

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

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

1.	17-24000 -C-13	LYNDA STOVALL	CONTINUED MOTION TO DISMISS
	DPC -2	Peter Macaluso	CASE
			8-3-18 [115]

Thru #2

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 3, 2018. Twenty-eight days notice is required. That requirement is met.

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

<p>The court's decision is to grant the Motion to Dismiss and dismiss the case.</p>
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

A. Debtor is delinquent in plan payments in the amount of \$10,074.65, with another Plan payment in the amount of \$4,374.45 due prior to the date of the hearing. Debtors have paid \$34,349.95 into the plan to date.

Debtor's response, filed without a declaration, notes that an amended plan will be filed prior to the hearing.

The September 5, 2018 was continued to provide the Debtor additional time to file a Modified Plan and cure the delinquency. Dckt. 124. The November 14, 2018 hearing was continued to allow for the resolution of Debtor's Motion to the Modified Amended Plan. Dckt. 142.

At the hearing -----.

The court finds the Trustee's objections valid. As the debtor is delinquent and has not complied with all of the requirements under 11 U.S.C. § 1307, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Tentative Ruling: The Motion to Modify 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.

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 November 9, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Modified 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 Chapter 13 Trustee opposes the Modified Plan because:

A. Debtor is delinquent \$4,785.00 under the proposed plan and delinquent \$19,805.81 under the confirmed Plan.

B. The Plan requires 62 months to complete, in order complete within the required 60 months the Plan payments should be \$4,860.00.

C. The Debtor appears to have a typographical error listed in Class 1. The Trustee believes that Debtor intended to list arrears owed to Wells Fargo in the amount of \$5,558.36, not the interest rate on the arrears. If so, Debtor has not provided an interest rate for the arrears owed to Wells Fargo.

DEBTOR'S RESPONSE:

Debtor's counsel responds that he has not been able to contact the Debtor and requests that the hearing be continued. However, Debtor's counsel clarifies that the Class 1 arrears to paid to Wells Fargo are \$5,558.36 and the plan provides for a 0% interest rate on that amount.

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

IT IS ORDERED that the Motion is denied and the Modified Plan is not confirmed.

Thru #4

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 16, 2018. Twenty-eight days notice is required. That requirement is met.

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

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

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

A. Debtor is delinquent in plan payments in the amount of \$2,060.00, with one payment in the amount of \$1,030.00 due prior to the date of hearing. Debtor has paid \$47,380.00 into the plan to date.

FILING OF MODIFIED PLAN

Debtor did not respond to the Trustee's Motion to Dismiss, despite the Motion being filed pursuant to Local Bankruptcy Rule 9014-f(1), which allows for a final determination in the absence of response. However, upon the courts own independent review of the docket, the court notes that Debtor filed a Motion to Modify Plan. Dckt. 58.

Debtor filed a Modified Plan and Motion to Confirm on November 5,

2018. Dckt. 58. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 58; 61. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Notwithstanding filing a modified plan and motion to confirm, Debtor has allowed her default to be entered. On November 10 , 2018, Debtor's counsel filed an untimely response stating that a Modified Plan was filed and requests that the case not be dismissed.

On November 14, 2018 and December 4, 2018, the court continued the hearing to afford counsel for the Debtor additional time to address the issues identified above.

At the hearing -----.

In the absence of evidence that the Debtor has filed and served a Motion to Confirm a confirmable Plan, the Motion is ~~granted and the bankruptcy case is dismissed.~~

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

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

The Motion to Dismiss the Chapter 13 case filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is ~~granted and the bankruptcy case is dismissed.~~

No Tentative Ruling: The Motion to Modify 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.

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 November 5, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Modified 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 confirm the Motion to Modify the Plan.~~

The Chapter 13 Trustee opposes the Modified Plan because:

A. The Trustee is uncertain of Debtor's ability to pay. The Plan proposes a monthly payment of \$1,236.00 but the Debtor's most recent Schedules I and J, filed on September 14, 2018, reflect that the Debtor has the ability to pay only \$1,089.49.

