

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

January 14, 2020 at 2:00 p.m.

---

1. [19-25405-C-13](#)      DANNY ROBINSON      MOTION TO CONFIRM PLAN  
[NSV-1](#)                      Nima Vokshori                      11-15-19 [\[31\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2019. By the court’s calculation, 60 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Plan is denied.**

The debtor, Danny K Robinson (“Debtor”) seeks confirmation of the First Amended Chapter 13 Plan. The Plan provides monthly payments of \$3,145.00 over 60 months, with a 100 percent dividend to unsecured claims totaling \$5,939.10. Plan, Dekt. 30. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 27, 2019, arguing confirmation should be denied because Debtor is \$3,145.00 delinquent in plan payments.

### DISCUSSION

The Debtor is delinquent one plan payment under the proposed amended plan. Delinquency shows the plan is not feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 19, 2019. By the court’s calculation, 56 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied.**

The debtor, Richard Allen Chastain (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$2,262.57 for 9 months, and a lump sum payment of \$61,370.00. Amended Plan, Dckt. 33. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 17, 2019. Dckt. 41. Trustee opposes confirmation on the following grounds:

1. The attorney fees of \$2,810.00 are proposes to be paid at \$100 a month, resulting in a 29 month plan where the plan term is specified to be 10 months. Trustee does not oppose correcting the monthly dividend to \$281 in the order confirming the plan.
2. Debtor is \$2,262.57 delinquent in plan payments.

3. Debtor's plan proposes selling Debtor's home and using the proceeds to make a \$61,370.00 lump sum in month 10. However, Debtor has not employed a broker or filed a motion to sell.

## **DISCUSSION**

The Debtor has not shown the plan to be feasible. The plan will not mathematically complete in the 10 month term; the Debtor is delinquent plan payments; and the plan relies on a significant lump sum from the sale of Debtor's residence where there is no indication Debtor has taken steps to actually market the property. This is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 9, 2019. By the court’s calculation, 36 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
-----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. The Plan proposes valuing the secured claim of Travis Credit Union, but no motion to value that claim has been filed.
- B. Debtor has not provided Trustee 60 days’ pay advices.
- C. Debtor has not provided Debtor’s social security number.

## DISCUSSION

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Travis Credit Union. Debtor has failed to file a Motion to Value the Secured Claim of Travis Credit Union,

however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Additionally, the Debtor did not provide proof of social security at the Meeting of Creditors, as required. 11 U.S.C. § 521(h).

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

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 10, 2019. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. the debtor, Christopher A Kelso (“Debtor”), is \$450 delinquent in plan payments.
- B. Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year .
- C. Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition.
- D. Debtor admitted at the Meeting of Creditors he has changed jobs and

receives no rental income, contradicting Schedule I which lists \$1,700 a month from rental income.

- E. Schedule D lists the claim of the Department of Tax and Fee Administration in the amount of \$33,691.22. This secured claim is not provided for in the plan.

## DISCUSSION

Several of the grounds for objection indicate the plan is not feasible. Debtor is delinquent plan payments; Debtor listed substantial rental income but later admitted to receiving none; and Debtor has a scheduled secured claim of \$33,691.22 that is not provided for. Each of those facts shows the plan is not feasible, which is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Debtor also did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor also has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

THRU #8

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 18, 2019. By the court’s calculation, 57 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of BBVA Compass Bank (“Creditor”) is denied without prejudice.**

The Motion filed by Patricia Ann Michael (“Debtor”) to value the secured claim of BBVA Compass Bank (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 48. Debtor is the owner of a 2015 Nissan Rogue Automobile (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$10,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No evidence or argument was presented as to whether the hanging paragraph of 11 U.S.C. § 1325(a)(9) applies.

**DISCUSSION**

As discussed above, there is no mention of when the debt was incurred and whether it was a purchase-money security interest. The hanging paragraph of 11 U.S.C. § 1325(a)(9) prohibits valuing a PMSI where the collateral is a personal-use vehicle purchased within 910 days preceding filing.

Therefore, the Motion is denied without prejudice.

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

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

The Motion to Value Collateral and Secured Claim filed by Patricia Ann Michael (“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 without prejudice.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 14, 2019. By the court’s calculation, 61 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Plan is ~~XXXXX~~.**

The debtor, Patricia Ann Michael (“Debtor”) seeks confirmation of the First Amended Chapter 13 Plan. The Plan provides for payments of \$6,660.00 for 60 months, and a 0 percent dividend on claims totaling \$477,747.00. Plan, Dckt. 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition arguing that the Plan relies on the court granting 3 motions to value secured claims, and that the plan indicates there are additional provisions where there are none.

**DISCUSSION**

A review of the docket shows that one of the Debtor’s motions seeking to value the secured claim of BBVA Compass Bank was denied without prejudice.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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, Patricia Ann Michael (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Plan is **XXXXXXX**

**Final Ruling:** No appearance at the January 14, 2020, 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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 17, 2019. By the court’s calculation, 58 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of SUNRUN (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Patricia Ann Michael (“Debtor”) to value the secured claim of SUNRUN (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 38. Debtor is the owner of the subject real property commonly known as 2861 Regatta, Fairfield, California (“Property”). Debtor seeks to value the Property at a fair market value of \$670,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor’s secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor’s interest in the**

**estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

## **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$910,236.43. Proof of Claim, No. 3. Creditor's lien secures a claim with a balance of approximately \$62,390.00. Declaration, Dckt. 38. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Patricia Ann Michael ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of SUNRUN ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 2861 Regatta, Fairfield, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$670,000.00 and is encumbered by a senior lien securing a claim in the amount of \$910,236.43, which exceeds the value of the Property that is subject to Creditor's lien.

**Final Ruling:** No appearance at the January 14, 2020, 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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 18, 2019. By the court’s calculation, 57 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of the California Franchise Tax Board is granted, and Creditor’s secured claim is determined to have a value of \$0.00.**

The Motion filed by Patricia Ann Michael (“Debtor”) to value the secured claim of the California Franchise Tax Board (“FTB” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 43. Debtor is the owner of real property commonly known as 2861 Regatta, Fairfield, California (“Real Property”), as well as several items of personal property fully listed on Schedule B (“Personal Property”). Debtor seeks to value the Real Property at a replacement value of \$670,000.00, and the Personal Property at a value of \$13,167.99 as of the petition filing date. Dckt. 12. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim, No. 3, evidences a first deed of trust of \$911,371.34 encumbering the Real Property. On Schedule D, Debtor also lists a secured claim of \$18,000.00 encumbering some of the Personal Property. Debtor argues that as a result, the net equity left to secure Creditor’s claim is \$3,167.99, which has been entirely exempted on Schedule C.

Creditor filed Proof of Claim No. 2 on November 1, 2019. The Proof of Claim asserts that

\$112,075.87 is secured by the Property, and that \$1,033.70 is a general unsecured claim.

