

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 14, 2020 at 3:00 p.m.

1.	<u>19-25716-E-13</u> <u>TJW-1</u>	JOSEPHINE WRIGHT Timothy Walsh	MOTION TO CONFIRM PLAN 11-21-19 <u>[38]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2019. By the court's calculation, 54 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 without prejudice.
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The debtor, Josephine Wright ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$415.00 for 60 months, and 100% percent dividend to unsecured claims totaling \$11,852.00. Amended Plan, Dckt. 35. 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. 48. Trustee opposes on the basis that:

1. Debtor has failed to explain why the initial documents omitted debts and assets and why Debtor's plan has changed.
2. Debtor is delinquent in plan payments.
3. There are concerns regarding Debtor's Attorney "no look" fee.

DISCUSSION

Good Faith

The Chapter 13 Trustee asserts that either the Plan or the Petition may not have been filed in good faith. The original plan proposed no less than 0% to unsecured claims. Further, Debtor originally scheduled assets of \$14,400.00 and debt of \$43,838.88. Debtor proposed to value a 2015 Nissan at \$11,000.00 and pay it through the plan.

In the Amended Plan, Debtor proposes to pay 100% of unsecured claims. Debtor now lists assets of \$43,028.24 and debt of \$61,325.074. Moreover, Debtor proposes to surrender the 2015 Nissan but more importantly, Debtor now proposes to surrender a vehicle which was not previously disclosed—a 2016 Chevy Cruz; and to pay another vehicle, a 2006 Camry which had not been previously disclosed.

Debtor's declaration fails to explain why these two assets had not been previously disclosed. First, Debtor's declaration states that her plan payment is now \$410.00 but the Plan filed states \$415.00.

Furthermore, Debtor states that she will be able to make the \$415 payments, instead of the original \$235, because she no longer has to make a monthly payments of \$77.00 to the clerk for filing fees. This still does not explain how she can pay \$415.00, as \$235.00 plus \$77.00 totals \$312.00. There is no explanation as to how Debtor can now pay 100% unsecured claims which total \$11,852.00.

Moreover, a look at Debtor's Schedules, reveals other concerns. Schedule I states that Debtor has an income of \$1,949.29 a month which comes from Social Security and a pension or retirement income. Dckt. 1. Schedule J states Debtor has expenses of \$1,530.00. *Id.* Leaving her with \$419.20 as her monthly net income. However, a close look at Schedule J shows no expenses in clothing or personal products. These are not realistic amounts.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Further, in light of Debtor having omitted two vehicles previously, concerns arise that Debtor may have more income or other assets which are being used "off the books" to maintain her lifestyle.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$681.00 delinquent in plan payments, which represents one months of the \$415.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

“No Look” Fee

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee continues to object to a “no look” fee in this case. Under the previously filed plan, Trustee opposed the “no look” fee on the basis that serious deficiencies existed in the plan, schedules, and statement of financial affairs. Objection to Confirmation, Dckt. 23. Thus, counsel’s fees will be reviewed under the standard loadstar analysis.

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, Josephine Wright (“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.

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.

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 26, 2019. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

<p>The Motion to Impose the Automatic Stay is XXXXXXXXXX.</p>

Michael Roy Mullins (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 2018-26630 and 2019-23988) were dismissed on March 25, 2019, and October 8, 2019, respectively. *See* Order, Bankr. E.D. Cal. No. 18-26630, Dckt. 38, March 22, 2019; Order, Bankr. E.D. Cal. No. 19-23988, Dckt. 46, October 8, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because Debtor could not make the required plan and court payments due to a lack of income, caused by severe medical conditions. Debtor has suffered three heart attacks in the last two years.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

Debtor's prior cases were dismissed after Debtor failed to file a confirmed plan (No. 2018-26630) and after Debtor failed to timely pay installment(s) fees (No. 2019-23988).