B. The Plan does not complete within the required 60 months. The Debtor would need to propose monthly payments of \$1,400.00 for the remaining 10 months to complete timely.

C. The Debtor's notice does not comply with Local Rule 9014-1(d)(3)(B)(iii) because it does not advise respondents about the pre-hearing disposition.

DEBTOR'S RESPONSE:

Debtor's Modified Plan is intended to cure (3) missed payments over the course of the (10) remaining months of the Plan. Debtor claims that the Modified Plan will cure the deficiency and the Supplemental Exhibits and Schedules I and J demonstrate that Debtor can afford the Modified Plan

payments. The court notes that the Debtor has attached the updated Schedules I and J to the Motion to Confirm the Modified Plan but have not filed the Schedules in the bankruptcy proceeding.

At the hearing-----.

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

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

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

~~The Motion to Modify 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, Debtors' Modified Chapter 13 Plan filed on November 5, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying 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.

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 3007-1 Objection to Claim-Hearing Required.

Insufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2018. **The Proof of Service reflects that the individual who signed the Proof of Claim No. 9 was served but not the Creditor.** 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition). That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 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 Proof of Claim Number 9 of Inland Finance Company is xxxx , and the claim is xxxx .
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John Kilakowske, the Debtor, ("Objector") requests that the court disallow the claim of Inland Finance Company's ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$66,772.36. Objector asserts that the his business partner made a \$21,000.00 payment that is not reflected in the claim amount and the claim was filed with insufficient support.

DISCUSSION

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

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

Objector claims, without any corroborating testimony or evidence, that at least \$21,000.00 of the claim has already been paid by a non-debtor. The Objector requests that court disallow the claim to the extent that the obligation has been paid.

At the hearing -----.

Based on the evidence before the court, Creditor's claim **xxxx**. The Objection to the Proof of Claim 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 Objection to Claim of Inland Finance Company ("Creditor"), filed in this case by John Kilakowske, the Debtor("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 9 of Inland Finance Company is **xxxx**.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Trustee filed a Non-Opposition to the Motion. Dckt. 89.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 is granted, Debtors' Chapter 13 Plan filed on November 11, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [12-36523](#)-C-13 ROY/KATHLEEN GOODENOUGH CONTINUED MOTION TO AVOID LIEN
[MET](#)-1 Mary Ellen Terranella OF GIZZI AND REEP, LLP
11-5-18 [[65](#)]

Final 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, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2018. 28 days' notice is required. That requirement was met.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Judicial Lien of Gizzi and Reep, LLP ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.

This Motion requests an order avoiding the judicial lien of Gizzi and Reep, LLP ("Creditor") against property of Roy Goodenough and Kathleen Goodenough ("Debtors") commonly known as 131 Christine Drive, Vacaville, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$31,990.75. Debtors' motion states that an abstract of judgment was recorded with the Solano County Record's Office on August 6, 2012 as Document Number 201200078793, that encumbers the Property. Dckt. 69, Exhibit A.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$176,29.00 as of the petition date. Dckt. 1. The unavoidable consensual liens total \$275,756.70 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor claims an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1.00 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 may be avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

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 Roy Goodenough and Kathleen Goodenough("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 judgment lien of Gizzi and Reep, LLP , California Superior Court for Solano County Case No. FCS038574, recorded on August 6, 2012, Document No. 201200078793, with the Solana County Recorder, against the real property commonly known as 131 Christine Drive, Vacaville, 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.

8. [18-24024](#)-C-13 JEFFREY MACILRAITH
[SCB](#)-4 Jessica Dorn

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SCHNEWEIS-COE 7
BAKKEN, LLP FOR LORIS L.
BAKKEN, TRUSTEE'S ATTORNEY(S)
11-16-18 [[73](#)]

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 November 16, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). That requirement was met.