Upon review of the evidence and the statement of the secured claim for the FTB in Proof of Claim No. 2, the court determines the value of the secured claim to be \$0.00, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

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 Value Collateral and Secured Claim filed by Patricia Ann Michael (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the California Franchise Tax Board (“FTB” or “Creditor”) secured by both real and personal property of the Debtor (“Property”) is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 10, 2019. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. The debtors, John Michael Goulding and Marni Jeanne Goulding (“Debtor”), are \$3,785.00 delinquent in plan payments.
- B. Debtor admitted at the Meeting of Creditors Debtor has not filed the 2017 and 2018 tax returns.

**DISCUSSION**

Debtor is \$3,785.00 delinquent in plan payments, having paid nothing to date. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2017

and 2018 tax years have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2019. By the court’s calculation, 63 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied.**

The debtor, Deborah Marie Candate (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$1,374.00 for 60 months, and a 0 percent dividend to unsecured claims totaling \$12,233.00. Amended Plan, Dckt. 65. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 27, 2019. Dckt. 72. Trustee opposes confirmation on the grounds that (1) the dividend towards HOA fees is less than \$15, which is lower than Trustee’s software permits for payments, and (2) the Debtor is \$2,490 delinquent in plan payments.

**CREDITOR’S OPPOSITION**

Creditor Vallejo Cerros Homeowners Association (“Creditor”) filed an “Objection” opposing confirmation on January 2, 2020. Dckt. 75. Creditor argues that because its claim is secured by Debtor’s

primary residence, the contractual interest rate of 12% cannot be modified to 0% as proposed. Creditor also argues the plan only provides for \$10 towards the ongoing post-petition payment rather than the full amount.

## **DISCUSSION**

Based on the oppositions, several grounds for denying confirmation exist. Debtor is delinquent in plan payments which shows the plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's plan does not provide for Creditor's ongoing postpetition payment, again showing the plan is not feasible.

Creditor's claim is listed on Schedule D as secured only by Debtor's principal residence. The Bankruptcy Code prohibits the plan from modifying the holder's rights of a claim secured only by a security interest in real property that is the debtor's principal residence. 11 U.S.C. § 1322(b)(2). "Those rights include, among others, the right to repayment of the principal in monthly installments over a fixed term at specified adjustable interest rates, and they are protected from modification by § 1322(b)(2)." *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 324, (1993).

Finally, Trustee notes as a practical matter that Trustee's software does not process payments under \$15.

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 30, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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 granted.**

Louie Graham Gilligan and Shardalai Monique Gilligan (“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 Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 18-22000) was dismissed on November 27, 2019, after Debtor fell delinquent in plan payments and proposed a plan with terms the Trustee could not comply with. *See Order, Bankr. E.D. Cal. No. 18-22000, Dckts. 74, 75.* 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.

Debtor argues the prior case was dismissed because (1) a family emergency caused Debtor to incur unexpected expenses which forced Debtor to file a modified plan; and (2) those same expenses causes delinquency to persist even under the modified plan.

**APPLICABLE LAW**

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.

## DISCUSSION

A review of the prior case shows that the first modified plan was denied confirmation because even under the modified plan terms Debtor was delinquent.

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 Louie Graham Gilligan and Shardalai Monique Gilligan (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good

cause appearing,

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 17, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor did not appear at the December 12, 2019 Meeting of Creditors due to medical emergency. The Meeting was continued to January 9, 2020.
- B. Debtor provides only 8% tax withholding, which appears insufficient. The State has placed a tax levy on Debtor.
- C. Debtor has not provided the Chapter 13 Trustee with the correct employer payment advices for the sixty-day period preceding the filing of the petition.
- D. Trustee believes Debtor undervalued Debtor’s 1968 Chevrolet Impala at

\$5,500 where it should be around \$10,500.00.

## **DISCUSSION**

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341—or the continued hearing on January 9, 2020. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has not shown the plan to be feasible where Debtor is only withholding 8% for taxes, and where there is an active tax levy on Debtor's wages. 11 U.S.C. § 1325(a)(6).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). While Debtor has provided some pay stubs, Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Additionally, Debtor has not responded to Trustee's argument that the Chevy Impala was undervalued.

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

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 17, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. The debtor, Robert Munoz (“Debtor”) is \$1,349.00 delinquent in plan payments.
- B. Debtor did not appear at the December 12, 2019 Meeting of Creditors.
- C. Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year.
- D. Debtor has not provided all business documents required by 11 U.S.C. § 521.

## DISCUSSION

Debtor did not appear at the December or January Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor is \$1,349.00 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 10, 2019. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Modified Plan is granted.**

The debtor, Allison Davison (“Debtor”) seeks confirmation of the Modified Plan. The Modified Plan provides for \$3,000.00 paid through November 15, 2019, and payments of \$1,192.00 for the remainder of the plan term. Modified Plan, Dckt. 73. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 16, 2019. Dckt. 76. Trustee opposes confirmation on the following grounds:

1. While Debtor states she has a new job, no supplemental schedules were filed to show actual numbers. Trustee estimates based on previously received pay advices Debtor’s net income is \$2,600.
2. The modified plan proposes paying arrearages of \$3,800.84 on Specialized Loan Servicing’s claim. However, that creditor’s proof of claim only indicates arrearages of \$977.49, which means the Debtor is

trying to incorporate postpetition arrearages. Trustee notes this cannot be done without specifying treatment in the additional provisions.

3. The Notice of Hearing did not inform parties in interest of the ability to view prehearing dispositions on the court website as required by the local bankruptcy rules.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on December 31, 2019. Dckt. 83. Debtor notes that Amended Schedules were filed to reflect Debtor's current income. Dckt. 84. Debtor requests the issue with Specialized Loan Servicing's arrearages, as well as an increase in the plan payment to address an increase of the mortgage payment, be addressed in the language of the order confirming the plan.

## **DISCUSSION**

Debtor filed Amended Schedules <sup>FN.1.</sup> on December 31, 2019, to show Debtor's increased ability to pay. Dckt. 84. Trustee's other grounds for opposition can be addressed in the language of the order confirming the plan.

-----  
FN.1. Filing amended schedules almost a year into the case is not correct. An Amended Schedule amends the stated income back to the date of filing. Supplemental schedules should be filed when Debtor is providing updated information. In this case, Debtor proposed a 100% plan. Therefore the error does not affect confirmation.  
-----

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 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, Allison Davison ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on December 10, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 13, 2019. By the court’s calculation, 62 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Modified Plan is ~~XXXXX~~.**

The debtor, Bradley Martin (“Debtor”) seeks confirmation of the Modified Plan. The Modified Plan provides for payments of \$6,245.00 for 17 months; \$5,000.00 for 2 months; and \$9,690.00 for 41 months. Modified Plan, Dckt. 135. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 9, 2019, opposing confirmation on the following grounds:

1. Debtor filed Supplemental Schedule I which reports an increase in net income from \$12,248.00 to \$13,210.00. This is the second increase, with income originally stated to be \$10,960 at the time of filing. No further documentation has been provided to show these numbers are accurate.
2. Debtor is delinquent \$5,001.00 in plan payments.