Debtor has had a series of recurring serious medical incidents over the past two year. While he is undergoing treatments. Declaration, Dckt. 12. Debtor testifies that he should be able to perform the Plan because he is receiving Social Security income of \$1,573.60, in addition to his wife's social Security income, and a monthly care fee for a veteran living in Debtor's house.

Going to Schedule I Debtor lists the following income:

Net Business Income.....	\$3,700.00
Debtor's Social Security.....	\$1,573.60
Spouse's Social Security.....	\$1,542.00
SSA Payment for Veteran's Care.....	<u>\$1,354.60</u>

Total Stated Income.....\$8,170.20

No provision in made on Schedule I for payment of any income or self-employment taxes.

An inconsistency exists between Schedule I and Debtor's Profit and Loss Statement for the catering sole proprietorship. On the attached Profit and Loss Statement, which it the projected average for the first six months of the Plan, the information is:

Gross Business Income.....	\$2,250.00
Materials (food, propane, etc).....	(\$ 750.00)

Total Profit.....\$1,500

Dckt. 1 at 32-33.

Debtor states that he has been unable to actively prosecute this business due to the serious health issues and the financial mechanics of how to more than double the profits.

On Schedule A/B Debtor states that he has no interests in any business related assets. Schedule A/B Question 37; Dckt. 1. Debtor further states that he has no interests in any partnerships, corporation, limited liability companies, or other unincorporated businesses. *Id.*, Question 19.

On the Statement of Financial Affairs, Question 27, Debtor lists having two sole proprietorships, which are described as:

Simply Southern Café
Catering - as sole proprietorship,
no employees. Assets are trailer
BBQ grill, commercial refrigerator
at house.

These assets are not listed on Schedule A/B, unless they are included as in the household kitchen items of with a stated value of \$300.

Women Over 40 Praise Works LLC
Health and Wellness Services (run
by wife) - mostly a hobby,
expenses usually exceed income

No interest in such limited liability company is listed on Schedule A/B.

Moving to expenses on Schedule J, Debtor does not provide information for his household of three persons, though using all of the income for the other two household members on Schedule I. Dckt. 1 at 34.

For this household of three persons, Debtor lists expenses of only (\$2,329). *Id.* at 35. Debtor states having \$5,841 of monthly net income that could be used for a plan.

There are several missing expenses - most significantly self-employment tax and income taxes. Debtor projects having \$42,000 on net income from his business, and \$37,380 in Social Security income - for \$79,380 in annual income for Debtor and his wife. This presumes that Debtor is not receiving income for the veteran's housing. This is without the "rental income" for the boarder.

Looking at the most recent of Debtor's dismissed bankruptcy cases, on Schedule I Debtor listed having \$5,836, which consisted of \$3,703 in profit from the catering business, \$2,133 in Social Security received by Debtor's Spouse (which is greater than the amount stated on Schedule in the current case). 19-23988; Schedule I, Dckt. 1 at 29-30. Debtor states that he anticipates an additional \$2,203 in "rental income," which is computed as Debtor receiving \$1,725 VA payment and \$1,178 payment from Social Security (presumably the veteran's benefit), and having only (\$700) in expenses. It is unclear if Debtor were taking all of the Social Security and Veterans' benefits what the veteran would be use for his/her personal expenses, as (\$700) is clearly not sufficient.

Prior Chapter 13 Cases

Debtor has been filed and unsuccessfully prosecuting Chapter 13 cases since September 10, 2012. These prior cases are:

- a. Chapter 13 Case No. 12-32210 - Represented by Experienced Counsel
 - i. Filed.....June 29, 2012
 - ii. Dismissed.....September 12, 2012
 - iii. No Chapter 13 Plan Confirmed
 - iv. Income on Schedule I; 12-32210, Dckt. 1; stated to be \$3,900, consisting of
 - (1) Debtor's Unemployment.....\$1,900

