

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 18, 2018 at 2:00 p.m.

1.	18-24211 -C-13	JESSICA KELLER	MOTION TO CONFIRM PLAN
	LBG -1	Lucas Garcia	7-31-18 [28]

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.

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 31, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Chapter 13 Trustee's Opposition:

The Trustee opposes confirmation on the basis that:

A. Debtor lists net business income on Schedule I, Line 8a in the

amount of \$1,660.00 but has not attached a statement showing gross receipts, ordinary and necessary business expenses, and total monthly income as required.

B. Debtor lists Loan Care's First Deed of Trust to be pain in Class 1 of the Plan, however, Debtor's Schedules list the property as belonging to Debtor's deceased mother's estate. Debtor claims she is the sole heir of the estate, but that the residence is still in probate. Loan Care has not yet filed a claim, the claim bar date is September 13, 2018. As such, Trustee will not make payments for pre-petition arrears.

At the hearing, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~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
~~XXXXXX~~

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 September 4, 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. 18-23843, "First Case") was filed on June 19, 2018 and dismissed without discharge on July 2, 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, Debtor's previous bankruptcy was dismissed for failure to timely file all required documents, less than a month after it was filed. (Case No. 18023843, Dckt. 11). In the previous case, Debtor never filed the required schedules or a proposed Plan. Moreover, Debtor was not represented by an attorney in the previous bankruptcy proceeding.

In the support of the success of the current bankruptcy, Debtor states that he has filed all required documents, has submitted a Plan (Dckt. 13), and has representation. (Dckt. 18).

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

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

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

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

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

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 and Debtors' Attorney on August 20, 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 overrule the Objection.

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

A. Debtors cannot afford to make Plan payments. Debtors' Plan relies on the Motion to Value Collateral of Wells Fargo Auto Finance, set for September 11, 2018.

The court notes that the Motion to Value Collateral was granted on September 11, 2018. (Dckt. 27).

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 overruled and the proposed Chapter 13 Plan is confirmed.

4. [18-24333](#)-C-13 KAMALJIT GOSAL
[DPC](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
8-20-18 [[31](#)]

Thru #5

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 20, 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's Plan proposes to sell real property located at 584 Santa Ynez Way, Sacramento, CA on or before February 1, 2019. The Plan lacks specific details as to the sale and Debtor has not yet filed a motion to sell the property. The Plan allows for approximately 7 months to sell the property. Debtor's Plan proposes, prior to the

sale, Debtor will make monthly payments of \$800 to the creditor Wells Fargo Bank N.A.

B. Debtor has not filed tax returns for the last four years. The IRS filed Claim No. 1, indicated that Debtor failed to file income taxes for the tax years 2013 and 2017.

At the hearing -----.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee 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, Debtor's Attorney, the Chapter 13 Trustee, and the Office of the United States' Trustee on July 30, 2018. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Creditor, Wells Fargo Bank, N.A., opposes confirmation of the Plan based on the following:

A. Creditor has a claim secured by real property located at 584 Santa Ynez Way, Sacramento, CA. (Claim No. 2). Creditor asserts that the sale is speculative and the Plan does not address what will happen if the property is not sold.

B. Creditor believes that its claim is mis-classified as a

Class 1 claim because Debtor's Plan modifies its claim. Debtor's Plan proposes reduced mortgage payments to Creditor in anticipation of sale on or by February 1, 2019.

C. Debtor has not provided sufficient information to support claimed expenses. Debtor lists \$4,603.80 in monthly income, \$650.00 purportedly contributed by Debtor's parent. Creditor claims that the contribution by Debtor's parent is unsupported.

At the hearing -----.

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

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

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

The Objection to the Chapter 13 Plan filed by Creditor Wells Fargo Bank, 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.