3. Debtor's Schedule J reflects a \$600 alimony payment where the Solano County records show the payment is \$604.00.

## **DEBTOR'S REPLY**

Debtor filed a Reply on January 7, 2020. Dckt. 148. Debtor reports the delinquency was cured, and necessary documentation to substantiate income provided to the Trustee. Debtor also concedes the alimony payment is \$4 higher than scheduled.

## **DISCUSSION**

At the hearing, the Trustee addressed whether Debtor was current and has provided necessary documentation to substantiate income **XXXXXXXXXXXXXX**.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is **XXXXXXXXXX**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the November 20, 2019, Debtor, the November 20, 2019, Debtor’s Attorney, and the November 20, 2019, Office of the United States Trustee on October 15, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is ~~XXXXXXXXXX~~**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Robert Ryan Stanley (“Debtor”), is \$14,742.74 delinquent in plan payments.

### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on November 6, 2019. Dckt. 130. Debtor’s counsel states that a modified plan will be filed and set for confirmation hearing once the Debtor’s outstanding domestic support obligations are determined.

### **NOVEMBER 20, 2019 HEARING**

At the November 20, 2019 hearing the court continued the hearing to afford Debtor and his counsel the opportunity to firm up whatever reorganization, if any, is possible. Civil Minutes, Dckt. 140.

### **SUPPLEMENTAL FILINGS**

On December 31, 2019 Debtor filed his Declaration and a Business Income Spreadsheet. Dckts. 145, 146. The Declaration presents Debtor’s explanation for the failures of his prior cases, and the fluctuating income he has had over the years.

### **JANUARY 8 HEARING**

At the January 8, 2020, hearing the court continued the Motion to be heard alongside Debtor's Motion To Confirm Modified Plan.

## DISCUSSION

Debtor is \$14,742.74 delinquent in plan payments, which represents multiple months of the \$8,021.91 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court notes that this is the Debtor's fifth Chapter 13 case this decade. His prior attempted, defaulted, and dismissed cases are:

- A. 11-23330
  - 1. Filed.....February 9, 2011
  - 2. Dismissed.....June 14, 2013
  - 3. Post-Petition Default that was basis for Motion to Dismiss
    - a. Post-Petition State Bard of Equalization Tax Payments in the amount of .....\$65,233.28
- B. 13-29065
  - 1. Filed.....July 7, 2013
  - 2. Dismissed.....October 7, 2015
  - 3. Post-Petition Default that was basis of Motion to Dismiss
    - a. Default in Plan Payment in the amount of ...\$6,090.01
- C. 15-28558
  - 1. Filed.....November 3, 2015
  - 2. Dismissed.....November 10, 2016
  - 3. Post-Petition Default that was basis of Motion to Dismiss
    - a. Default in Plan Payments in the amount of \$12,300.00
- D. 16-28195
  - 1. Filed.....December 13, 2016
  - 2. Dismissed.....January 21, 2018
  - 3. Post-Petition Default that was basis of Motion to Dismiss
    - a. Default in Plan Payments in the amount of \$19,985.00

- b. Of the \$8,765.00 paid into the Plan by Debtor, \$7,221.57 was refunded to him. 16-28195; Trustee's Final Report, Dckt. 93.

Since February 9, 2011, Debtor has been represented by very knowledgeable, experienced bankruptcy counsel. During these past almost nine years, Debtor has effectively maintained a continuous non-productive Chapter 13 existence, turning a maximum plan period into what he now seeks to make into a fourteen year plan (assuming that Debtor would properly fund a five year plan in the current case).

Looking at the most recent case, 16-28195, Debtor "explained" the default in that fourth bankruptcy case of the decade and why that fourth Chapter 13 case should not be dismissed, by having his attorney argue (Debtor failing or refusing to provide testimony) that:

The debtor has been struggling to resolve business issues created when his long-time manager/bookkeeper abruptly left in June of this year. His mother has been working for him since then, and has cleaned up some of the mess left by the previous manager, but the office upheaval has contributed to the debtor falling behind in plan payments. He has also been involved in a very contentious family law matter that has taken time and resources away from his Chapter 13 case. The debtor does have jobs in various stages of completion, and believes he can bring his plan current by the date of the continued hearing on his motion to confirm plan, scheduled for November 21, 2017.

16-28195; Opposition to Motion to Dismiss, p. 2:5-12, Dckt. 65.

In his third Chapter 13 case of this decade, Debtor attempted to avoid the dismissal by modifying his Chapter 13 Plan. In that case, in his Declaration in support of confirmation, Debtor testified:

The Chapter 13 Trustee filed a Notice of Default and Application to Dismiss Case, indicating I am delinquent in my plan payments in the amount of \$9,225.00 through May 2016. I operate a commercial and residential window and glass installation business. In November 2015, my company completed a subcontracting job for LPS Construction, for the renovation of a Staples store in Vacaville, California. My company, United Glass, was a sub-contractor. The general contractor on the job was LPS Construction. Large commercial jobs such as the Staples job generally pay within 60 to 90 days of submission of invoices. However, LPS Construction has still not paid the amount due, which is approximately \$20,000.00. I was depending on receipt of these funds in February or March at the latest. The failure of LPS Construction to pay the amount owed caused me to fall behind in my plan payments. General contractors such as LPS Construction usually have to qualify to get awarded contracts from large corporate businesses like Staples. When Staples learned I hadn't been paid by LPS Construction, its legal department contacted me, and asked me to submit all my invoices and change orders. It looks like Staples may pay me directly, although I am not sure of that. In the meantime, I have two good commercial jobs that I signed, one of which starts on Monday, May 30. The other one is for CVS, and is larger. I expect that job will pay close to \$63,000.00 over the next few months. I

am confident I will be able to recommence my plan payments with the June 25, 2016 payment.

15-28558; Declaration, p. 2:5.5-22.5, Dckt. 58. Unfortunately, Debtor's confidence was good for only the short run and by September 2016 he was again in default, unable to cure the defaults, and the third bankruptcy case dismissed.

In his second Chapter 13 case this decade, Debtor and his counsel did not file any pleadings addressing his default and the Trustee seeking the dismissal of case number 13-29065. This was notwithstanding the Debtor having paid \$55,403.99 into the Plan in that case. 13-29065; Trustee's Final Report, Dckt. 42.