- (2) Family Assistance.....\$2,000
- v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, with that business ending February 2012. *Id.* at 34.
- vi. The case was dismissed for Debtor's failure to prosecute confirmation of a Chapter 13 Plan and failure to make plan payments. 12-32110; Civil Minutes, Dckt. 23.
- vii. The Chapter 13 Trustee's Final Report states that Debtor made no plan payments in this first Chapter 13 case. *Id.*; Dckt. 26.
- b. Chapter 13 Case No. 12-36400 - Represented by Same Experienced Counsel as in Case No. 12-32210.
 - i. Filed.....September 10, 2012
 - ii. Dismissed.....March 1, 2013
 - iii. No Chapter 13 Plan Confirmed
 - iv. Income on Schedule I;12-36400, Dckt. 1; stated to be \$3,900, consisting of
 - (1) Debtor's Unemployment.....\$1,900
 - (2) Family Assistance.....\$2,000
 - v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, with that business ending February 2012. *Id.* at 35.
 - vi. Dismissal of the case was based on Debtor being delinquent \$8,400 in plan payments (when the motion to dismiss was filed) and Debtor's failure to file an amended plan and motion to confirm a modified plan in the three months following the court denying confirmation of the original plan in that case. 12-36400; Civil Minutes, Dckt. 38.
 - vii. The Trustee's Report states that Debtor made no plan payments in this second Chapter 13 case. *Id.*; Dckt. 43.
- c. Third Chapter 13 Case No. 13-23817 - In Pro Se
 - i. Filed.....March 22, 2013
 - ii. Dismissed.....July 3, 2013

- iii. No Chapter 13 Plan Confirmed
- iv. Income on Schedule I;13-23817, Dckt. 1; stated to be \$3,900, consisting of
 - (1) Debtor's Employment.....\$3,900
- v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, with that business ending February 2012. *Id.* at 26.
- vi. This third Chapter 13 case was dismissed due to Debtor failing to make any plan payments, failure to provide tax records, failure of Debtor to disclose spouse's income information (Schedule I stating that spouse was a homemaker with \$0.00 income, which spouse had income from employment of \$1,700 a month), and Debtor failed to provide payroll advices. 13-23871; Motion and Civil Minutes, Dckts. 18, 37.
- vii. The Trustee Final Report states that Debtor made no plan payments. *Id.*; Dckt. 44.

During the twelve months of these first three Chapter 13 cases, Debtor made no plan payments.

Following the July 2013 dismissal of the third Chapter 13 case, five years passed before Debtor commenced his next Chapter 13 case.

- d. Fourth Chapter 13 Case No. 18-26630 - Represented by New Experienced Counsel
 - i. Filed.....October 22, 2018
 - ii. Dismissed.....June 22, 2019
 - iii. No Chapter 13 Plan confirmed
 - iv. Income on Schedule I;18-26630, Dckt. 1; stated to be \$4,398.67, consisting of
 - (1) Debtor's Business Income.....\$ 750
 - (2) Debtor's Unemployment.....\$1,347.67
 - (3) Spouse's Unemployment.....\$1,950.00
 - (4) Food Stamps.....\$ 351.00

Debtor also states that Debtor will be getting \$350-\$450 a month

for renting “rooms” in home. Further that Debtor expects to be employed at \$35 an hour beginning January 1, 2019, and Debtor’ wife “just started” receiving \$450 a month unemployment. It appears that the spouse’s unemployment income of \$1,950.00 is overstated.

- v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, that operated from 2008 to 2015. *Id.* at 36. This conflicts with the prior statements under penalty of perjury that Simply Southern was closed down in February 2012 - indicating that it was operating and there was undisclosed income in the first three bankruptcy cases.

Debtor does not state there being any other business of the Debtor as of completing the Statement of Financial Affairs under penalty of perjury on October 22, 2018.

- vi. This fourth Chapter 13 case was dismissed due to Debtor failing to file and prosecute an amended Chapter 13 plan within 60 days of the court denying confirmation of the original plan in the fourth bankruptcy case. *Id.*; Order, Dckt. 38.
- vii. The Trustee Final Report states that Debtor made no plan payments. *Id.*; Dckt. 41.