The Motion for Allowance of Professional Fees 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 for Allowance of Professional Fees is granted.

Schneweis-Coe & Bakken, Counsel for the Chapter 7 Trustee, ("Applicant") for the Estate of Jeffrey Mcailraith ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period July 27, 2018, through November 20, 2018. Applicant seeks compensation in the total amount of \$4,380.00 and expenses in the total amount of \$172.74.

RESPONSE BY CHAPTER 13 TRUSTEE:

The Chapter 13 Trustee does not oppose the Motion but flags for the court that there is a pending Order to Show Cause why the case should not be dismissed, that if granted, would cause the case to be converted back to a Chapter 7. Dckt. 71.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are

"actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958-59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include assisting the Chapter 7 Trustee with general case administration, marketing and listing real property, and preparing a motion to compel turnover of property. The Applicant spent a total of 14.9 hours on this matter. Applicant notes that the case was converted to a Chapter 13 and ultimately did not administer the case. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 3.9 hours in this category. Applicant reviewed the deadline to object to exemptions and prepared this fee request application.

Efforts to Assess and Recover Property of the Estate: Applicant spent 8.6 hours in this category. Applicant assisted in preparing a motion to authorize employment of a realtor, communicated with Debtor regarding failure to respond to the Chapter 7 Trustee, and filed a

Motion to Compel Turnover Property.

Reviewed Motion to Convert: Applicant spent 2.4 hours in this category. Applicant reviewed Debtor's Motion to Convert to Chapter 13 and prepared a response.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a).

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$4,380.00
Costs and Expenses	\$172.74

The court shall issue an 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 Allowance of Fees and Expenses filed by Schneweis-Coe & Bakken, Counsel for the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Schneweis-Coe & Bakken is allowed the following fees and expenses as a professional of the Estate:

Schneweis-Coe & Bakken, Counsel the Chapter 7 Trustee

Fees in the amount of \$4,380.00
Expenses in the amount of \$172.74.

Tentative Ruling: The Motion to Confirm 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.

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

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 deny the Motion to Amend the Plan.</p>

SECURED CREDITOR WELLS FARGO'S OPPOSITION:

Secured Creditor Wells Fargo opposes Debtor's Amended Plan because:

A. The Plan classifies Wells Fargo as having a Class 1 claim, however, the Plan modifies the claim. The Plan contemplates paying Wells Fargo's claim through a future sale of the secured property. Wells Fargo argues that the sale is speculative and does not address what happens if the sale does not occur by February 25, 2019. Additionally, the Plan only provides for one adequate protection payment of \$800.00 prior to the sale. Wells Fargo argues that is insufficient. The sale contemplates a lump sum payment of \$242,433.15.

TRUSTEE'S OPPOSITION:

The Chapter 13 Trustee opposes the Amended Plan because:

A. The Trustee is unable to determine the feasibility of the Plan as it only provides for 7 months of payments and contemplates a lump sum payment in February 2019. However, the Trustee notes that the Plan appears to have a typographical error because the lump sum payment is reflected as February 2018 rather than 2019. The Trustee assumes this lump sum payment is predicated on a future sale of real property. The Plan does not provide for an alternative if

the sale is not completed by that date. The Trustee notes this issue was previously raised in the Trustee's Objection to Confirmation filed on August 20, 2018. Dckt. 31.

B. The Plan includes a residential listing agreement as an exhibit but the Debtor has not sought approval of the court to employ the realtor.

C. The Debtor modifies Wells Fargo's ongoing mortgage payments despite listing the creditor in Class 1. Additionally, the Debtor does provide for adequate protection payments and only provides for one payment of \$800.00.