### **Current, Fifth Chapter 13 Case of The Decade Proposed Modified Plan**

Facing the current Motion to Dismiss the current case based on \$14,742.74 in plan payment defaults as of October 15, 2019, the Debtor has responded with a proposed Modified Plan. In his Declaration in the current case, Debtor explains that his contentious divorce has dragged on for years, but he "believes" that his support obligation, due to the short duration of the marriage, "I believe that any spousal support obligation terminated years ago." Declaration, p. 2:10.5-15; Dckt. 136. The court notes the equivocal language by this non-expert Debtor witness. Either the obligation terminated long ago and has not been paid, or it has not terminated. Debtor's "belief" offers little to support his attempt to modify the Plan in the fifth Chapter 13 case.

Debtor then provides his "understanding" that there are no "permanent orders in his family law case. *Id.*, p. 2:15-16. The court cannot understand the legal and economic significance of the Debtor's personal "understanding." Further, if there was an order requiring Debtor to make support payments for the next ten years, is it Debtor's "understanding" that it is not permanent, but only ten years "temporary?"

Debtor further testifies that he needs to prosecute legal proceedings in the family law matter, but cannot afford to do so. Thus, it appears that this long, contentious, draining family law proceeding will continue.

The one out of the ordinary, somewhat temporary event Debtor describes in his declaration is that when PG&E cut power due to fire dangers, on two occasions he lost power and phone service to Debtor's shop.

Debtor's proposed modified plan will require monthly plan payments of \$9,690 for the final forty-one months of the Plan. Proposed Modified Plan, Dckt. 135 at 8. For the first seventeen months the payments are "only" \$6,245.00 and then "only" \$5,000 for months eighteen and nineteen of the Plan.

After nine years, four prior defaulted Chapter 13 cases and now having a "the plan payments will jump 55%, notwithstanding the substantial defaults in the significantly lower plan payment, the "fact" that the Debtor has filed a document titled "Modified Plan" and swears that he can make significantly greater plan payments in the future is not sufficient to deny the present Motion — even if it is likely to result in the Debtor's sixth bankruptcy case in this decade or the first in the new decade.

## Continued Hearing

As discussed above the hearing was previously continued to track the confirmation hearing on Debtor's Modified Plan.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXX**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 14, 2019. By the court’s calculation, 60 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

The debtor, Bradley Martin (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$2,000.00 paid through October 2019, and Plan payments of \$3,200.00 for 58 months. Amended Plan, Dckt. 41. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on December 4, 2019. Dckt. 46. Trustee states he is not certain the proposed payment of \$2,577.47 (40 year amortization plus \$100 arrearage payment) offers adequate protection to creditor Ditech Financial where the prior plan proposes a payment of \$3,284.70 (20 year amortization).

**DISCUSSION**

Reviewing the record shows where Debtor came up with the adequate protection payment: Proof of Claim, No. 2 filed by Ditech Financial, LLC, lists the postpetition payment at \$2,477.47.

The court finds that the proposed adequate protection payment is sufficient. The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Bradley Martin (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on November 14, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2019. By the court’s calculation, 55 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Plan is granted.**

The debtor, Jessy Cortez Esio and Klarissa Arevalo Esio (“Debtor”), seeks confirmation of the Amended Plan. The Chapter 13 Plan provides for 60 payments of \$3,583, and a 100 percent dividend to unsecured claims totaling \$65,860.00. Amended Plan, Dckt. 21. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 27, 2019. Dckt. 61. Trustee notes that no new plan has been filed, and in denying the prior plan confirmation the court found that the Debtor’s transfer of real property commonly known as 7459 50<sup>th</sup> Avenue, Sacramento, CA was possibly an avoidable transfer. Civil Minutes, Dckt. 40, 45.

Trustee also opposes confirmation on the following grounds:

1. Debtor is \$3,583 delinquent in payments.

2. Trustee opposes a flat attorney fee in this case.
3. Debtor's Declaration is insufficient because it does not explain Debtor's source of income; why the case was filed; and what creditors would receive in a Chapter 7 liquidation.

## **DISCUSSION**

At outset, the plan will be denied confirmation for the same reason it was previously denied—Debtor's transfer of the Property occurred within two years of the date of filing and the transaction may be avoided pursuant to 11 U.S.C. §548(a)(1).

Additionally, Debtor is delinquent \$3,583 in plan payments, and Trustee has opposes the use of the flat fee. Those facts indicate that the Plan is not feasible and are reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Jessy Cortez Esio and Klarissa Arevalo Esio ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 27, 2019. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

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 denied.**

Yvonne Rose Richards (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 18-27966) was dismissed on September 4, 2019, after Debtor failed to confirm a Chapter 13 Plan. *See* Order, Bankr. E.D. Cal. No. 18-27966, Dckt. 102. 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 and explains that the previous case was dismissed because she cannot afford the payments. Debtor represents that the present case will be successful because family members are making contributions to protect their interests in property.

## APPLICABLE LAW

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.

## DISCUSSION

The Debtor has not presented a clear picture of why the prior case failed and what has changed to show the present case was filed in good faith.

Debtor states summarily the prior case was dismissed because she could not make payments. But, there is no discussion of what was and was not payable. In the prior case, Debtor listed less expenses by about \$600. 18-27966, Dckt. 12; 19-27777, Dckt. 1. Some of the expenses cut between the present and prior case include vehicle insurance (though Debtor still has her vehicle); food (from \$400 to \$200 for 2 persons per month); utilities (by \$100); telephone (by \$200); and home maintenance (by \$160).

The above cut expenses could show that Debtor is tightening her belt. But, more likely they are just unrealistically low and will result in another Plan Administrator where Debtor falls delinquent. \$200 a month for food for Debtor and her adult-dependent son does not appear realistic.

Debtor also argues vaguely that family members will be making more contributions. No

mention is made of which family members, or what their contribution will be, or what their ability to make such a contribution is.

In reviewing the Schedule I filed in the prior and present case, Debtor's son is contributing income. *Id.* But, this is not new. In the prior case Debtor's son was contributing \$2,334.00, now he is contributing \$3,115.00. Debtor's son's contribution did not make a difference in the prior case.

It is not stated whether the son making contributions is also the dependent. Presumably not, if the son can flexibly afford to donate \$2,300 to \$3,100 a month to fund a plan.

Debtor has not 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 denied.

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

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

The Motion to Extend the Automatic Stay filed by Yvonne Rose Richards ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 3, 2019. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is ~~XXXXX~~.**

The debtor, Yvonne Johnson (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$2,802.70 for 2 months and \$3,318.00 per month for 58 months. Amended Plan, Dckt. 40. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 23, 2019. Dckt. 50. Trustee opposes confirmation on the grounds that the plan unfairly discriminates against unsecured creditors because it pays student loans separately, and because Debtor has not substantiated her income listed on Amended Schedule I.

**DISCUSSION**

The Trustee has expressed doubts as to whether Debtor’s income on Amended Schedule I is correctly stated. However, no pay advices or other documentation supporting the stated income was provided by Debtor. 11 U.S.C. § 521 requires the Debtor to cooperate with the Trustee and provide supporting documentation.