- e. Fifth Chapter 13 Case No. 19-23988 - Represented by Same Experienced Counsel as in Fourth Chapter 13 case.

- i. Filed.....June 24, 2019
- ii. Dismissed.....October 8 2019
- iii. No Chapter 13 Plan confirmed
- iv. Income on Schedule I;19-23988, Dckt. 1; stated to be \$5,836.00, consisting of

(1) Debtor’s Business Income.....\$ 3,703

For employment, Debtor states that he was, as of signing the Statement of Financial Affairs, and for the prior 10 years been employed by Simply Southern Café. *Id.* at 29. This is in direct conflict to what Debtor stated under penalty of perjury on the prior Schedules and Statements of Financial Affairs.

Attached to Schedule I is a Profit & Loss Statement for Debtor’s business. It states that the projected monthly gross income is \$2,250 a month, with expenses of (\$750), for a projected actual net income of \$1,500 a month - with in (\$2,203) less than stated on Schedule I. *Id.* at 31.

(2) Spouse’s Social Security.....\$2,133.00

Debtor also states that Debtor will be getting \$2,203 a month for renting room and expenses in home to a disabled veteran (\$1,725 veterans' payment and \$1,178 Social Security, less \$700 in expenses) in home.

- v. On Schedule B, no businesses are listed as assets. *Id.* On the Statement of Financial Affairs Debtor lists having a business, Simply Southern, that operated from 2008 to 2015. *Id.* at 41. This conflicts with the prior statements under penalty of perjury that Simply Southern was closed down in February 2012 - indicating that it was operating and there was undisclosed income in the first three bankruptcy cases. Now he also lists Simply Southern Case, a sole proprietorship, that Debtor has operated since 2015. *Id.*

Debtor does not state there being any other business of the Debtor as of completing the Statement of Financial Affairs under penalty of perjury on October 22, 2018.

- vi. This fifth Chapter 13 case was dismissed due to Debtor failing to file and prosecute an amended Chapter 13 plan, failure to make plan payments, and failure to provide the required documents to the Chapter 13 Trustee. *Id.*; Order, Civil Minutes, Dckt. 34.
- vii. The Trustee Final Report states that Debtor made no plan payments. *Id.*; Dckt. 49.

The main creditor that is the subject of the Chapter 13 Plan filed in this case is NewRez, with a claim secured by Debtor's residence. The arrearage on this claim to be cured in Class 1 is stated to be (\$36,000). Dckt. 3.

In the fifth Chapter 13 case, the plan listed Ocwen Loan Servicing as having the claim secured by Debtor's residence, with an arrearage of (\$36,000). 19-23998; Plan, Dckt. 3. No proofs of claim were filed in the fifth Chapter 13 case. Proof of Claim No. 5 filed in this case appears to be this secured claim. U.S. Bank, N.A. is identified as the creditor, with the amount of the secured claim stated to be (\$784,235.07), and the pre-petition arrearage as being (\$44,825.01).

On Schedule A in the current case Debtor lists the residence property, Caliente Ct, as having a value of \$600,000. Dckt 1 at 13. On Schedule D, Debtor lists the following claims being secured by the residence property:

California Franchise Tax Board.....	(\$ 8,700)
NewRez.....	(\$790,304) ^{FN. 1}

FN. 1. It is stated that there is a "Deferred Principal" of (\$427,022.72) on this secured claim.

These filings raise some serious questions. Debtor has had a "spotty" record of providing

accurate information under penalty of perjury. Debtor's own projected profit and loss statement shows that Debtor does not have the monies to fund the Plan. Debtor's "plan" is to pour money into a property that has a significant negative equity at a time that property values are at an all-time high.

At the hearing, Debtor's counsel addressed the issues in the case, **XXXXXXXXXX**

~~Debtor has/has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.~~

~~The Motion is not granted, and the automatic stay is not imposed 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 Impose the Automatic Stay filed by Michael Roy Mullins ("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 not granted, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(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 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 -----
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<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Debtor failed to provide tax transcript or copy of federal income tax return.
- B. At the meeting of creditors, Debtor testified that he failed to file tax returns for the last four years.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

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).