D. The Debtor's Plan does not authorize prior disbursements made by the Trustee under the prior Plan.

E. Debtor's Motion to Confirm conflicts with the terms of the Plan. The Motion states it is a (60) month Plan; however, based on the Section 7, it only appears to be a (7) month Plan. Additionally, the Plan incorrectly states the amount of the unsecured claims. The Debtor's Plan claims there are \$1,082.53 in unsecured claims but the Trustee notes there are a total of \$13,830.85 in filed unsecured claims.

DEBTOR'S RESPONSE:

Debtor requests additional time to address the Trustee's and Creditor's concerns.

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

IT IS ORDERED that the Motion is denied and the Plan is not confirmed.

Thru #11

Final Ruling: No appearance at the December 18, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2018. 28 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.
--

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Wayne Rosemond'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 September 12, 2017. Case No. 17-26045. Debtor received a discharge on May 1, 2018. Case No. 17-26045, Dckt. 69.

The instant case was filed under Chapter 13 on October 2, 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 May 1, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 17-26045, Dckt. 69. 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.18-26242), 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 David Cusick, 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. 18-26242, the case shall be closed without the entry of a discharge.

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 November 7, 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 may fail the Chapter 7 liquidation analysis. Debtor may have an interest in real property commonly known as 6721 Carnation, Sacramento, California that was not disclosed on Debtor's Schedule A. Additionally, Debtor did not disclose rental income from that property on his Schedules. The Trustee claims that Debtor's 2016 and 2017 tax returns report approximately \$3,000.00 of annual rental income generated from this property. The Trustee also notes that the

Debtor stated at the 341 Meeting of Creditors that interest in the property was transferred to J&J, LLC in 2016 and the rental income reported on his tax returns was an error made by his tax preparer; however, the Trustee does not have sufficient information to determine the veracity of Debtor's claims.

B. Debtor's Plan may not be his best effort under 11 U.S.C. § 1325(b). Debtor proposes to pay \$2,600.00 for 6 months and \$74,000.00 from the future sale of Debtor's real property located at 8608 Cassieri Circle, Sacramento, California within 120 days of filing the petition. Dckt. 3. Debtor's Plan proposes to pay a dividend of 0% to the general unsecured creditors, however, the Trustee asserts that Debtor is able to full pay the scheduled unsecured claims. The unsecured claims that total \$3,954.43.

C. Debtor's Plan relies on the sale of real property; however, Debtor has not filed a motion to employ a broker or real estate agent and has not filed a motion to sell.

D. Debtor has not provided the Trustee with the required Business Documents including: 6 months of profit and loss statements; 6 months of bank statements; and proof of license and insurance or written statement that no such documentation exists.

E. Debtor has not provided his middle name on the Voluntary Petition.

F. Debtor admitted at the 341 Meeting of Creditors that he received a medical bill from Kaiser estimated to be \$13,000.00 that was not identified in Debtor's schedules.

At the December 4, 2018 hearing the court continued the hearing to December 18, 2018 to provide Debtor additional time to respond the Trustee's Objections.

DEBTOR'S RESPONSE:

The Debtor responded that Amended Schedules C & E/F were filed on November 15, 2018. Debtor agrees to increase the dividend to the general unsecured creditors to no less than 100%. Debtor requests that this change be made in the Order Confirming the Plan.

DISCUSSION:

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.

12. [18-26244](#)-C-13 MAY KRAY
[DPC](#)-1 Michael Croddy

OBJECTION TO DISCHARGE BY DAVID
CUSICK
10-30-18 [[13](#)]

Final Ruling: No appearance at the December 18, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2018. 28 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.
--

David Cusick, the Chapter 13 Trustee, ("Objector") objects to May Kray'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 20, 2015. Case No. 15-24099. Debtor received a discharge on August 31, 2015. Case No. 15-24099, Dckt. 13.

The instant case was filed under Chapter 13 on October 2, 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 31, 2015, which is less than four years preceding the date of the filing of the instant case. Case No. 15-24099, Dckt. 13. 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.18-26244), 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 David Cusick, 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. 18-26244, the case shall be closed without the entry of a discharge.