6. [18-22839](#)-C-13 ROBERT STANLEY
[USA](#)-1 Mary Ellen Terranella

MOTION TO DISMISS CASE AND/OR
MOTION TO CONVERT CASE TO
CHAPTER 7
8-13-18 [[66](#)]

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 Convert 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 13 bankruptcy case of Robert Stanley ("Debtor") has been filed by the United States on behalf of the Internal Revenue Service ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor has not filed all pre-petition tax returns by the date of the meeting of creditors required under 11 U.S.C. § 1308. Debtor has not filed the following required tax returns:

1. Form 941 "Employer Quarterly Tax Returns" for the following tax periods: 09/30/2017; 12/31/2017; 03/31/2018; and 06/30/2018.

2. Debtor has not filed Form 940 "Employer's Annual Federal Unemployment Tax Return" for the tax years 2013 through 2017, inclusive.

3. Debtor has not filed a federal income tax return for the tax year 2017.

B. Movant asserts, through the declaration of IRS Bankruptcy Specialist Rhonda Roberts, that on June 15, 2018, Debtor and Debtor's attorney were sent a letter from a representative of the IRS identifying the unfiled tax returns identified above.

C. Movant filed Claim No. 3-3 asserting

Movant also flags for the court that this is Debtor's fifth consecutive bankruptcy.

CHAPTER 13 TRUSTEE'S RESPONSE:

The Chapter 13 Trustee responds that Debtor's Plan was confirmed on July 11, 2018 over the Trustee's Objection. (Dckt. 60). The Debtor is current under the terms of the Plan. Debtor has paid a total of \$14,880.00. The Meeting of Creditors was held open to allow Debtor to provide his Social Security number.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 4, 2018. Dckt. 74. Debtor acknowledges in his declaration that the federal tax returns identified by the United States have not been filed and intends to file all required tax returns within 30 days.

Debtor claims that certain circumstances starting in early 2017 impacted Debtor's ability to file timely tax returns. Debtor identified difficulties with his former business manager, his former landlord, and the telephone company as factors affecting his ability to file his tax returns. Additionally, Debtor states that his former business manager, who he let go in August 2017, created a bookkeeping mess that is taking time to address.

UNITED STATES' REPLY:

The United States claims that the mandatory language of 11 U.S.C. § 1307(e) requires that this case be dismissed or converted because required pre-petition tax returns were not filed.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer* (*In re Nelson*), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell* (*In re Ho*), 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

The court notes that Debtor acknowledges that pre-petition tax returns within the four-year period ending on the date of the filing of the petition were not filed, as required under 11 U.S.C. § 1308(a). The meeting of creditors was not held open for the purpose of filing those tax returns and the Debtor did not request that it be held open for that purpose. The Chapter 13 Trustee noted in its Response that the Meeting of Creditors was held open to allow the Debtor to provide his Social Security Number, not to file required tax returns.

Debtor's declaration indicates that at some point after August 2017, Debtor knew that there were business tax returns that were not filed and hired his mother to help him "straighten out the mess." (Dckt. 75). However, Debtor does not provide a specific date on which he knew that the pertinent tax returns for his business were not filed. Debtor does not provide the date he hired his mother, nor does Debtor indicate whether he knew that the tax returns were not filed prior to filing his bankruptcy petition on May 8, 2018. Moreover, Debtor also acknowledges that his personal tax return for 2017 was not filed.

The United States submitted evidence that indicates that the Debtor and Debtor's attorney were notified about the non-filed returns by a letter sent by the IRS dated June 15, 2018, prior to closing of the meeting of creditors on July 20, 2018. Additionally, the court notes that the IRS' Claim 3-1 filed on May 29, 2018 includes notations indicating there were unfiled tax returns within the four year period ending on the date of the petition. (Claim No. 3-1). There is no evidence to indicate when Debtor began taking proactive steps to file the required tax returns or what specific steps were taken by the Debtor.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(e). The Motion is granted, and the case is converted to a case

under Chapter 7.

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

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

The Motion to Convert the Chapter 13 case filed by the United States ("a creditor") 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

7. [18-24343](#)-C-13 BENJAMEN VERMA
[DPC](#)-1 Martin Phillips

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
8-20-18 [[23](#)]

Thru #8

Final Ruling: No appearance at the September 18, 2018 hearing is required.