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the tax years of 2014 through 2018 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.

**Counsel for Objecting Creditor
Shall Address the Issue of Adequacy
of ECF Electronic Service**

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.

Below is the court's tentative ruling.

The Objection to Confirmation is XXXXXXXXXX

On December 19, 2019, Ditch Financial, LLC ("Creditor") filed an Objection to Confirmation of the Chapter 13 Plan. Dckt. 15. A Certificate of Service is improperly attached to the Objection as part of a single document, not filed as a separate document as required under the Local Bankruptcy Rules.

It states that it was served by mail on the Debtors, counsel for Debtors, and Chapter 13 Trustee. The Objection is stated to have been served on all other parties in interest electronically through the CM/ECF system, appearing to certify that all other parties in interest in this case (or their agents for service of process) are all registered electronic filers.

Federal Rule of Bankruptcy Procedure 2002(b) requires 28 days notice for the hearing considering confirmation of a Chapter 13 Plan.

The Master Address List in this case lists the various parties in interest for whom Objecting Creditor asserts are registered electronic filers:

Alternative Recovery M
8204 Parkway Drive #9
La Mesa, CA 91942

Bank of America
4909 Savarese Circle
FII-908-01-50
Tampa, FL 33634

Coast to Coast Financial Solutions
Attn: Bankruptcy
101 Hodencamp Rd Ste 120
Thousand Oaks, CA 91360

Cybrcollect
Attn: Bankruptcy
3 Easton Oval, Ste 210
Columbus, OH 43219

Ditech Financial Llc
345 St Peter St
Saint Paul, MN 55102

ERC/Enhanced Recovery Corp
Attn: Bankruptcy
8014 Bayberry Road
Jacksonville, FL 32256

Nissan Motor Acceptance
Attn: Bankruptcy
Po Box 660360
Dallas, TX 75266

Travis Credit Union
Attn: Bankruptcy
Po Box 2069
Vacaville, CA 95696

Universal Recovery Corp
Attn: Bankruptcy
2880 Sunrise Blvd Ste 136
Rancho Cordova, CA 95742
University Of Phoenix
Attn: Bankruptcy
1625 W Fountainhead Pkwy
Tempe, AZ 85285

USDOE/GLELSI
Attn: Bankruptcy
Po Box 7860
Madison, WI 53707

Verizon Wireless
Attn: Bankruptcy
500 Technology Dr, Ste 550
Weldon Spring, MO 63304

Wells Fargo Bank NA
Attn: Bankruptcy
1 Home Campus Mac X2303-0la
Des Moines, IA 50328

Westlake Financial Services
PO Box 54807
Los Angeles, CA 90054

It does not appear that all of these persons are registered to electronically file documents for Objecting Creditor to rely on service of the hearing to consider confirmation on all of the persons above.

Confirmation of Plan

On December 28, 2019, an order confirming the Chapter 13 Plan was filed by the court.

The deadline for filing and serving an objection to confirmation was December 19, 2019. Notice of Chapter 13 Bankruptcy Case, Section 9; Dckt. 9. Objecting Creditor appears to have met that deadline, with the Objection filed on December 18, 2019, at 3:32 p.m.

It may be that while filed, because there is not a certificate of service on the Docket, the Clerk's Office may have believed that it was not served, or if reviewed, that service was not effectively made on all of the parties in interest as required by Federal Rule of Bankruptcy Procedure 2002(b).

Review of Objection

Creditor asserts in the Objection that the proposed plan is underfunded in light of Creditor asserting the pre-petition arrearage of (\$27,880.09), while the Debtor premises the Plan on an arrearage of "only" (\$22,053). Dckt. 15. By Creditor's calculation, the Plan is under funded by \$165.82 a month.

No declaration of any person who could so testify for Creditor has offered testimony as to the amount owed Creditor and the amount of the pre-petition arrearage. The Objection states that Creditor is preparing a proof of claim, but that none was filed at the time the Objection was filed. No information is provided as to why there was no person who could provide a simple declaration providing such necessary evidence to the court.