13. [14-24246](#)-C-13 CARL ASMUS AND JODI
[SAC](#)-9 CAMPISI ASMUS
Scott Coben

MOTION TO MODIFY PLAN
11-2-18 [[218](#)]

Tentative Ruling: The Motion to Modify 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.

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 25, 2018. Thirty-five days' notice is required. That requirement was met.

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

The court's decision is to grant the Motion to Modify, and confirm the Modified Plan.
--

The Chapter 13 Trustee opposes the Modified Plan because:

A. Debtors modified Plan proposes a payment of \$273,128.00 to be paid by December 25, 2018 and then \$10,300.00 to be paid for the remaining four months starting on January 25, 2019. The Trustee notes that Debtors will need to pay an additional \$5,900.00 by December 25, 2018 to comply with the plan payment as proposed.

B. The Trustee notes that there is an alternative treatment of Wells Fargo's Home Mortgage should the court issue and order granting relief from stay. However, the Trustee notes that there is no pending motion for relief and the provision does not appear necessary.

C. The Debtors filed multiple pending Plans, one on November 2, 2018 and another on November 3, 2018. The Trustee believes the Plans are identical but requests that the Debtors clarify which one they seek to confirm.

DEBTORS' RESPONSE:

The Debtors agree with the Trustee's calculations and intend to pay

\$5,900.00 before December 25, 2018. The Debtors proposed modified language to Section 7 to address the Trustee's concerns about the alternative treatment of Wells Fargo's claim. The Debtors state that they inadvertently filed two Plans and seek to confirm the Plan filed on November 2, 2018.

At the hearing-----.

The Plan, as modified by the request of the Trustee, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the 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 the Motion is granted, Debtors' Chapter 13 Plan filed on November 2, 2018, as incorporating the agreed upon correction, is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying 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 December 18, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 1, 2018. 28 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.
--

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Amanda Stratford'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 December 23, 2015. Case No. 15-29791. Debtor received a discharge on April 25, 2016. Case No. 15-29791, Dckt. 24.

The instant case was filed under Chapter 13 on October 2, 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 April 25, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 15-29791, Dckt. 24. 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. 18-25951), 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 David Cusick, 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. 18-25951, the case shall be closed without the entry of a discharge.

15. [18-26457](#)-C-13 DEBRA SCHOEPLIN
Aubrey Jacobsen

OBJECTION TO CONFIRMATION OF
PLAN BY QUICKEN LOANS, INC.
11-8-18 [[12](#)]

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

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

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 November 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 ~~xxxx~~ the Objection.

Secured Creditor Quicken Loans, Inc. opposes confirmation of the Plan based on the following:

A. Debtor's Plan does not provide for payment of all of the pre-petition arrears. The Plan provides for \$0.00 in pre-petition arrears and the Secured Creditor claims there are \$1,459.21 in pre-petition arrears.

B. The Secured Creditor claims that Debtor's Schedules I and J demonstrate that the Plan is not feasible.

DEBTOR'S RESPONSE:

Debtor responds by stating that the Secured Creditor erroneously claims a pre-petition delinquency in the amount of \$1,459.21. The Debtor argues that this amount reflects an October mortgage payment that was made by the Debtor and a claimed escrow shortage. Additionally, Debtor argues that any escrow shortage should be treated a post petition debt not a pre-petition debt.

At the hearing -----.

The Plan **xxxx** with 11 U.S.C. §§ 1322 and 1325(a). The objection is **xxxx** and the Plan 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 Objection to the Chapter 13 Plan filed by the Quicken Loans, 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 the Objection is **xxxx**, and Debtor's Chapter 13 Plan filed on October 12, 2018, is **xxxx**. ~~Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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 December 18, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Trustee filed a Non-Opposition to the Motion. Dckt. 74.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 is granted, Debtors'

Chapter 13 Plan filed on October 29, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. [14-25965](#)-C-13 CRISENTE/JACQUELINE
WW-4 VALDEZ
Mark Wolff

MOTION TO INCUR DEBT
11-29-18 [[50](#)]

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 November 28, 2018. 14 days' notice is required. That requirement was met.