The Trustee has also expressed concern that Debtor may still be paying a student loan debt even though the expense was removed on Amended Schedule J. Because 0% is paid to unsecured claims, Debtor paying her student loans (an unsecured claim) would constitute unfair discrimination.

At the hearing, the Trustee addressed whether sufficient documentation has been provided since the filing of the Opposition **XXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Yvonne Johnson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXXXXXXXXXXXXX**.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2019. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is ~~XXXXX~~.**

The debtor, Tammy Lou Potter-Goddard and Betty Ann Potter-Goddard (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan provides for payments of \$2,382 for 5 months and \$1,010.00 for 55 months. Amended Plan, Dckt. 86. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 18, 2019, opposing confirmation on the following grounds:

1. Debtor filed Amended Schedule J removing an expense for retirement income taxes totaling \$2,764.00. Trustee speculates the Debtor’s net income should be \$285.00, and not \$3,049.00.
2. The Plan indicates Debtor’s counsel will comply with Local Bankruptcy Rule 2016–1(c), but no Rights and Responsibilities and Disclosure of

Compensation has been filed.

3. The plan provides for a 22% dividend to unsecured claims, which conflicts with the Motion To Confirm and Supporting Declaration which both state 100%.

## **CREDITOR'S OPPOSITION**

Creditor Wells Fargo Bank, N.A., dba Wells Fargo Auto ("Creditor") filed an Opposition on December 30, 2019. Dckt. 92. Creditor objects solely to the classification of its claim as a non-purchase money security interest.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on January 2, 2020. Dckt. 96. Debtor states:

1. Debtor filed Amended Schedule J to including previously omitted Class 4 payments, and leaving net disposable income of \$1,010.00.
2. Debtor has not filed the Rights and Responsibilities and Disclosure of Compensation.
3. Debtor filed a Declaration confirming the unsecured dividend is 22%.
4. Debtor filed Amended Schedule D to reflect Creditor's claim is a purchase money security interest, and requests the order confirming the plan specify the same.

## **DISCUSSION**

The majority of the Trustee and Creditor's grounds for opposition have been addressed by the Debtor filing additional documents and requesting the issues be addressed in the order confirming the plan.

However, there appears to be either a feasibility or best efforts issue. As the Trustee noted, the Debtor recently removed a \$2,764.00 expense from Schedule J for "Taxes from . . . Retirement Pay." Schedule J, Dckts. 1, 27, 40.

Debtor's counsel in the Response states that disposable income is higher than it should be because the Class 4 payments were accidentally omitted. But, that does not explain where the \$2,764.00 tax expense went, which Debtor 3 times stated under penalty of perjury was a necessary expense.

In this case, Debtor has filed in November 7, 2018, Debtor has filed 5 Schedule J forms and 3 Schedule I forms. Dckts. 1, 27, 40, 81, 95. None of these were supplemental—each time Debtor indicated that this was an amendment to the original filing documents.

The income, expenses, and net disposable income (all stated under penalty of perjury to be Debtor's financial information at the time of filing) is as follows:

	<b>Schedule J</b>	<b>1st Amended</b>	<b>2nd Amended</b>	<b>3rd Amended</b>	<b>4th Amended</b>
Income	\$11,344.00	\$11,344.00	\$11,344.00	\$8,997.00	\$8,997.00
Expenses	\$11,315.00	\$14,482.00	\$8,854.00	\$5,948.00	\$7,983.00
<b>Net</b>	<b>\$29.00</b>	<b>(\$3,138.00)</b>	<b>\$2,490.00</b>	<b>\$3,049.00</b>	<b>\$1,014.00</b>

This case was converted from Chapter 7 to Chapter 13 after the U.S. Trustee filed a Motion to Dismiss or Convert. Dckt. 19. In support of that Motion, the U.S. Trustee filed an extensive analysis concluding Debtor's income was \$11,586.00 and documented expenses were \$9,844.00. Dckt. 19. The UST concluded that by paying \$2,322 a month Debtor has the ability to pay 100% of claims.

In Debtor's schedules, Debtor notes Debtor's son was initially looking for work while staying with them. Then, the schedules were changed to report Debtor's son was going to nursing school. Where unsecured claims are being paid 22%, it is unclear why creditors are bearing the cost of this gift.

On the 3rd Amended Schedule J, Debtor notes that their son receives financial assistance from the military. But, none of this assistance is contributed into the Plan.

The Plan does not appear to be proposed in good faith. At the hearing, Debtor's counsel explained **XXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Tammy Lou Potter-Goddard and Betty Ann Potter-Goddard ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXXXXXXXXXXXXX**

**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, Chapter 13 Trustee, and Office of the United States Trustee on May 5, 2019. By the court’s calculation, 30 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition). FN.1.

-----  
FN.1. The court notes that the notice provided was insufficient. However, Creditor filed an opposition and has never asserted notice provided was not adequate. Since the initial hearing, six months have passed. At this point notice is clearly adequate.

-----

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 4 of Bosco Credit, LLC is overruled.**

The debtor Patricia Sittinger, (“Objector” or “Debtor”) requests that the court disallow the claim of Bosco Credit, LLC (“Creditor”), Proof of Claim No. 4 (“Claim”), Official Registry of Claims in this case.

The Claim is asserted to be secured in the amount of \$248,963.69. However, on March 11, 2019, the court granted Debtor’s Motion To Value (Dckt. 9) and valued the secured claim at \$0.00.

The Debtor makes two arguments. First, Debtor argues that the claim is barred from recovery by California’s 4-year statute of limitations per California Code of Civil Procedure 337. Second, Debtor argues that she previously received a Chapter 7 discharge which discharged all but the secured portion of the debt, meaning that now the entirely unsecured claim is stayed by the discharge injunction.

## Creditor's Opposition

Creditor filed an Opposition on May 30, 2019. Dckt. 88. The Opposition argues that the applicable statute of limitations is California Code of Civil Procedure 882.020, which allows 10 years from the date of an ascertainable maturity date before a lien expires. Creditor also argues that case law cited by Debtor suggests a Chapter 7 discharge does not result in a disallowed claim where the claim was still secured. FN.2

---

FN.2. Creditor also spends a substantial portion of its opposition on whether the court's order valuing its secured claim should be considered. The court issued an Order denying reconsideration on November 26, 2019. Dckt. 166.

---

## APPLICABLE LAW

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

### California's Statute of Limitations Cited by the Parties

There are a few sections of the California Code of Civil Procedure which have been brought up. Debtor relies on the period for limitation for recovery on contract, arguing that because the lien is gone, and Creditor has not been paid since 2008, that limitation applies and Creditor cannot recover on its claim. Creditor relies on the limitation for expiration of liens, apparently arguing that its claim was allowed since there was a valid lien at the time of filing.

