

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge
Sacramento, California

October 23, 2018 at 2:00 p.m.

Notice

**The court has reorganized the cases, placing all of the
Final Rulings in the second part of these Posted Rulings,
with the Final Rulings beginning with Item 17.**

1.	18-22208-C-13 PGM-3	TERRY PARKER AND TONYA TYUS-PARKER Peter Macaluso	MOTION TO CONFIRM PLAN 9-17-18 [87]
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No Tentative Ruling: The Motion to Confirm the Debtors' 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 September 17, 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 xxxx the Motion to Confirm the Plan.

THE TRUSTEE'S OBJECTION

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

A. Debtors' are delinquent in plan payments in the amount of \$1,200.00, Debtors also have a scheduled payments of \$2,000.00 due on October 25, 2018. The Debtors have paid \$9,127.00 into the Plan.

B. Debtors' Plan may not be proposed in good faith. The Proof of Claims registry reflects secured debt totaling \$457,283.23 and the Plan does not propose payments on these claims for 23 months. Claim Nos. 3; 5; 6. It appears that the Debtors propose deferring all payments to the secured creditors for two reasons. First, Debtors state they anticipate refinancing in month 23 in order to pay the IRS' tax lien and the arrears. However, the Debtors have not provided evidence regarding the success of this proposed refinance. Second, Debtors state they will file an objection to claim with respect to the mortgage arrears and propose suspending all disbursements until resolution of the objection. The court notes that Debtors have since filed an Objection to Claim currently set of hearing on November 6, 2018. Dckt. 82.

C. Debtors' Plan states that the IRS shall receive a monthly interest payment of \$50.00 but the Trustee is uncertain which month this payment starts.

D. Debtors may not be able to make plan payments. Debtors list a \$1,488.00 contribution from "Terry and Family - Debtor's son" but has not provided sufficient evidence to identify who the contributor is and whether contributor has the ability to assist the Debtors. The Plan is not feasible without this contribution because Debtors proposed monthly payment \$2,000.00 and their disposable income, including the contribution, is \$2,250.00. Further, the Trustee notes that the Debtors' income appears to have recently reduced and Debtors provide no explanation for the decrease and whether they anticipate that their income will continue to the decline.

THE SECURED CREDITOR'S OBJECTION

Secured Creditor, U.S. Bank National Association as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-2, objects to confirmation of Debtors' Plan based on the following:

A. Debtors' Plan does not fully provide for Secured Creditor's pre-petition arrears. Claim No. 5-1. Secured Creditor claims that in order to cure the \$39,468.87 in pre-petition arrears Debtors will have to increase monthly payments \$1,066.73. Presently, the Plan does not provide for payment of the arrears until after Debtors obtain refinancing.

B. Debtors' Plan is reliant on future refinancing and an objection to claim against a junior lien holder. Secured Creditor states that the Objection to Claim (Dckt. 82) does not appear to be plead with particularity.

DEBTOR'S RESPONSE

Debtors' respond through their attorney that:

A. Debtors' anticipate curing the payment delinquencies prior to the hearing.

B. Debtors propose that the monthly interest payment to the IRS start upon confirmation of the Plan.

C. Debtors propose that on-going mortgage payments be disbursed in the regular course of Trustee disbursements.

D. Debtors believe they have the ability to qualify for a refinance while in Chapter 13 and this will require approximately 12 to 18 months to finalize.

E. Debtors intend to file supplemental declarations from their family members regarding the family contributions that are necessary to ensure the feasibility of the Plan.

RULING

At the hearing -----.

The Plan does **xxxxx** comply with 11 U.S.C. §§ 1322 and 1325(a) and **xxxxx** 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 **xxxxx** and the proposed Chapter 13 Plan **xxxxx** 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 Debtors' Attorney on September 19, 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.
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The Trustee opposes confirmation of the Plan based on the following:

A. Debtor has not filed all required tax returns. The IRS filed Claim 2-1 indicating that Debtor has not filed a tax return for at least the 2014 tax year.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not filed all required tax returns. The objection is sustained and the Plan is not confirmed.

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

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

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

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

No Tentative Ruling: The Motion to Confirm the Debtors' 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 31, 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).

