. The Chapter 13 Trustee does not oppose Debtor's Motion to Avoid Judicial Lien.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtors' Schedules A through D, the Debtors' do not own real property and have fully exempted their personal property which has an approximate value of \$25,920.00 as of the date of petition, as reported on Debtors' Schedule C. Additionally, Debtors' list an auto loan in favor of GM Financial in the amount of \$26,500.00 which is secured by Debtors' 2015 vehicle, valued at approximately \$19,132.00 on the date of the petition which is senior to Midland Funding, LLC. The respondent holds a judicial lien created by the recordation of an abstract of judgment. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the personal property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

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

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

IT IS ORDERED that the judgment lien of Midland Funding, LLC, Sacramento County Superior Court Case No. 34-2016-00204469, recorded in Book 20171017 Page 1061, with the Sacramento County Recorder, against personal property located in Sacramento County, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

14. [18-20475](#)-C-13 LENET VABA-BISCHOF
[BLG-2](#) Chad Johnson

MOTION BY CHAD M. JOHNSON TO
WITHDRAW AS ATTORNEY
8-6-18 [[39](#)]

Final Ruling: No appearance at the September 11, 2018 hearing is required.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 28, 2018. Fourteen days' notice is required. That requirement was met.

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

~~The Motion to Extend the Automatic Stay is denied, and the automatic stay is not extended in this case.~~

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-25641, "First Case") was filed on July 15, 2015 and dismissed without discharge on February 28, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re*

Elliot-Cook, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Debtor's Basis for Extension of the Stay:

Here, the Debtor claims that he was unable to make the required payments in their previous bankruptcy due to an inability to refinance a mortgage. However, Debtor's statement is not wholly accurate.

The court notes that in Debtor's previous bankruptcy, the Debtor's initial Plan, filed on July 29, 2015 and confirmed on November 9, 2015, included a provision that Debtor would pay the mortgage claim within (18) months by either refinancing the mortgage or selling the property. First Case Dckts. 13; 28. On February 3, 2017, the Trustee sought to dismiss the case because after (18) months the Debtor had not refinanced the mortgage or sold the house. First Case Dckt. 41. The Trustee noted in his motion to dismiss that, absent the sale or refinanced, Debtor's Plan required 131 months to finish because the Plan only provided for monthly payments of \$700.00. On February 28, 2017, the court converted the case to a Chapter 7 instead of being dismissed. First Case Dckt. 49. Shortly thereafter, on May 21, 2017, Debtor sought to reconvert the case back to a Chapter 13 with the stated purpose of paying off the mortgage in order to keep his home. First Case Dckt. 64. As part of his motion to reconvert, Debtor's brother and niece submitted declarations stating that they were able to contribute a combined \$1,300.00 a month to Debtor's monthly payments. First Case Dckts. 67; 68. The court granted Debtor's Motion to Reconvert. First Case Dckt. 77. Upon reconversion, Debtor submitted a proposed Plan to payoff the mortgage over (60) months at 0% interest, with monthly payments of \$1,522.00. First Case Dckt. 83. The court was unpersuaded that Debtor could propose a (60) month plan after reconversion and that Debtor should be allowed to pay 0% interest. First Case Dckt. 110. As such, on September 19, 2017, the court sustained the Trustee's and the Creditor's Objections to Debtor's Plan. Shortly thereafter, Debtor obtain present counsel and voluntarily dismissed his case in February 2018. First Case Dckts. 120; 123; 125.

In support of the success of the present bankruptcy, the Debtor claims that he and his brother are in a better position to refinance the mortgage and/or assist with plan payments. Debtor also claims that his niece may also be able to assist with plan payments. Debtor's motion does not contain declarations from either his brother or daughter attesting to their ability and/or willingness to assist Debtor. Moreover, Debtor's declaration does not provide the specific dollar amounts that Debtor's family members purportedly anticipate contributing to the Plan. Debtor's Plan proposes monthly payments of \$1,550.00 and proposes to pay the Creditor 4% over the life of the Plan. Dckt. 20. While not objections to the Plan are currently filed, the court notes that the deadline to object is October 4, 2018. Dckt. 28.

Trustee's Opposition:

The Chapter 13 Trustee filed an opposition to the Debtor's Motion for Stay Relief, Trustee states that the previous case was dismissed on motion of the Trustee due to Debtor's failure to refinance or sell his residence within 18 months of Plan confirmation. The Trustee also noted that Debtor's filing was

incomplete at the time of the filing of the Opposition and the Trustee was not able to determine whether the Plan was confirmable. The court notes that the Debtor filed a Plan on August 31, 2018 but has not yet filed a motion to confirm. (Dckt. 20).

Creditor David Mecurio's Opposition:

Creditor, David Mecurio, objects the Debtor's request to extend the automatic stay. Creditor claims that Debtor's current bankruptcy was not filed in good faith and suggests it is merely an attempt to thwart the Creditor's foreclosure sale of Debtor's residence. Creditor claims that because Debtor's motion does not address how he proposes to make the necessary payments to his creditors, including various taxing authorities, the stay should not be extended.