California Code of Civil Procedure section 337, relied on by Debtor, states as follows:

Within four years:

(a) An action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in Section 336a; provided, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend

beyond three months after the time of sale under such deed of trust or mortgage.

California Code of Civil Procedure section 882.020 relied on by Creditor provides:

(a) Unless the lien of a mortgage, deed of trust, or other instrument that creates a security interest of record in real property to secure a debt or other obligation has earlier expired pursuant to Section 2911, the lien expires at, and is not enforceable by action for foreclosure commenced, power of sale exercised, or any other means asserted after, the later of the following times:

(1) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is ascertainable from the recorded evidence of indebtedness, 10 years after that date.

(2) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is not ascertainable from the recorded evidence of indebtedness, or if there is no final maturity date or last date fixed for payment of the debt or performance of the obligation, 60 years after the date the instrument that created the security interest was recorded.

(3) If a notice of intent to preserve the security interest is recorded within the time prescribed in paragraph (1) or (2), 10 years after the date the notice is recorded.

## **DISCUSSION**

As presented by the parties, the question in dispute is whether a mortgagee's secured claim being valued at \$0.00 means the limitation period for an unsecured claim applies, rather than the limitation providing for the extinguishment of a lien.

However, the court need not answer that question.

Upon the court's independent review, the actual limitation period is six years for a note payable at a definite time:

a) Except as provided in subdivision (e), an action to enforce the obligation of a party to pay a note payable at a definite time shall be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

Cal. Com. Code § 3118(a); *Cadle Co. v. World Wide Hosp. Furniture, Inc.*, 144 Cal. App. 4th 504, 514, 50 Cal. Rptr. 3d 480, 488 (2006) (“Commercial Code section 3118, subdivision (a) establishes a six-year statute of limitations, from the final due date, for promissory notes payable at a definite time.”); § 13:161. Statute of limitations—In general, 5 Cal. Real Est. § 13:161 (4th ed.).

The note is included in the attachments to the Claim, and reflects a 120 month draw period,

and a 180 month repayment period—giving a maturity date of 300 months after execution of the agreement on July 25, 2006. As reflected in the deed of trust (also included in the attachments), that sets the maturity date at approximately August 20, 2031. The statute of limitations would run 6 years after that date.

Additionally, as to the Debtor's prior Chapter 7 discharge, the court agrees with the court in *In re Gounder* which held:

Effectively, the discharged debt is a nonrecourse debt. Because of the chapter 7 discharge, the claimant cannot sue the debtor but it can foreclose on its security. The intervention of the chapter 13 petition and the application of section 506(a), however, prevent it from pursuing its collateral. Consequently, the claimant has an unsecured claim against the estate. It is entitled to be paid whatever sections 1325(a)(4) [the best-interests of creditors-test] and 1325(b) [the disposable income test] require be paid to unsecured creditors, the prior chapter 7 discharge notwithstanding. 11 U.S.C. § 1325(a)(4) & (b). That may be nothing or it may be 100%.

*In re Gounder*, 266 B.R. 879, 881 (Bankr. E.D. Cal. 2001), *aff'd sub nom. Gounder v. Real Time Sols., Inc.*, No. CIV.A. S-01-1707-WBS, 2001 WL 1688479 (E.D. Cal. Dec. 19, 2001).

Based on the evidence before the court, the Objection to the Proof of Claim is overruled.

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 Bosco Credit, LLC ("Creditor"), filed in this case by the debtor Patricia Sittinger, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 4 of Creditor is overruled.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 16, 2019. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of the Employment Development Department. The Motion is one of a series of motions attempting to deal with this judicial lien—the debtor, Christopher G. McIntosh (“Debtor”), previously brought two motions to value the secured claim (Dckts. 25, 39) which were both denied without prejudice due to failure of Debtor’s counsel to present sufficient evidence of the secured claim’s value ( because the Debtor only discussed the real and not personal property securing the claim).

Unfortunately, this Motion is not better than the prior two. The Debtor now seeks to bifurcate the valuation process between the real and personal property by avoiding the lien as to personal property.

However, there is no 11 U.S.C. § 522(f) analysis. That is left for the court. It is not explained what exemption is being impaired, and to what extent. The Debtor’s counsel merely dropped in a list of all Debtor’s personal property and concludes that Creditor’s lien is avoidable.

The Debtor’s purported Declaration filed in support of the Motion is not credible because

Debtor's counsel merely copy-pasted the Motion into the Declaration. Dckts. 51, 53. The Declaration includes Debtor's counsel's legal conclusions, which if Debtor was called to testify about he would not have personal knowledge.

Another issue with the Motion is Debtor's counsel glossing over in a summary fashion the "wife's separate property." The court during the hearing on the second motion to value noted that it was not clear why Debtor and Debtor's counsel thought the assets claimed to be separate property were of that nature. No further explanation has been provided.

If the assets were truly separate property of the non-filing spouse, why are they listed on the Schedules as property of the Estate? No explanation is given.

There is a very simple, procedurally correct process for Debtor's counsel to get the requested relief: file a motion to value creditor's secured claim wherein Debtor clearly lists ALL property secured by the claim.

The present Motion will be denied without prejudice due to the deficiencies discussed above.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Christopher G. McIntosh ("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 without prejudice.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 17, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
-----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor did not appear at the Meeting of Creditors on December 12, 2019.
- B. Debtor is self employed but does not list an income tax expense. Debtor also lists dependents on her tax returns, but does not claim any in this case. Therefore, Trustee doubts whether Debtor will be able to make payments.
- C. Trustee believes Debtor undervalued her home and a 10 acre lot she owns, and therefore does not believe the Plan meets the liquidation test.

- D. Trustee opposes a flat fee in this case because Debtor's counsel has disciplinary actions requiring at least temporary suspension from the practice of law.
- E. Debtor has not provided business documents required by 11 U.S.C. § 521.

## **DISCUSSION**

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The plan is not feasible because Debtor has overstated income by not including self-employment taxes or expenses for dependants. 11 U.S.C. § 1325(a)(6).

Debtor has not responded to Trustee's argument that she undervalued assets.

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

### **Suspension of Debtor's Counsel**

Debtor's counsel proposes a flat fee to represent Debtor in this case. However, the court takes judicial notice that 16-O-10780; 17-O02624; and 17-O-04790 are disciplinary actions against Debtor's counsel which resulted in 4 years of probation and at least 2 years' suspension during that 4 year period.

It is unclear how Debtor's counsel believes he will continue to effectively represent the Debtor during this time.

At the hearing, Debtor's counsel explained **XXXXXXXXXXXXXXXXXX**.

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 10, 2019. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor is \$250 delinquent in plan payments.
- B. Trustee opposes the \$2,000 flat fee because Debtor’s counsel has disciplinary actions requiring at least temporary suspension from the practice of law.
- C. Debtor failed to list her surname “Nunez” on the petition, which surname was reflected on her photo identification.