<p>The court's decision is to xxxx the Motion to Confirm the Plan.</p>
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The Chapter 13 Trustee objects to the confirmation of the Debtors' Plan based on the following:

A. Debtors appear to have filed two different Plans (Dckts. 25, 29). The Trustee notes that the only substantive difference between the Plans is the omission of last page from the Later Filed Plan. Dckt. 29. The Trustee also notes that *if* the First Filed Plan (Dckt. 25) is deemed the filed Plan, Debtor is current.

B. The Trustee is unclear regarding the additional provisions listed in the First File Plan (Dckt. 25). The Trustee request that the Debtor clarify what the Debtors should pay over the course of the plan from beginning to end.

B. The Trustee also notes that the Debtor filed an Amended Schedule I (Dckt. 28) which increased business income by \$980.08 and did not attach a detailed statement showing gross income and expenses. Debtor also filed an amended Form 122C-1 listing business net income that increased by \$1,276.44 from the originally filed Form 122C-1 (Dckt. 1).

RULING

At the hearing -----.

The Plan does **xxxx** comply with 11 U.S.C. §§ 1322 and 1325(a) and **xxxx** 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 **xxxx** and the proposed Chapter 13 Plan **xxxx** confirmed.

Tentative Ruling: The Motion to Confirm the Debtors' 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.

Sufficient 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 September 13, 2018. Thirty-five days' notice is required. That requirement was met.

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

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

A. Debtors plan payments are not increased by the correct amount as a result of retirement loans being paid off. Debtors' plan payments have a proposed increase of \$275, however, Debtors' Schedule I (Dckt. 12) reports retirement loans of \$864.00 per month.

B. Debtors may have disposable income not being paid into the Plan. The Trustee notes that Debtors may not be properly including income from overtime and may be listing expenses such as "optional telephone and telephone services" (Dckt. 13, p. 35) that should not be included.

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: 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, Chapter13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2018. 14 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). 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, -----.

<p>The Motion to Extend the Automatic Stay is granted.</p>

Wayne Rosemond ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-24113) was dismissed on September 7, 2018. *See* Order, Bankr. E.D. Cal. No. 18-24113, Dckt. 62. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith. Debtor states that he was initially pro se during his first bankruptcy proceeding and did not realize he needed the assistance of an attorney until it was too late to correct the deficiencies in his previous case. Dckt. 12, Rosemond Declaration. Debtor retained counsel at the end of his first case and continues with representation in the current case. *Id.*

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

clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Wayne Rosemond (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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)(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, creditors, parties requesting special notice, and Office of the United States Trustee on October 2, 2018. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice). That requirement was met.

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Martha Sault and Richard Sault, the Chapter 13 Debtors, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 7236 Cardinal Road, Fair Oaks, California ("Property"). Debtors' state that the sale will generate enough funds to pay all of the allowed creditors a 100% dividend. (Dckt. 93, Debtors Declaration).

The proposed purchaser of the Property is Vladimir Sadoma, and the terms of the sale are:

- A. Purchase price of \$390,000.00;
- B. The sale provides for the payoff of: (1) the First Deed of Trust with Wells Fargo Bank, N.A. of \$126,148.72; (2) payoff of the Second Deed of Trust with Wells Fargo Bank, N.A. of \$55,233.82, (3) abstract of judgment of \$14,782.52; (4) sales commission of \$23,400.00; and (5) tax and expenses of \$5,590.05; and
- C. The net proceeds from the sale will be \$164,844.

Debtors state they will continue with their Plan for the remaining 45 months.

RESPONSE OF WELLS FARGO BANK, N.A.:

Wells Fargo Bank, N.A., the secured creditor with respect to this property, filed a non-opposition

to the sale, so long as the liens are paid off in full.

TRUSTEE'S RESPONSE:

The Trustee filed a response stating that he did not oppose the sale. The Trustee notes that the sale should generate net proceeds payable to the Debtors of approximately \$123,344.89 and is unclear why Debtors assert they will remaining in their plan for the remaining 45 months.

DISCUSSION:

The court find Debtors' Plan to be unclear. The Debtors claim that the proposed sale will purportedly generate proceeds distributable to the Debtor and that the proceeds will be sufficient to pay their creditors' claims in full. However, the Debtor also claims that they will remain in the Plan for the remaining (45) months, even though the Plan suggests that the allowed claims would have already been paid out of the proceeds of this sale. The court requests that Debtors explain more fully how the propose to apply the proceeds generated from this sale.