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

The Motion to Incur Debt is granted.

Chrisente Valdez and Jaqueline Valdez ("Debtors") seek permission to purchase real property commonly known as 10237 Soprano Way, Elk Grove California, with a total purchase price of \$533,700.00 and monthly payments of \$3,663.00 to Eagle Home Mortgage of California over 30 years with a 4.875 % interest rate.

TRUSTEE'S RESPONSE:

The Trustee does not oppose the motion. Debtors have completed payments to the Chapter 13 Trustee and have paid 100% to general unsecured claims effective October 2, 2018.

DISCUSSION:

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Chrisente Valdez and Jaqueline Valdez ("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 is granted, and Chrisente Valdez and Jaqueline Valdez are authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 53.

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

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

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 November 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 xxxx the Objection.
--

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

A. Debtors Plan appears to fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$13,528.61 and the Debtor proposes to pay the general unsecured creditors a 0% dividend. The non-exempt property is personal property listed as a 2000 Nissan Extera (\$750.00) and a Vanguard 401(K) (\$12,778.61). The Trustee has also concurrently filed an Objection to Debtor's Claim of Exemption for lost wages of \$5,280.00.

DEBTORS' RESPONSE:

Debtors respond that the Trustee's opposition is due to an inadvertent error in Debtors' originally filed Schedule C. Debtors

state the Nissan Extera and the Vanguard 401(K) were not claimed as exempt on the initial petition. The Debtors' amended their Schedule C to exempt those assets. Debtors agree that the \$5,280.00 of unpaid wages is not exempt and the unpaid wages are at issue in a pending class action lawsuit.

Debtors claim that the after correcting their exemptions, there is a total of \$5,620.51 of non-exempt assets with a net value of \$4,308.46 to be paid to the general unsecured creditors, after adjusting for net liquidation expenses. The Debtors propose to make a lump sum payment of \$4,308.46 to the Chapter 13 Trustee upon receipt of the unpaid wages from the lawsuit proceeds.

Debtor requests that the modifications to the Plan be addressed in the order confirming the Plan.

At the hearing -----.

The Plan **xxxx** with 11 U.S.C. §§ 1322 and 1325(a). The objection is **xxxx** and the Plan 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 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 **xxxx**.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2018. Thirty-five days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Trustee filed a Non-Opposition to the Motion. Dckt. 106.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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 is granted, Debtors' Modified Chapter 13 Plan filed on November 12, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. [18-25079](#)-C-13 SHONTELL BEASLEY
[PGM](#)-3 Peter Macaluso

MOTION FOR ORDER APPROVING
TRIAL LOAN MODIFICATION AND
REQUEST TO BIFURCATE PAYMENTS
TO CHAPTER 13 TRUSTEE
11-19-18 [[68](#)]

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 November 19, 2018. 28 days' notice is required. That requirement was met.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Approve Loan Modification is xxxxxx .
--

The Motion to Approve Trial Loan Modification and Request to Bifurcate Payments filed by Shontell Beasley ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ditech Financial, LLC ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a trial loan modification that will reduce Debtor's mortgage payment from the current \$2,193.62 per month to \$1,941.03 for three months. If the Debtor adheres to the terms of the trial modification, Debtor anticipates making the modification permanent. The interest rate for the three month trial period will increase from 4.125% to 5.125%.

Additionally, Debtor requests approval to make the payments of \$1,941.03 directly to the Creditor and pay the remaining plan payment amounts of \$1,248.97 to the Trustee. Debtor claims that the bifurcation is necessary to ensure that the payments are received by the Creditor on the first of the month and not merely issued by the Trustee on the first of the month.