At the hearing Debtor -----.

~~The motion is denied and the automatic stay is not extended for all purposes, unless terminated by further order of this court.~~

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

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

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

~~**IT IS ORDERED** that the Motion is denied and the automatic stay is not extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by further order of this court or subsequent operation of law.~~

* * * *

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

The Chapter 13 Trustee objects to the confirmation of the Debtor's Plan based on the following:

A. Debtor's Plan provides for two lump sum payments, the source of the funds coming from a settlement of a pending lawsuit. The Trustee is uncertain if Debtor has provided sufficient information to ascertain the likelihood of these payments.

B. Debtor's motion states that Debtor seeks to confirm her first amended plan when the first amended plan was denied confirmation. (Dckt. 70). Trustee notes that Debtor appears to be seeking confirm her second amended plan.

C. Debtor's Plan may not comply with applicable law because the lump sum provisions are described in Section 2.01 rather than in Section 7.02, resulting in improper interlineation.

Debtor's Response:

Debtor's Counsel responds to the Chapter 13 Trustee's Opposition by conceding that the motion mistakenly seeks to confirm the first amended plan when it actually seeks to confirm the second amended plan. Debtor Counsel objects the Trustee's contention that the plan interlineates and requests that

court resolve the disagreement between the Trustee and Debtor's counsel.

Debtor's response; however, is silent regarding the Trustee's concern about insufficient information to determine whether the Debtor can make the proposed lump sum payments.

At the hearing -----.

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

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

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

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

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

* * * *

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 27, 2018. Fourteen days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 18-20403) was filed on July 15, 2015 and dismissed without discharge on July 13, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *staying the Serial Filer* -

Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Debtor's Basis for Extension of the Stay:

Here, the Debtor claims that her previous case was filed due to decreased business revenue. When Debtor filed her previous case she was not represented by an attorney. Debtor has since retained counsel to assist with the current bankruptcy. Debtor also states that no new debt has been acquired since the previous case was dismissed.

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

The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this court.

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

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

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

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

Final Ruling: No appearance at the September 11, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee, and the United States Trustee on August 16, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the record, the Motion is moot due to the filing of a new plan, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Amended Plan is denied as moot.</p>

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Joseph Miller Azevedo ("Debtor") filed a Amended Plan and corresponding Motion to Confirm on August 28, 2018. Dckts. 22, 25. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, 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 Motion to Confirm the Amended Chapter 13 Plan filed by Joseph Miller Azevedo ("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 as moot, and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtors, 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 Avoid Judicial Lien is granted.

A judgment was entered against the Debtors in favor of Midland Funding, LLC for the sum of \$13,583.40. The abstract of judgment was recorded with the County of Sacramento on April 24, 2017. That lien attached to the Debtors' residential real property known as 9040 D. Valley Dr., Elk Grove, California.

The Chapter 13 Trustee does not oppose Debtor's Motion to Avoid Judicial Lien but notes that Debtors' listed Midland Funding, LLC as a nonpriority unsecured claim on Schedule F. (Dckt. 20) Debtors responded by conceding that Midland Funding, LLC's claim should have been listed on Schedule D as a secured claim rather than on Schedule F as an unsecured claim, but requests that the lien be avoided since, if Debtor prevails, Midland Funding, LLC's claim will become a nonpriority unsecured debt. (Dckt. 23)

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$336,225.00 as of the date of the petition. The unavoidable consensual liens total \$236,225.00 on that same date according to Debtors' Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the

personal property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

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

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

IT IS ORDERED that the judgment lien of Midland Funding, LLC, Sacramento County Superior Court Case No. 34-2016-00191982, recorded in Book 20170424 Page 0362, with the Sacramento County Recorder, against real property located at 9040 D. Valley Dr., Elk Grove, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee, and Office of the United States Trustee on August 7, 2018. Twenty-eight days notice is required. That requirement is met.

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

The court's decision is to deny the Motion to Dismiss.

Creditor, Prabhakar Goel and Goel Family Ventures, LLP, ("Movant") seek dismissal of Debtor's case based on the following:

A. Debtor does not have a "true bankruptcy purpose" and is merely an attempt to re-litigate a contractual dispute that Movants argue has already been decided in an arbitration proceeding. Building off this argument that by virtue of the arbitration, Debtor does not own significant assets listed on his Schedules, including income generating property that Debtor's previously filed Plans relied upon.

C. Debtor's case exceeds the statutory maximums for Chapter 13 relief.

D. Debtor has not presented a confirmable Plan.

Debtor's Response:

Debtor responds by claiming that he has a genuine interest in paying his creditors and anticipates paying the allowed claims of his creditors in full and that the purpose of the bankruptcy is to pay the debts he owes while not forfeiting property with a value he believes exceeds his debts. Debtor denies misrepresenting his assets on his schedules. Lastly, Debtor states that he objects to certain claims related to

attorneys fees asserted by Movant.