Creditor did get its proof of claim on file on December 23, 2019 – Proof of Claim No. 5-1.

Creditor further argues that in light of Debtor's Schedule J showing that Debtor has net monthly income of \$3,870, which is the projected disposable income amount used for confirmation of the Plan, it is questionable that Debtor can have the additional \$165.82 to properly fund the cure of the pre-petition arrearage.

Review of Plan and Schedules

The Chapter 13 Plan (Dckt. 2) requires a monthly plan payment of \$3,870.00 for sixty

months. The treatment of claims and amounts to be paid, including the higher arrearage amount state in Proof of Claim No. 5-1, are:

Class 1 - Ditech

(\$27,880.09) arrearage cure payment\$ 464.67
[54 months x \$432.41 = \$23,350.14]
[60 months x \$432.41 = \$25,944.60]

If the arrearage is paid in installments over 60 months of the Plan the monthly shortfall in the payment is only (\$32.26 a month). This may raise a challenge for Debtor's counsel, for whom it appears was to be paid in full on his no-look attorneys fees in the first six months of the Plan, which was achieved by the delay in commencing the cure payments for Creditor's arrearage.

Current Post-Petition Monthly Payment.....\$3,028.77 a month

Class 2 - Travis Credit Union

Vehicle Secured Claim.....\$ 164.79 a month

Chapter 13 Trustee Fees

Estimated at 6%.....\$ 232.20 a month

Debtor Attorney No Look Fees

(\$2,575) to be paid through the Plan.....\$ 42.92 a month (amort./60 months)

There are no other "necessary" payments for creditor claims, but only a projected distribution on unsecured claims on not less than 0.5%.

The "necessary" plan disbursements total \$3,933.35, which is \$63.35 higher than the current plan payment amount.

Moving to Schedules I and J filed by Debtor providing income and expense information under penalty of perjury, the court begins with Schedule I. The two debtors' gross monthly income from employment is \$8,539 a month. Dckt. 1 at 30. After tax and insurance, and an estimated tax refund of \$6,000 a year (prorated at \$500 a month), Debtor reports having \$7,584.00 in take-home income.

Seeing such refund, the court has two questions. First, why would the Debtors, who need to perform their Chapter 13 Plan with regular, equal monthly payments, are allowing there to continue such gross overpayment of taxes. Second, if the Debtor needs the \$500 a month in pro rata tax refund to perform the Plan, how is the Debtor able to perform the Plan before receiving such refund? Third, if the debtor is receiving a \$6,000 lump sum refund every year, why does the Debtor keep such monies and then doles it out at only \$500 a month?

Going to Schedule J, Debtor lists having five dependants, making for a household unit of seven persons. *Id.* at 33-34. The total monthly expenses are (\$3,870.00). It does not seem improbable that Debtor could squeeze \$63.35 out of the monthly expenses - if Debtor believes that maintaining a residence that costs them more than \$3,500 a month is a good use of their monies for such a large family.

On Schedule A Debtor lists the property securing Creditor's claim as having a value of \$470,000. *Id.* at 12. On Schedule D, Debtor lists Creditor as having a claim for \$370,620. *Id.* at 20. Creditor lists the claim slightly higher, \$375,446.56, on Proof of Claim 5-1.

Consideration of Objection

Whether or not the Objection was filed, Debtor will have to address the higher pre-petition arrearage amount - either how to pay it or object to Proof of Claim No. 5-1 if Debtor believes it to be in error.

It appears that in the exuberance of the Holidays, Debtor's counsel, Trustee's counsel, and the court missed the Objection to Confirmation.

At the hearing, **xxxxxxxxxx**

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 Confirmation 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 **xxxxxxxxxx**.

5 thru 6

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, parties requesting special notice, and Office of the United States Trustee on December 31, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Onemain Financial Group, LLC (“Creditor”) is granted.