At the hearing ----.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **xxxxxxxxxxxxxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale provides for full payment of the allowed claims.

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 Property filed by Martha Sault and Richard Sault, Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Martha Sault and Richard Sault, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Vladimir Sadoma, or nominee ("Buyer"), the Property commonly known as 7236 Cardinal Road, Fair Oaks, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for \$390,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibits A and B, Dckt. 94, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

* * * *

Thru #8

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2018. 14 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). 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 granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank, N.A. ("Creditor") against property of James Hammon ("Debtor") commonly known as 1863 San Clement Street, Fairfield, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,961.30. Debtor's motion states that an abstract of judgment was recorded with the Solano County Record's Office on August 7, 2018 as Document Number 20130019594, that encumbers the Property. Upon review of the Abstract of Judgment submitted by Debtor the abstract of judgment was recorded with Solano County on August 21, 2018 as Document Number 201800056369.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$330,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$267,340.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$75,000.00 on Schedule C. Dckt. 1.

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

TRUSTEE'S RESPONSE:

The Trustee does not oppose the Motion. Dckt. 27.

ISSUANCE OF A COURT-DRAFTED ORDER

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by James Hammon (“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 judgment lien of Capital One Bank, N.A. in California Superior Court for Solano County Case No. FCM158322, recorded on August 21, 2018, Document Number 201800056369, with the Solano County Recorder, against the real property commonly known as 1863 San Clement Street, Fairfield, California is avoided in its entirety 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: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2018. 14 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). 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 granted.

This Motion requests an order avoiding the judicial lien of Kelstin Group, Inc. ("Creditor") against property of James Hammon ("Debtor") commonly known as 1863 San Clement Street, Fairfield, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$23,598.51. An abstract of judgment was recorded with the Solano County Record's Office on August 10, 2018 as Document Number 201800053870, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$330,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$267,340.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$75,000.00 on Schedule C. Dckt. 1.

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

TRUSTEE'S RESPONSE:

The Trustee does not oppose the Motion. Dckt. 27.

ISSUANCE OF A COURT-DRAFTED ORDER

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by James Hammon (“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 judgment lien of Kelstin Group, Inc in California Superior Court for Solano County Case No. FCM158458, recorded on August 10, 2018, Document Number 201800053870, with the Solano County Recorder, against the real property commonly known as 1863 San Clement Street, Fairfield, California is avoided in its entirety 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.

Thru #10

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 and Debtors' Attorney 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.

Creditor Plaza Home Mortgage, Inc. opposes confirmation of the Plan based on the following:

A. Debtors' Plan is not feasible because the Plan does not provide for payment of the pre-petition arrears. Debtor's Plan only provides for \$12,835,26 in pre-petition arrears, however, Creditor claims that there are in fact \$27,696.77 in pre-petition arrears.

The court notes that since the Creditor filed its Objection the Plaza Home Mortgage, Inc. filed a proof of claim (No. 8-1) listing \$29,183.04 in pre-petition arrears.

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 Plaza Home Mortgage, Inc. 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 and Debtors' Attorney on September 19, 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. Debtors' Plan is not feasible because the Plan requires 75 months to complete because the Plan only provides for payment of arrears to Plaza Home Mortgage, Inc. in the amount of \$12,835.36, an amount inconsistent with the creditor's proof of claim and objection to confirmation (Dckt. 19).

The court notes that since the Trustee filed its Objection the Plaza Home Mortgage, Inc. filed a proof of claim (No. 8-1) listing \$29,183.04 in pre-petition arrears.

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: 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 September 10, 2018. 28 days' notice is required. That requirement was met.

The Motion to Employ 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.

<p>The Motion to Employ is granted.</p>
--

Frank A. Davis ("Debtor") seeks to employ Keller Williams Realty ("Realtor") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to sell property of the estate commonly known as 3908 Washington Ave, Sacramento, CA.

The Debtor argues that Realtor's appointment and retention is necessary to market and sell the property. The Realtor agrees to take a commission of 2.5% upon sale of the Property.