Discussion:

Movant spends a considerable amount of time explaining the saga of a business deal gone sour between Movant and the Debtor. Movant argues that this court is obligated to determine that issue preclusion applies in order to prevent the Debtor from re-litigating findings from the described arbitration proceeding. However, the decision to apply issue preclusion is discretionary and appropriate only when the all five threshold requirements are met. *See Harmon v. Kobrin*, 250 F.3d 1240, 1245 (9th Cir. 2001), citing *Lucido v. Superior Ct.*, 51 Cal.3d 335, 341 (1990) (listing the five requirements: (1) identical to the former proceeding; (2) actually litigated; (3) necessarily decided; (4) final on the merits; and (5) involve the same parties). Here, Movant, by failing to submit a final state court order demonstrating that the arbitration was confirmed, has not demonstrated to this court that the arbitration is final. While Movant submitted certain orders from a California Superior Court including: (1) an order providing injunctive relief that references the “interim” findings of the arbitration proceeding; and (2) an order from a California Superior Court that denies Debtor motion to avoid the determinations of the arbitration proceeding – none demonstrate a confirmation of the proceeding. (Dckts. 45, Exhibit D; 46, Exhibit, I). This court need not determine whether any of the other threshold requirements for issue preclusion were met because finality has not been proven. As a result, the question of whether certain property listed on Debtor’s schedules is in fact property of the estate is an issue that must be resolved in this bankruptcy.

Movant claims that Debtor lacks a true bankruptcy purposes because the bankruptcy represents a “two-party” dispute. However, the court notes that there are other creditors with filed claims in excess of \$450,000.00. Moreover, the date to file a claim does not expire until October. As such, the court is not persuaded that this bankruptcy only serves to resolve a dispute with Movant.

Next, Movant argues that this court must dismiss Debtor’s Chapter 13 case because Debtor exceeds the debt limits. Movant claims that the attorneys fees awarded in the arbitration represents an unliquidated debt at the time of the petition. However, Movant acknowledges that Debtor disputes Movant’s asserted attorney fees and Movant has not submitted sufficient evidence for the court to determine that the arbitration proceeding is final. As such, it is for this court to determine whether Debtor exceeds the debt limits of a Chapter 13 based on what this court finds to be readily determinable.

Lastly, Movant argues that the case should be dismissed because a confirmable Plan has not been filed. The court notes that on August 28, 2018, Debtor’s Amended Plan was denied. (Dckt. 63). Movant and the Trustee filed oppositions to Debtor’s Plan. Movant’s arguments were similar to those presented here. The Trustee’s opposition was based on the following three issues: (1) that the Plan may fail a Chapter 7 liquidation test; (2) that the feasibility of the Plan was predicated on the resolution of the issues from the arbitration proceeding for which insufficient information has been given; and (3) that Debtor was requesting certain payment provisions to this Creditor that were administratively burdensome. There has been an insufficient amount of time since the denial of the Amended Plan to warrant a dismissal at the juncture. The court notes, that while Debtor claims that he wants to confirm a 100% Plan, merely paying the allowed claims without sufficient interest, given Debtor’s disclosed assets, may not be sufficient to overcome a Chapter 7 liquidation test.

At the hearing -----.

The court does not find the Creditor’s objections valid. The motion is denied and the case is not

dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by Creditor Prabhakar Goel and Goel Family Ventures, LLP having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied and the case is not dismissed.

Final Ruling: No appearance at the September 11, 2018 hearing is required.

The Motion to Sell is dismissed without prejudice.

Penny Pelkey (“Debtor”) having filed a Request for Denial of Motion to Sell, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on August 23, 2018, Dckt. 28; no prejudice to the responding party appearing by the dismissal of the Motion; the Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the statements of non-opposition filed by the Chapter 13 Trustee and Creditor America Advisors Group; the Ex Parte Motion is granted, the Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

IT IS ORDERED that the Debtor’s Motion to Sell is dismissed without prejudice.

* * * *

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

The Chapter 13 Trustee objects to the confirmation of the Debtor's Plan because the Debtor may not be able to make required Plan payments.

A. On July 26, 2018, Debtor admitted at the First Meeting of Creditors that he had childcare expenses of \$600.00 per month. This expenses is not listed on Debtor's Amended Schedule J, but was listed on Form 122C-2.

B. Debtor claims \$766.59 of involuntary deductions per month from his paycheck, but does not list this expenses as a deduction on his Schedule I or as an expenses on his Schedule J.

Debtor's Counsel's Response:

Debtor's Counsel filed a response that the court notes that despite being titled as a declaration, is not a declaration because it was not signed under penalty of perjury. Debtor's counsel's response states that based on his personal knowledge, Debtor can make the required payments. Debtor's Counsel states that Debtor lists the monthly childcare expense of \$600.00 on the Schedule J on Line 8, the court notes that a \$600.00 childcare expense is shown on Line 8 of Debtor's Schedule J. Debtor's counsel states that Debtor lists a involuntary deduction for Union due of approximately \$120.00 per month on Schedule I, Line 5g. However, Debtor's counsel does not address the remaining \$646.59 of involuntary expenses that the Trustee

asserts are not reflected on Debtor's Schedule J but claimed as an deduction in Debtor's Plan.

At the hearing -----.

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

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

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

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

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

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