## DISCUSSION

Debtor is \$250.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

### Suspension of Debtor's Counsel

Debtor's counsel proposes a flat fee to represent Debtor in this case. However, the court takes judicial notice that 16-O-10780; 17-O02624; and 17-O-04790 are disciplinary actions against Debtor's counsel which resulted in 4 years of probation and at least 2 years' suspension during that 4 year period.

It is unclear how Debtor's counsel believes he will continue to effectively represent the Debtor during this time.

At the hearing, Debtor's counsel explained xxxxxxxxxxxxxxxx.

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor , Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 12, 2019. By the court’s calculation, 33 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

**The Objection to Confirmation of Plan is sustained.**

Self-Help Federal Credit Union (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the plan provides for its claim as a Class 4 with a postpetition payment of \$1,587.70 where the actually ongoing payment is \$1,691.75.

The Debtor understating the postpetition payment in the plan shows the plan is not feasible since the Debtor will be defaulting in payments and Debtor’s residence. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

## Suspension of Debtor's Counsel

Debtor's counsel proposes a flat fee to represent Debtor in this case. However, the court takes judicial notice that 16-O-10780; 17-O02624; and 17-O-04790 are disciplinary actions against Debtor's counsel which resulted in 4 years of probation and at least 2 years' suspension during that 4 year period.

It is unclear how Debtor's counsel believes he will continue to effectively represent the Debtor during this time.

At the hearing, Debtor's counsel explained **xxxxxxxxxxxxxxxx**.

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 Self-Help Federal Credit Union ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.



**DEBTOR DISMISSED: 11/05/2019**

**Final Ruling:** No appearance at the January 14, 2020, hearing is required.  
-----

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

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

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

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

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

**Final Ruling:** No appearance at the January 14, 2020, hearing is required.  
-----

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on November 25, 2019. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

Upon review of the record, a hearing is not required.

**The hearing on the Objection to Confirmation of Plan is continued to January 28, 2020 at 2:00p.m.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor did not appear at the Meeting of creditors on November 21, 2019. The Meeting was continued to January 16, 2019.
- B. Trustee doubts the plan feasibility where Debtor provided very limited information about her and her non-filing spouses’ occupations, where Debtor reports no income for the last two years on her Statement of Financial Affairs, and where this is a case filed in a long series of unsuccessful cases.

**DEBTOR’S RESPONSE**

Debtor filed a Response on December 10, 2019, arguing that the 341 Meeting was missed due to calendaring error, and that the plan is feasible. As to feasibility, Debtor asserts documentation was submitted to the Trustee to demonstrate an ability to pay. Debtor also argues that Debtor’s non-filing spouse’s most recent case was dismissed because Debtor was too far delinquent by the time Debtor had sufficient income to fund the plan.

## **DISCUSSION**

The court previously continued the hearing in light of the Debtor submitting supplemental documentation and to allow Debtor to appear at the continued Meeting of Creditors. However, the hearing was mistakenly continued to a hearing date just before the January 16, 2020, continued meeting.

Based on the foregoing, the hearing is continued to January 28, 2020 at 2:00p.m.

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

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to January 28, 2020 at 2:00p.m.

**Final Ruling:** No appearance at the January 14, 2020, hearing is required.  
-----

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 2, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

Upon review of the record, a hearing is not required.

**The hearing on the Objection to Confirmation of the Plan is continued to January 28, 2020 at 2:00p.m.**

CERTIS PN 1, LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The proposed Plan does not set forth a reasonable schedule and time period for the payment of the arrearages owed Creditor given multiple prior filings and prepetition delinquencies.
- B. Given Debtor’s prior history and speculative future income, there is not a reasonable likelihood of success in this bankruptcy. As pointed out in the trustee’s objection to the currently proposed plan, feasibility is a concern as the schedules do not adequately provide sufficient information regarding the Debtor and her non-filing spouse’s employment.

## **DISCUSSION**

Creditor opposes confirmation largely on the existence of past unsuccessful cases, and prepetition delinquencies. Though some evidence, neither are per se indicative of the present plan’s feasibility.

Creditor also relies on Trustee’s arguments (Dckt. 29) about insufficient information provided as to Debtor and her non-filing spouse’s employment. In response to Trustee’s Objection, Debtor argues additional documentation was submitted to the Trustee to demonstrate an ability to pay, and that Debtor’s non-filing spouse’s most recent case was dismissed because Debtor was too far delinquent by the time Debtor had sufficient income to fund the plan.

The court previously continued the hearing in light of the Debtor submitting supplemental documentation and to allow Debtor to appear at the continued Meeting of Creditors. However, the

hearing was mistakenly continued to a hearing date just before the January 16, 2020, continued meeting.

Based on the foregoing, the hearing is continued to January 28, 2020 at 2:00p.m.

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

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to January 28, 2020 at 2:00p.m.

**Final Ruling:** No appearance at the January 14, 2020, 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2019. By the court’s calculation, 63 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Shauna Tara Jean (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 27, 2019. Dckt. 36. 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 debtor, Shauna Tara Jean (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Chapter 13 Plan filed on October 15, 2019, is confirmed. Debtor’s Counsel shall prepare an

appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the January 14, 2020, 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2019. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Lorenzo Jose Naranjo (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 23, 2019. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lorenzo Jose Naranjo (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended

Chapter 13 Plan filed on November, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

33. [19-25935-C-13](#) **PATRICIA KIRBY-AMANT CONTINUED OBJECTION TO**  
[DPC-1](#) **AND JOHN AMANT CONFIRMATION OF PLAN BY DAVID**  
**Julius Cherry P. CUSICK**  
**11-13-19 [13]**

THRU #34

**Final Ruling:** No appearance at the January 14, 2020, hearing is required.

-----  
Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s attorney November 13, 2019. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

After a review of the record, a hearing will not assist the court and is not required.

**The Objection to Confirmation of the Plan is overruled.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the plan relies on valuing the secured claim of Santander Consumer USA, and no motion to value that claim has been filed.

#### **DISCUSSION**

Dckt. 17. A review of the docket shows Debtor’s Motion To Value (Dckt. 17) was granted, the court valuing Santander Consumer USA’s secured claim at \$5,500.