Robert J. Peterson, a real estate agent employed by Keller Williams Realty, testifies that he is a licensed real estate agent for the state of California and is familiar with the area where the subject property is located. Robert J. Peterson, testifies he and Keller Williams Realty do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

DISCUSSION:

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the

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

Taking into account all of the relevant factors in connection with the employment and compensation of Realtor, considering the declaration demonstrating that Realtor does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Keller Williams Realty as Realtor for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit B, Dckt. 39.

Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Frank A. Davis (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ Robert J. Peterson as Broker for the Debtor on the terms and conditions as set forth in the Listing Agreement as Exhibit B, Dckt. 39.

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

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

Thru #13

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 Debtors' Attorney on September 19, 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 continue the Objection to November 6, 2018 at 2:00 p.m.

The Trustee filed an Objection to the Confirmation of Plan, it appears that the Motion filed by the Trustee corresponds to another bankruptcy proceeding and the Declaration in support of the Motion appear to correctly identify the Debtor. Dckt. 25. However, it appears from the Declaration that the Trustee opposes confirmation based on the fact that:

- A. Debtor did not attend the September 27, 2018 Meeting of Creditors.
- B. Debtor has not filed all required tax returns.
- C. Debtor does not provide sufficient support for the claimed business income reported on Schedule I.
- D. Debtor's Plan relies on a Motion to Value Collateral.

DEBTOR'S RESPONSE:

Debtor's counsel responds, without a declaration, that the Meeting of Creditors was continued to October 25, 2018, the required tax returns have been filed, the business attachment was filed on October 1, 2018

(Dckt. 3), and the Motion to Value is set for October 23, 2018. (Dckt. 42). Debtor requests a continuance to permit the Meeting of Creditors set for October 25, 2018 to conclude.

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 continued to November 6, 2018 at 2:00 p.m.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2018. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Santander Consumer USA, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$xxxx.

The Motion filed by Shontell Beasley ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Ford Flex ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,000.00 as of the petition filing date. Debtor's declaration states that, there are approximately 130,000 miles on the Vehicle, that the Vehicle is in poor condition, and lists several items that require repair. Dckt. 30. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE:

On October 5, 2018, the Chapter 13 Trustee filed a response stating that the Debtor listed the Vehicle on Schedules A/B with a value of \$7,000.00 and in poor condition.

CREDITOR SANTANDER CONSUMER USA, INC.'S RESPONSE:

Creditor Santander Consumer USA, Inc. opposes Debtor's Motion to Value. Creditor claims that the Vehicle should be valued no less than \$11,000.00. In support, Creditor included a Declaration authenticating a NADA Guide Report listing the value of the make and model of the Vehicle at \$11,100.00.

Creditor claims that Debtor has not sufficiently demonstrated that the repairs listed in the declaration reduce the retail value of the Vehicle.

DISCUSSION:

Based on the evidence submitted the court determines that the replacement value for a car with same make, model, and milage of the subject Vehicle in **good** condition is approximately \$11,000.00. Debtor has provided a declaration stating that the Vehicle is in *poor* condition and lists specific repairs including: “A. Fuel fill inlet is in need of repair; B. Third row seat latch broken (1st seat); C. Third row seat floor board broken; D. Passenger door knob missing cover; E. Front bumper needs securing; and F. Door key pad not working.” Dckt. 30, Beasely Declaration.

At the hearing -----. The court determines that the replacement value for the subject Vehicle is **\$xxxx.xx**.

The lien on the Vehicle’s title secures a purchase-money loan incurred on March 17, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,789.75. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of **\$xxxx.xx**, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is **XXXX**.

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

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

The Motion to Value Collateral and Secured Claim filed by Shontell Beasley (“Debtor”) to 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 Santander Consumer USA, Inc. (“Creditor”) secured by an asset described as a 2012 Nissan Versa (“Vehicle”) is determined to be a secured claim in the amount of **\$XXXX** and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is **\$XXXX** and is encumbered by a lien securing a claim that exceeds the value of the asset.

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 October 9, 2018. 14 days' notice is required. That requirement was met.

The Motion for Declaratory Relief 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, -----

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The Motion Regarding Arbitrator's Rulings is denied.