The Objection to Confirmation of Plan is deemed moot due to the case being dismissed on September 5, 2018. (Dckt. 32)

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.

IT IS ORDERED that the Objection is dismissed as moot.

8. [18-24343](#)-C-13 BENJAMEN VERMA
[MWP](#)-1 Martin Phillips

OBJECTION TO CONFIRMATION OF
PLAN BY OLEG UVAROV
8-9-18 [[16](#)]

Final Ruling: No appearance at the September 18, 2018 hearing is required.

The Objection to Confirmation of Plan is deemed moot due to the case being dismissed on September 5, 2018. (Dckt. 32)

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.

IT IS ORDERED that the Objection is dismissed as moot.

9. [18-22446](#)-C-13 BRYAN/MARY BROOME
[PGM](#)-2 Peter Macaluso

AMENDED MOTION TO SELL
8-20-18 [[76](#)]

Final Ruling: No appearance at the September 18, 2018 hearing is required.

The Amended Motion to Sell is deemed moot due Debtor filing a motion to dismiss the case on September 13, 2018. (Dckt. 90)

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.

IT IS ORDERED that the Motion is dismissed as moot.

INSUFFICIENT NOTICE PROVIDED.

Insufficient Notice Provided. The Proof of Service states that the Motion to Value and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2018. **However, creditor ONEMAIN Financial Gropu, LLC was not properly served by its registered agent listed by the California Secretary of State or other person a required by Federal Rule of Bankruptcy Procedures 7004 and 9014. The Certificate of Service states that "service" on ONEMAIN Financial Gropu, LLC was made on its loan servicer listed on the Proof of Claim as a post office box to be used for "notices" and on an agent for service in New York rather than the agent for service located in Los Angeles, per California Secretary of State. Service for a contested matters, as opposed to merely providing a notice, must be made in the same manner as required fro a summons and complaint under Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 9014(b) .**

The Motion to Value secured claim of ONEMAIN Financial Group, LLC, "Creditor," is denied without prejudice.
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2014 Toyota Avalon XLE Sedan. The Debtor seeks to value the property at a replacement value of \$16,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a non-opposition. The Trustee further states that the Debtor provides for the creditor on Schedule D and in Class 2B of the proposed Plan. The Creditor filed Claim No. 4-1 for \$22,583.71, reflecting \$16,000.00 as secured and \$6,583.71 as unsecured.

The lien on the vehicle's title secures a non-purchase-money loan with a balance of approximately \$22,583.71. Therefore, the respondent 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 \$16,000.00. 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) denied without prejudice due to insufficient notice.

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 denied without
prejudice.

11. [18-24147](#)-C-13 JUDY SYPNIESKI
[AP-1](#) Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
8-22-18 [[19](#)]

Thru #12

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, Debtor's Attorney, the Chapter 13 Trustee, and the Office of the United States' Trustee on August 22, 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.

Creditor, U.S. Bank, N.A., opposes confirmation of the Plan based on the following:

A. Debtor's plan does not cure pre-petition arrears of Creditor's secured claim (Claim No. 3-1). Debtor's Plan lists Creditor's claim as a Class 4 creditor.

B. Debtor does not have adequate disposable income to fund the proposed Plan. Debtor's Plan relies on income contributions from undisclosed family members of \$675.00 a month for (60) months.

At the hearing -----.

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

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

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

The Objection to the Chapter 13 Plan filed by Creditor U.S. Bank, 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, Debtor's Attorney on August 21, 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 Chapter 13 Trustee Objects to confirmation of the Plan based on the following:

A. Debtor cannot make payments under the Plan. Debtor admitted at the First Meeting of Creditors held on August 16, 2018 that she does not receive the income of \$500.00 a month described as "Boarder" income on Debtor's Schedule I.