All grounds for opposition having been addressed, the Plan appears to comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

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

**IT IS ORDERED** that the Objection is overruled, and Patricia Regina Kirby-Amant and John Dean Amant's ("Debtor") Chapter 13 Plan filed on September 23, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the January 14, 2020, 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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 19, 2019. By the court’s calculation, 56 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Santander Consumer USA (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$5,500.00.**

The Motion filed by Patricia Regina Kirby-Amant and John Dean Amant (“Debtor”) to value the secured claim of Santander Consumer USA (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dekt. 19. Debtor is the owner of a 2011 Hyundai Sonata (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$5,500.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle’s title secures a purchase-money loan incurred in August 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,902.28. Proof of Claim, No. 4. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$5,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal

Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Patricia Regina Kirby-Amant and John Dean Amant (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Santander Consumer USA (“Creditor”) secured by an asset described as 2011 Hyundai Sonata (“Vehicle”) is determined to be a secured claim in the amount of \$5,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$5,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**THRU #36**

**Final Ruling:** No appearance at the January 14, 2020, 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2019. By the court’s calculation, 70 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Andrey Mikhailovich Slobodyanyuk and Mariya Slobodyanyuk (“Debtor”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition (so long as the order confirming plan adds language authorizing already paid funds) December 4, 2019. Dckt. 54. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Andrey Mikhailovich Slobodyanyuk and Mariya Slobodyanyuk (“Debtor”) having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on November 5, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order, with language clarifying amounts already paid by Debtor, confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the January 14, 2020, 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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 5, 2019. By the court’s calculation, 70 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
---

This Motion requests an order avoiding the judicial lien of Yevgeniy Bulgakov (“Creditor”) against property of the debtor, Andrey Mikhaylovich Slobodyanyuk and Mariya Slobodyanyuk (“Debtor”) commonly known as 4446 Woodhawk Way, Antelope, California (“Property”).

Creditor holds a judgment lien in the amount of \$154,408.00

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$405,000.00 as of the petition date. Dckt. 22. The unavoidable and senior liens that total \$286,515.00 as of the commencement of this case are stated on Debtor’s Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C. *Id.*

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), the Creditor’s judicial lien impairs Debtor’s claimed exemption in the amount of \$134,262.00. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided in excess of \$20,146.00 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 Andrey Mikhaylovich Slobodyanyuk and Mariya Slobodyanyuk (“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 Yevgeniy Bulgakov, secured by real property commonly known as 4446 Woodhawk Way, Antelope, California, is avoided in its entirety for all amounts in excess of \$20,146.00 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.

**Final Ruling:** No appearance at the January 14, 2020, 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 (*pro se*) on November 26, 2019. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed this Objection to the debtor, Dorothy Lola Sobayo's ("Debtor"), claimed exemptions on the basis that Debtor claimed exemptions pursuant to California Code of Civil Procedure 703 and 704 where an election is required.

A review of Schedule C confirms Trustee's arguments, and also shows Debtor has failed to claim an actual exemption amounts, electing instead to claim "100% of fair market value." Both are grounds for disallowing the claimed exemptions.

Therefore, the Objection is sustained and the exemptions are disallowed in their entirety.

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

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

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

**IT IS ORDERED** that Objection is sustained, and all of Debtor’s exemptions listed on Schedule C are disallowed in their entirety.

**Final Ruling:** No appearance at the January 14, 2020, hearing is required.  
-----

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s attorney December 10, 2019. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

After a review of the record, a hearing will not assist the court and is not required.

**The hearing on the Objection to Confirmation of the Plan is continued to January 28, 2020 at 2:00p.m.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the plan proposes valuing the secured claim of Solano First Federal Credit Union.

Debtor filed a Reply requesting the court continue the hearing to be heard alongside Debtor’s motion to value Solano First Federal Credit Union’s claim set for January 28, 2020.

#### **DISCUSSION**

Based on the request of the parties and good cause appearing, the court shall continue the hearing to January 28, 2020.

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

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation of

the Plan is continued to January 28, 2020 at 2:00p.m.

**Final Ruling:** No appearance at the January 14, 2020, 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2019. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Tomas Perez Uribe and Maricela Perez (“Debtor”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 18, 2019. Dckt. 59. Creditor Miriam Perez initially filed opposition, but later withdrew opposition. Dckt. 61. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Tomas Perez Uribe and Maricela Perez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 4, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

THRU #41

**Final Ruling:** No appearance at the January 14, 2020, hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors on December 13, 2019. By the court’s calculation, 32 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The hearing on the Motion to Confirm the Plan is continued to January 28, 2020, at 1:30p.m.**

The debtor, Marcus Da Mone Buckner (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides for payments of \$1,060 for 60 months, and a 0 percent dividend to unsecured claims. Plan, Dckt. 23. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 27, 2019. Dckt. 43. Trustee opposes confirmation on the following grounds:

1. Debtor filed all the pleadings as one single document.
2. It is unclear whether the Debtor served parties using the PACER creditor matrix.
3. There is a pending Order To Show Cause based on failure to pay filing fees.

4. Debtor is \$1,790 delinquent in plan payments.
5. Elite Acceptance has not filed a proof of claim, meaning that claim cannot be paid as provided by the plan.

Trustee notes that other than the stated objections, the plan meets the Bankruptcy Code requirements for confirmation.

### **MOTION TO DISMISS**

Trustee filed a Motion To Dismiss the case on December 6, 2019. Dckt. 35. At the hearing, the Trustee noted there were some payments made and amount still delinquent, and that Debtor had not provided all documentation required. However, the Trustee agreed to a continuance, with the court ordering the Debtor to appear at a January 28, 2020, status conference to insure that Debtor appreciates his obligations in prosecuting this case.

### **DISCUSSION**

In light of the court continuing the dismissal motion to allow Debtor to become current and submit all necessary documentation, the court will continue the hearing on the Motion To Confirm to the date of the Status Conference – January 28, 2020, at 1:30p.m.

This will allow some additional time for Debtor to show the plan meets the requirements for confirmation, while not allowing unreasonable delay.

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, Marcus Da Mone Buckner (“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 hearing on the Motion to Confirm the Plan is continued to January 28, 2020, at 1:30p.m.

**Final Ruling:** No appearance at the January 28, 2020, hearing is required.  
-----

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor on November 25, 2019. By the court’s calculation, 50 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Objection to Proof of Claim Number 2 of the Internal Revenue Service is sustained, and the portion of the IRS’ claim from unpaid 2017 taxes is determined to be \$4,143.00.**

The debtor Marcus Da Mone Buckner (“Objector”) requests that the court disallow a portion of the Internal Revenue Service’s (“Creditor”) Proof of Claim No. 2 (“Claim”), Official Registry of Claims in this case.

The Claim as initially filed, No. 2–1, is in the amount of \$30,004.38, with 2017 taxes owed totaling \$8,069.37. The Objector argues that his income tax return shows the amount of 2017 taxes owed is \$4,143.00.

On December 16, 2019, the Creditor amended the Claim. Claim, No. 2–2, reflects 2017 taxes were \$4,143.00 as the Debtor argues.

Based on the record, including Creditor’s amendment conceding the same amounts owed that

Debtor asserts, the Objection to the Proof of Claim is sustained, and the portion of Creditor's claim from unpaid 2017 taxes is determined to be \$4,143.00.

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 Internal Revenue Service("Creditor"), filed in this case by debtor Marcus Da Mone Buckner ("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 2 of the Internal Revenue Service is sustained, and the portion of the IRS' claim from unpaid 2017 taxes is determined to be \$4,143.00.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.