Prabhakar Goel and Goel Family Partnership I L.P. ("Movant") filed a motion titled "Motion Regarding Arbitrator's Rulings" which this court construes as a motion seeking declaratory relief. Dckt. 70. Movant's motion specifically requests that the court determine certain findings from an arbitration involving a dispute between Movant and Debtor regarding the recovery of money and/or property be given preclusive effect. *Id.*

Movant improperly seeks declaratory relief in this contested matter. The relief sought by Movant must be made in an adversary proceeding. Fed. R. Bankr. R. 7001(9). Moreover, even if Movant correctly sought this relief in an adversary proceeding, such relief is not warranted because the relevant arbitration award has not been confirmed. *See In re Khaligh*, 338 B.R. 817 (B.A.P. 9th Cir. 2006), *aff'd*, 506 F.3d 956 (9th Cir. 2007) (holding that only after an arbitration award is confirmed is a court's permissive authority to determine issue preclusion triggered).

The relief sought by Movant 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 Regarding Arbitrator's Rulings filed by Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion Regarding Arbitrator's Rulings is denied.

Tentative Ruling: The Motion to Modify 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 September 5, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Modify 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 Modify the Plan.

The Trustee opposed confirmation on the basis that :

A. Debtor is delinquent \$365.00 under the terms of the proposed modified Plan. Debtor has a paid a total of \$24,289.00 into the Plan.

B. Debtor filed a Supplemental Schedule J on September 14, 2018 listing certain reductions that may not be reasonable given Debtor's family size. Specifically the Trustee is uncertain if the \$110.00 reduction in electricity/heat/natural gas and \$200.00 reduction of food are possible. Debtor's declaration does not provide any explanation for the reduction of these expenses.

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.

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 Debtors' Attorney on September 19, 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 attend the First Meeting of Creditors held on September 13, 2018. The Meeting was continued to October 18, 2018. The court notes, per the October 19, 2018 Trustee Report, that on October 18, 2018 neither Debtor nor Debtor's counsel attended the continued Meeting of Creditors.

B. The Debtor's Plan relies on a Motion to Value the secured claims of the Franchise Tax Board but has not filed a motion to value.

C. Debtor has not filed all required tax returns. The IRS filed Claim 1-1 indicating that Debtor has not filed a tax return for at least the 2016 and 2017 tax years.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not attended the Meeting of Creditors, filed a feasible Plan, or filed all required tax returns. 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.

FINAL RULINGS

17. [18-20155](#)-C-13 DESMAL MATTHEWS MOTION TO CONFIRM PLAN
 Pro Se 8-22-18 [[100](#)]
DEBTOR DISMISSED: 09/26/2018

Final Ruling: No appearance at the October 23, 2018 hearing is required.

The Motion to Confirmation Plan is deemed moot due to the case being dismissed on September 28, 2018.
(Dckt. 102)

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.

Final Ruling: No appearance at the October 23, 2018 hearing 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 September 17, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Modify the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee opposed confirmation on the basis that:

A. Debtor is delinquent \$900.00 under the terms of the proposed modified Plan. The Trustee notes that Debtor has a payment dated October 2, 2018 for \$950.00 currently processing through TFS. If this payment clears and posts the Debtor will be current and the Trustee will have no further objection.

On October 19, 2018, the Trustee filed a Supplemental Response stating that the Trustee no longer opposes confirmation. (Dckt. 65).

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

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

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

The Motion to Confirm the 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 granted and the proposed Chapter 13 Plan is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 2, 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 Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2018. Twenty-eight days' notice is required. That requirement was met.

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

The Objection to Discharge is sustained.

The Chapter 13 Trustee ("Objector") objects to Michael D. Lafolley's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on May 1, 2018, Case No. 18-22706 and Debtor received a discharge on August 6, 2018. Case No. 18-22706, Dckts. 1; 30.

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

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on August 6, 2018, which is less than four years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-25071), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-25071, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the October 23, 2018 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal of the Trustee's Objection to Confirmation being consistent with the opposition filed to the Motion, filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 9014 and 7041 permits the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Confirmation of Plan.**

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.

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed a notice of dismissal of the objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Objection being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is dismissed without prejudice.

Final Ruling: No appearance at the October 23, 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 September 5, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Modify 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). 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 court's decision is to grant the Motion to Modify the Plan.
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The Trustee opposed confirmation on the basis that Debtor's Declaration was deficient and the Debtor's modification relied on a Motion to Avoid Lien. The Trustee filed an Amended Response stating that the Debtor corrected the deficiency in the Declaration and only opposes the Motion if the Debtor does not prevail on the Motion to Avoid Lien. (Dckt. 83).