Debtor's Response:

Debtor responds to the Trustee's Objection by stating that Debtor did not understand the term "Boarder" during the Meeting of Creditors. Debtor receives income from a "longtime friend, Mr. Gary Borrilez" who "pays me [Debtor] \$500.00 per month for the the room" in Debtor's house. Dckt. 26, Debtor's Declaration.

At the hearing -----.

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

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

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

The Objection to the Chapter 13 Plan filed 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.

13. [17-28363](#)-C-13 CHESTER JIMERSON AND
[DNL](#)-7 SUNITA RANI
Stephen Murphy

MOTION TO RECONVERT CASE TO
CHAPTER 7
8-21-18 [[154](#)]

Thru #15

No Tentative Issued

14. [17-28363](#)-C-13 CHESTER JIMERSON AND
[DPC](#)-2 SUNITA RANI
Stephen Murphy

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
8-17-18 [[150](#)]

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 Debtors, Debtors' Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2018. 28 days' notice is required. That requirement was met.

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

The Objection to Claimed Exemptions is xxxx .
--

The Chapter 13 Trustee objects to Chester Jimerson and Sunit Ranil's ("Debtors") claimed exemptions with respect to:

A. Debtors 2010 Dodge Caravan exempted under CCP § 704.010 purchased post-petition and after the case was converted to a Chapter 13 because the source of the funds used to purchase the vehicle were not disclosed; and

B. Debtors claimed exemption of \$0.00 for wages pursuant to CCP § 704.070 California law because it serves no purpose.

Debtors' Response:

Debtors' counsel responds, without a declaration, that Debtors purchased the vehicle from their employer paid out of bonus money paid to the Debtors after the Chapter 13 conversion. Debtor concedes that the funds used to purchase the vehicle were property of the estate and does not oppose the Trustee's objection to the vehicle.

Debtors claim that on December 29, 2017, one day after the original petition was filed, Debtor was paid his salary of \$1,727.61, as shown on a Wells Fargo bank statement for the account ending in 5079. Debtor claims that on January 11, 2018, Debtor was paid a "performance bonus" of \$4,119.77 into that same account. Debtor states that his December 29, 2017 pay advice reflects accrued vacation pay in the amount of \$7,436.98 and accrued sales commissions in the amount of \$248.13.

Additionally, Joint Debtor had \$107.62 in accrued vacation pay as of the date of the filing of the petition and claims that the entry titled "Paraprofessional IA Spec" for \$2,087.63 does not represent vacation pay and is paid at the discretion of the employer and not by contract.

The court notes Debtors did not submit the referenced bank statements or pay advices as an exhibits to their response.

Debtors state that they were told they failed to disclose earned but unpaid income of \$20,000.00 in the Chapter 7 Trustee's investigation. Debtors dispute this.

Debtors request that the Chapter 13 Trustee recognize \$9,520.34 in exemptible pay (Debtors' accrued vacation pay \$7,436.98 + Debtor's earned but unpaid income \$1,727.61 + Debtor's unpaid sales commission \$248.13 + Joint Debtor's accrued vacation pay \$107.62) subject to the exemption of CCP § 704.070 in the amount of \$7,140.26.

The Debtors further request that they be given leave to amend the claimed exemptions for vacation pay.

At the hearing -----.

The Chapter 13 Trustee's Objection is **xxxxxx**, and the claimed exemptions are **xxxxxx**.

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

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

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

IT IS ORDERED that Objection is **xxxxxx**, and the claimed exemptions for **xxxxxx** under California Code of Civil Procedure § **xxx.xx** are **xxxxxx** in their entirety.

15. [17-28363](#)-C-13 CHESTER JIMERSON AND
[SNM](#)-2 SUNITA RANI
Stephen Murphy

MOTION TO CONFIRM PLAN
8-7-18 [[139](#)]

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

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

Below is the court's tentative ruling.

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

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

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

J. Michael Hoppers's ("Former Trustee") Opposition:

The former Chapter 7 Trustee opposes confirmation on the basis that:

A. Section 6.01 of the Plan states that property of the estate shall revert in the Debtors' upon confirmation, placing the creditors at risk with respect to the estate's interest in certain property. Specifically property that was not properly disclose on Debtors' schedules, an unliquidated state tax refund for the tax year 2017, and an unknown amount of unpaid wages.