The Motion is supported by Debtor's Declaration. Dckt. 70. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S RESPONSE:

The Trustee notes that Debtor does not yet have a confirmed plan, the hearing for Debtor's Plan is set for January 15, 2019. The proposed Plan provides for Creditor in Class 1 with monthly mortgage payments of \$2,193.62, pre-petition mortgage arrears of \$12,034.82, and a monthly dividend of \$201.00.

The Trustee notes that the trial loan modification requires that each payment is received by Creditor in the month that it is due. The Trustee is not clear why it is necessary to bifurcate the payments between the Creditor and the Trustee, rather than having all payments administered by the Trustee.

The Trustee also questions whether the loan modification is in the Debtor's best interest due to the interest rate increase from 4.125% to 5.125%.

DEBTOR'S REPLY:

Debtor claims the bifurcation is necessary to ensure that the payments are received on or before the first of the month. Debtor also claims the modification would be in her best interest despite the interest rate increase because it lowers the monthly payments.

At the hearing -----

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

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

The Motion to Approve Loan Modification filed by Shontell Beasley ("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 court ~~xxxx~~ Shontell Beasley to amend the terms of the loan with Ditech Financial, LLC ("Creditor"), which is secured by the real property commonly known as 310 Donegal Drive, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 71).

21. [18-27381](#)-C-13 THOMAS/BECKY BOYES
[LBG](#)-1 Lucas Garcia

MOTION TO EXTEND AUTOMATIC STAY
AND/OR MOTION TO IMPOSE
AUTOMATIC STAY
11-27-18 [[8](#)]

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)(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 November 17, 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, -----
-----.

The Motion to Extend the Automatic Stay is xxxxx .

Thomas Boyes and Becky Boyes ("Debtor") seek 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 Debtors' second bankruptcy petition pending in the past year. Debtors' prior bankruptcy case (No. 18-22731) was dismissed on May 1, 2018, after Debtors did not confirm an Amended Plan within the 60 days ordered by the court and did not make all required Plan payments. See Order, Bankr. E.D. Cal. No. 18-22731, Dckt. 66. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtors thirty days after filing of the petition.

Here, Debtors state that the instant case was filed in good faith and explains that the previous case was dismissed because Debtors misunderstood the start date for Plan payments creating a set back they could not overcome. Dckt. 10, Debtors' Declaration. Debtors claim that the current proceeding was filed in good faith.

NATIONSTAR MORTGAGE LLC DBA MR. COOPRER'S OPPOSITION:

Nationstar Mortgage, LLC ("Secured Creditor") opposes Debtors' Motion to Extend the Automatic Stay because:

A. This is Debtors' fourth bankruptcy proceeding. The court notes that Debtors have filed three prior Chapter 13 bankruptcy proceedings (Case Nos. 14-2975; 15-28162; and 18-22731). The court also notes that the prior to two cases were both closed in 2018 and Debtors were represented by current counsel.

B. Secured Creditor questions Debtors statement that they were confused about when to make Plan payments, as this is their fourth bankruptcy proceeding.

C. Secured Creditor claims that the bankruptcy stay was not in effect when Debtors' residence located at 14880 Mosswood Lane, Grass Valley, California was sold at a foreclosure sale on November 28, 2018 (one day after this bankruptcy proceeding was filed). Secured Creditor claims that because Debtors has two prior bankruptcy proceeding pending and dismissed within one year of the filing of the current case, the automatic stay did not go into effect upon filing.

DISCUSSION:

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.

At the hearing -----.

Debtor **XXXXXX** 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 **XXXXXX**, and the automatic stay **XXXXXX** 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 Thomas Boyes and Becky Boyes ("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 is **XXXXXX**, and the automatic stay **XXXXXX** 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.

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2018. By the court's calculation, 14 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 granted.