At the October 16, 2018 hearing, the court granted Debtor's Motion to Avoid Lien. As a result, the Trustee's only remaining opposition to the proposed modified plan has been resolved.

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

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

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

The Motion to Confirm the 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 granted and the proposed Chapter 13 Plan is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 23, 2018 hearing is required.

The Objection to Confirmation of Plan is deemed moot due to the case being dismissed on October 11, 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.

Final Ruling: No appearance at the October 23, 2018 hearing is required.

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

Incorrect Notice Provided. The Proof of Service does not state that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 20, 2018, the attorneys listed in the Proof of Service are not Debtor's Attorney of record for the bankruptcy proceeding.

The Objection to the Plan was not 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 continue the Objection to November 6, 2018 at 2 p.m. No telephonic appearances will be permitted.

Counsel for the Creditor Federal National Mortgage Association and Seterus, Inc. Objects to confirmation of the Plan, without any evidence or declaration filed in support, based on the following:

A. Creditor's secured claim of approximately \$31,439.64 as a result of judgement lien is not provided for in the Plan. Additionally, Creditor's claim for attorneys' fees and costs as a result of judgment on those fees in the amount of \$41,949.50 is not provided for in the Plan.

B. Creditor asserts that Debtor has property in Glenn County, the county in which the aforementioned judgments were recorded. Creditor also asserts that Debtor did not properly schedule his Glenn County property.

DEBTOR'S RESPONSE:

Debtor responds that Creditor's Objection did not follow certain filing requirements:

A. Neither the Objection nor the Notice were served on Debtor's counsel.

B. Creditor did not comply with Local Rule 9014-1(d)(3)(B)(iii) by failing to include predisposition notice language and the pleadings were not separated as required by the Local Rules of this court.

Debtor also responded to the merits:

A. Debtor states that Creditor's claim and the claim for attorneys' fees were listed on Debtor's Schedule F.

B. Creditor is not secured because Debtor does not own any property in Glenn County, the county the Creditor's abstract of judgments were filed.

C. Debtor did not fail to schedule property he owns in Glenn County. Debtor claims that his non-filing spouse has property in Glenn County, but this property is her separate property. Debtor further asserts that this was disclosed to the Trustee at the Meeting of Creditors.

DISCUSSION:

Creditor's Objection was not filed in compliance with this court's local rules including, but not limited to, the requirement to:

- (1) file separate documents (Local Rule 9004-2 (c), (d), and (e));
- (2) use a Docket Control Number (Local Rule 9014-1 (c));
- (3) include required contents in the Notice (Local Rule 9014-1(d));
- (4) adhere to the service requirements (Local Rule 9014-1(e)); and
- (5) include evidence in support of the filed opposition(Local Rule 9014-1(f)(1)(B)).

Counsel for the Creditor should review this court's Local Rules prior to filing additional motions. Further, Counsel for the Creditor should review any other pending proceedings filed with this court (including Dckts. 23; 24) to ensure they conform with the Local Rules and be prepared to address this at the continued hearing on November 6, 2018, in person.

As to the merits, the dispute appears to be over whether certain property located in Glenn County is property of Debtor's bankruptcy estate. Debtor claims that he does not own any real property in Glenn County and that the property is the sole property of the non-filing spouse. (Dckt. 21). The court notes that the litigation forming the basis for Creditor's claim was filed in Glenn County Superior Court, raising the question whether Debtor owned the disputed property during the course of that litigation. Further, that litigation appears to have resolved on or around 2017, the same time frame that Debtor's Statement of Financial Affairs (SOFA) indicates that Debtor transferred property to a self settled trust. (Dckt. 1, Question 19). Debtor does not provide a description of the property transferred.

Additionally, Debtor lists on Schedule H "Damascus Road Ministries" as a co-debtor. This entity is shown to have the same address as Debtor and his non-filing spouse. On his Schedules A/B, Debtor lists owning "Damascus Road Ministries" and, in response to Question 14, lists a \$200.00 a month contribution to this entity. (Dckt. 1).

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 continued to November 6, 2018 at 2 p.m. No telephonic appearances will be permitted.