B. Debtors' Plan does not provide for the preservation of the

estate's avoiding powers for the potential pre-petition transfers to Debtors' parents for the (30) months prior to the filing of petition. The statute of limitations for this claim runs on December 28, 2018.

C. The Plan proposes to pay Debtors' attorney in full, however, there is a discrepancy whether the attorney was paid \$3,000 prior to the filing of the petition as stated in Debtors' Statement of Financial Affairs (Dckt. 16) or \$2,5000 as stated in the Plan.

Chapter 13 Trustee's Opposition:

The Trustee opposes confirmation on the basis that:

A. The Trustee is uncertain if the plan is proposed in good faith because the Debtors may have inadequately disclosed property on their schedules and not sufficiently preserved the estate's interest in pre-petition transfers to Debtors' family members.

B. Section 3.05 of the Plan provides that Debtors' attorney received \$2,500 prior to the filing of the petition and will pay the remaining balance of \$1,500 through the Plan in conflict with Debtor's Statement of Financial Affairs that indicates that the attorney was already paid \$3,000.

C. The Trustee requests that any order confirming the eliminate any questions regarding changes in Plan priorities with respect to the payment of attorneys fees.

Debtors' Response:

Debtor's counsel responds that:

A. Debtors' counsel states that Debtors are amenable to including a provision that property does not revert to the Debtors.

B. Debtors' counsel states that Debtors acknowledge the error in the initial petition and state that they have been forthright about it, and request that the Opposition specify a desired remedy, if any, for the initial omission. Debtors further argue that this was not a deliberate attempt to hide assets.

C. Debtor's attorney address the fees by stating that cost in this case exceeded \$500 due to multiple trips to the Court and printing costs. The \$1,500 in attorney fees in Section 3.05 plus the \$3,000 paid by Debtors before the filing represents a fee of \$4,000, plus \$500 in costs.

On September 13, 2018, a Declaration submitted by Chester Jimerson and Maria Jimerson (the individuals that received the pre-petition transfers identified in the Oppositions) states that they will agree to a waiver of the statute of limitations with respect a potential future avoidance actions with respect to those transfers.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

The Plan does **xxxxxx** comply with 11 U.S.C. §§ 1322 and 1325(a) and **xxxxxx** 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 **xxxxxx**

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 September 4, 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 xxxx, and the automatic stay xxxxxx in this case.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 17-27257, "First Case") was filed on November 1, 2017 and dismissed without discharge on July 17, 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, Debtor's previous bankruptcy was dismissed because Debtor was delinquent on Plan payments. (Case No. 17-27257, Dckt. 17). In the previous case, Debtor was delinquent approximately \$8,000, slightly over the monthly Plan payments.

In the support of the success of the current bankruptcy, Debtor states that he understands "what is required and expected of" him to make the Plan work. Debtor states that he has not acquired any new debt since the previous case was dismissed and that he has hired an attorney.

The court notes that Debtor's counsel represented Debtor in the previous bankruptcy, this is not a changed circumstance. The court also notes the Debtor has been an attorney for over 20 years, as stated in Debtor's Motion.

At the hearing -----.

The motion is **xxxxxx** and the automatic stay **xxxxxx** 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 **xxxxxx** and the automatic stay **xxxxxx** 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.

17. [18-25081](#)-C-13 NDEYE FALL
RJ-1 Richard Jare

MOTION TO AVOID LIEN OF
ACCRETIVE SOLUTIONS NORTHERN
CA, INC.
9-4-18 [[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 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 the Chapter 13, creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2018. By the court's calculation, **xx** days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is denied.
--

This Motion requests an order avoiding the judicial lien of Accretive Solutions Northern CA Inc. ("Creditor") against property of Ndeye Fall ("Debtor") commonly known as 3218 Prospect Park Drive, Rancho Cordova, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$77,000.00. An abstract of judgment was recorded with the Superior Court of Sacramento County on March 6, 2018, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$387,000.00 as of the petition date. Dckt. 1. There is an unavoidable consensual lien in the amount of \$265,102.00 and a statutory federal tax lien that in the amount of \$25,492.00 as of the

commencement of this case as shown on Debtor's Schedule D. Dckt. 1. Debtor claims an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C. Dckt. 1.