This Motion requests an order avoiding the judicial lien of Federal Credit Union ("Creditor") against property of Wendi White ("Debtor") commonly known as 1730 Baines Ave, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$22,639.35. An abstract of judgment was recorded with Sacramento County on June 11, 2013, that encumbers the Property. Dckt. 140, Exhibit C.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$386,400.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$375,265.88 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor's Schedule D also reflects a judgment lien of the local homeowners association totaling \$900.00. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b) (5) in the amount of \$10,500.00 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 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute 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 Wendi White ("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 Navy Federal Credit Union, California Superior Court for Sacramento County Case No. 34-2011-00098502-CL-CL-GDS, recorded on June 11, 2013, Book 20130611 and Page 0904, with the Sacramento County Recorder, against the real property commonly known as 1730 Baines Ave, Sacramento, 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 #24

Tentative Ruling: The Motion to Confirm 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.

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 October 5, 2018. Thirty-five days' notice is required. That requirement was met.

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

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

TRUSTEE'S OPPOSITION:

The Chapter 13 Trustee opposes the Amended Plan because:

A. The Debtor is delinquent \$6,252.00 in plan payments. Another plan payment of \$3,200.00 will be due on December 25, 2018. The Debtor has paid \$12,600.00 into the Plan.

At the hearing-----.

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

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

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

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

IT IS ORDERED that the Motion is denied and the Plan is not confirmed.

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 3007-1 Objection to Claim-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 5, 2018. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition). That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 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 Proof of Claim Number 3 of Ruth Xovox is **XXXX**, and the claim is **XXXX**.

John Robert Swensson, the Debtor, ("Objector") requests that the court treat the secured claim of Ruth Xovox("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case, as wholly unsecured. The Claim is asserted to be secured in the amount of \$57,683. Objector asserts that the claim should be unsecured because the debt reflects a property equalization payment arising from prior marital dissolution. The Objector claims this is not a debt for unpaid child support.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative

force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

At the hearing -----.

Based on the evidence before the court, Creditor's claim **xxxx**.
The Objection to the Proof of Claim 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 Objection to Claim of Ruth Xovox ("Creditor"), filed in this case by John Robert Swensson, the Debtor("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 3 of Ruth Xovox is **xxxx**.

No Tentative Ruling: The Motion to Confirm 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.

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 October 30, 2018. Thirty-five days' notice is required. That requirement was met.

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

TRUSTEE'S OPPOSITION:

The Chapter 13 Trustee opposes the Amended Plan because:

A. The Debtor is delinquent \$3,190.00 in plan payments. The Debtor has plan payment of \$1,995.00 due on December 25, 2018. The Debtor has paid a total of \$3,000.00 to date.

B. The Trustee states that Plan is not clear. The Trustee cannot determine the amount of the proposed plan payment that should occur as of April 2019. The proposed monthly payments leave \$749.84 unallocated.

C. The monthly dividend is under \$15.00 a month. Due to the Trustee's system this will require manually issued checks.

DEBTOR'S RESPONSE:

Debtor's counsel responds, without a declaration, that Debtor has cured the delinquency. Debtor's counsel next provides clarification regarding the plan payments and, if accepted by the Trustee, requests that the clarifying language be included in any order confirming the Plan.

At the hearing-----.

The Plan xxxx with 11 U.S.C. §§ 1322 and 1325(a) and 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 Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxx and the Plan is xxxx.

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

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

Local Rule 9014-1(f) (3) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2018. The court set the hearing for December 18, 2018. Dckt. 19.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
-----.

The Motion to Extend the Automatic Stay is granted.
--

Amy Loafea("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. 16-28040) was dismissed on September 20, 2018. See Order, Bankr. E.D. Cal. No. 16-28040, Dckt. 71. 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 since her previous case was dismissed for failure to make all required plan payments due to a decline in commissions and costs to support her daughter in college. Dckt. 16, Debtor Declaration. Debtor states that, as of this summer, the support to her daughter has stopped. Dckt. 16.

RULING:

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 Amy Loafea ("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.