The court notes that the Debtor also seeks alternative relief in this motion to value the property under 11 U.S.C. § 506.

CHAPTER 13 TRUSTEE'S RESPONSE:

The Chapter 13 Trustee responds by stating that Debtor, in filing a combined Motion to Avoid Lien and Value Property, may not have given adequate notice. Additionally, the Trustee points out discrepancies in the amounts of unavoidable liens in Debtor's Motion:

A. Debtor claims there is an unavoidable consensual mortgage lien in the amount of \$265,102.00. The Trustee notes that the mortgage creditor filed a Claim No. 1-1 listing a secured claim of \$262,023.50.

B. Debtor claims there is a statutory federal tax lien in the amount of \$25,492.00 on Debtor's Schedule. The Trustee notes that per the Debtor's own exhibits the federal tax lien is listed as \$14,790.00. Dckt. 22, page 7.

The Trustee is uncertain how the Debtor determined the secured portion of the federal tax lien and depending on the secured portion, there maybe sufficient equity in the property to overcome Debtor's Motion to Avoid the Lien.

Discussion:

The court notes that subsequent to the filing of the Trustee's response the IRS filed Claim No. 3-1 asserting a secured claim in the amount of \$19,775.69. Absent additional information it appears there is approximately \$2,000.00 of equity in the property after accounting for the unavoidable liens and the claimed exemption.

At the hearing-----.

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

IT IS ORDERED that Debtor's motion to Avoid Judicial lien is denied.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee opposes confirmation on the basis that:

A. Debtors cannot make Plan payments. Debtors are delinquent \$1,962.26. The Debtors have paid a total of \$32,800.00 into the Plan. An additional Plan payment of \$2,050.00 will become due before the hearing.

B. Debtors used the wrong form plan.

C. The Trustee disbursed \$1,478.98 to Lobel Financial in this matter prior to the creditor withdrawing its claim on July 19, 2018. Debtors' proposed modified Plan no longer provides for Lobel Financial in Class 2 and Debtor's Plan does not authorize the distributions that were already made to this creditor.

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

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

19. [18-23485](#)-C-13 BETTY WALKER
[DPC](#)-1 Mary Ellen Terranella

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-9-18 [[14](#)]

Thru #20

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 9, 2018. Fourteen days' notice is required.

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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's plan implicitly calls for the sale of real property but places no reasonable time limit on the sale of the real property.

B. Debtor failed to file a business budget detailing rental income and expenses.

C. Debtor has failed to properly complete Forms 122C-1 and 122C-2 where the debtor is above the median income.

The court held a hearing on August 7, 2018 on the Trustee's Objection and continued it until September 18, 2018 to allow Debtor time to seek approval from the court to sell her home. The court notes that while the Debtor filed a

Motion to Employ a real estate broker on August 9, 2018, that Motion was withdrawn by the Debtor and no new motion to employ has been filed. (Dckt. 34).

Debtor's Response:

Debtor's counsel responds to the Trustee's Objection, without a declaration, by stating that:

A. The Plan provides for the sale of the subject property within (12) months.

B. The Debtor does not operate a business but rents property to her son for \$1,900.00 a month that has a monthly mortgage payment of \$2,280.60.

C. The Debtor will amend her Means Test to reflect the income and expenses. The court notes that Debtor filed Forms 122C-1 and Forms 122C-2 on September 11, 2018. (Dckts. 43; 44).

Trustee's Supplemental Response:

The Trustee filed a supplemental response stating that:

A. The Trustee has not received a proposed order to sell the subject real property and seeks additional information from the Debtor that the sale will occur within 12 months as stated by Debtor's counsel.

B. The Debtor lists three different properties on her Schedules, one is listed as the Debtor's residence, the other is the property rented to her son, and has insufficient information about the use of the third property. Further, Debtor does not provide information for expenses for each property including utilities, taxes, or insurance.

C. Debtor's mortgage payment increased by \$800.00 on September 1, 2018. The Trustee is not certain Debtor can afford the payment increase.

At the hearing -----.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee 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 of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

20. [18-23485](#)-C-13 BETTY WALKER
[JCW](#)-1 Mary Ellen Terranella

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
7-10-18 [[20](#)]

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 10, 2018. Fourteen days' notice is required.

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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Creditor, Wells Fargo Bank, N.A. opposes confirmation on the basis that the plan does not provide for arrearages owed to the creditor.

Debtor's Response:

Debtor's counsel responds, after the continued hearing, that Debtor's Plan fully provides for the Creditor's arrearages with the proceeds from the sale of real property located at 747 Tuolumne Street, Vallejo, California.

Discussion:

The court held a hearing on August 7, 2018 on the Trustee's and this Creditor's Objections and continued it until September 18, 2018 to allow Debtor time to seek approval from the court to sell her home. The court notes that while the Debtor filed a Motion to Employ a real estate broker on August 9,

2018, that Motion was withdrawn by the Debtor and no new motion to employ has been filed. (Dckt. 34).

At the hearing -----.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor 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 of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

No Tentative Ruling: The Motion to Value 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.

Incorrect Notice Provided. The form of the Notice does not comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) and does not comply with the format proscribed by Local Bankruptcy Rule 9004-2(b)(1). The Proof of Service states that the Motion and supporting pleadings were served on Debtor, parties requesting special notice, and Office of the United States Trustee on August 21, 2018. Fourteen days' notice is required. That requirement was met.

The Motion to Value 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 Value secured claim of Ben Bridge Jewelers Inc. "Creditor," is xxxx.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of an engagement ring. The Debtor seeks to value the property at a replacement value of \$3,450.00, the purchase price, as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor asserts that the lien on jewelry is a purchase-money loan incurred more than one year prior to the filing of the petition, that was financed with Ben Bridge Jewelers with a balance of approximately \$6,000. Therefore, the respondent 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 \$3,450.00. 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.

Trustee's Opposition:

The Trustee filed an Opposition to Debtor's Motion to Value based on the following reasons:

A. Debtor's Motion does not cite applicable code. The Trustee is uncertain if the property qualifies to be valued because Debtor's Motion states that item was purchased more than one year before filing and Debtor's Schedule D states that the debt was incurred in 2018.

B. Debtor's Notice does not comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii), it does not provide a date when written response is due and the format of the document is not double spaced.

Discussion:

The court shares the Trustee's concern that the Debtor's declaration and Debtor's Schedule D create a factual question about whether the debt is a purchase-money security incurred within one year of the petition. Specifically, whether Debtor is precluded from valuing the subject property under 11 U.S.C. § 506 as a result of the conditions set forth in the hanging paragraph of 11 U.S.C. § 1325 (a)(5).

At the hearing -----.

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

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

The Motion 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 **xxxx** and the claim of Ben Bridge Jewelers, Inc., secured by a purchase-money loan secured against the Debtors' engagement ring, is determined to be **xxxxxx** claim in the amount of **\$xxxxxx**, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

22. [15-28724](#)-C-13 DONETTA COLLINS
[MET](#)-1 Mary Ellen Terranella

CONTINUED MOTION TO INCUR
DEBT
8-27-18 [[44](#)]

Final Ruling: No appearance at the September 18, 2018 hearing is required.

The Motion to Incur Debt is deemed moot due the filing of a Stipulation on September 12, 2018. (Dckt. 52)

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.

IT IS ORDERED that the Motion is granted and Donetta M. Collins is authorized to incur debt pursuant to the stipulation (Dckt. 52).