The Motion filed by Leanne Lynn Boger (“Debtor”) to value the secured claim of Onemain Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 20. Debtor is the owner of a 2011 Lexus IS250 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$10,250.00 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 non-purchase-money loan incurred in June 2018, to secure a debt owed to Creditor with a balance of approximately \$19,809.12. In Proof of Claim No. 2-1,

Creditor asserts that the value of the Vehicle, and Creditor's secure claim, is \$11,400.00. In the Motion, Debtor seeks to value the claim at \$10,250.00, which is \$1,150 a month less (which averages approximately \$20 a month over sixty months).

Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$11,400.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Leanne Boger, "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 Onemain Financial Group, LLC, "Creditor," secured by an asset described as 2011 Lexus IS250, VIN ending in -6734, "Vehicle," is determined to be a secured claim in the amount of \$11,400.00, 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 \$11,400.00 and is encumbered by liens securing claims which exceed the value of the asset.

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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 -----
-----.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Debtor is delinquent in plan payments.
- B. Debtor has failed to file a motion to value collateral.

DISCUSSION

Trustee’s objections are well-taken.

Debtor’s Reliance on Motion to Value Secured Claim

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

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

However, the docket reflects that Debtor filed a Motion to Value the Secured Claim of OneMain Financial Group, LLC on December 31, 2019. Dckt. 18.

Delinquency

Debtor is \$395.00 delinquent in plan payments, which represents a portion of one month of the \$3,395.00 plan payment. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. 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.

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, 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.

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.
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United States Life Insurance Company in the City of New York ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor fails to account for pre-petition arrearage and incorrectly lists Creditor as a Class 4 claim.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for Cure of Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$1,490.18 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 Confirmation filed by United States Life Insurance Company in the City of New York 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 is sustained and the Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 18, 2019. By the court's calculation, 18 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, Shoshana Christina Boek ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of: \$2,883.57 per month for 1 month, followed by \$5,767.14 for two months, with the rest of the plan at \$2,883.57 per month for 57 months, and a 1% dividend to unsecured claims totaling \$61,588.00. Amended Plan, Dckt. 27. 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. 39.

DISCUSSION

Lack of Feasibility

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 83 months on the basis that the monthly payment does not work mathematically in 60 months in that if Debtor were to

increase the plan payments from \$2,883.57 to \$2,900.00 per month, the Plan would complete in approximately 60 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Creditor Banc of California has filed a timely proof of claim in which it asserts \$29,777.64 in pre-petition arrearage. The Plan does not propose to cure the entire arrearage, but is funded for only a \$22,204 arrearage. The Plan must be sufficient funded for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Attorney states in the Motion to Confirmation First Amended Chapter 13 Plan, that "Debtor is going to borrow money and/or do whatever it takes to stay current." Motion at 2. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5,766.71 delinquent in plan payments, which represents one month of the \$5,767.14 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 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, Shoshana Christina Boek ("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.

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, 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 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 without prejudice.

The debtor, Larry James Bellani ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$3,356.50 (retroactive to first plan payment) for 36 months and 100% percent dividend in unsecured claims totaling \$22,233.00. Amended Plan, Dckt. 38. Further, Debtor will list the family residence for sale immediately and anticipates sale within 12 months, at which time he will pay into the plan an estimated lump sum payment of \$28,000.00. *Id.* 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. 58. Trustee argues that the Plan is not confirmable on the basis that Debtor is delinquent and that feasibility is at issue due to vague sale terms related to Debtor's residence. Debtor has also been working his way toward listing and getting his home sold as part of the plan payments will depend on receipt of the non-exempt proceeds of sale. Lastly, Debtor proposes a reasonable time to acquire an agent and submit the listing agreement, on an *ex parte* basis, to the court, would be by end of March 2020.

DEBTOR'S REPLY

Debtor filed an Reply on January 8, 2020. Dckt. 61. Debtor argues that he has completed the actions he promised to take to ensure plan payments will not have problems going forward, and he has in fact, come current on his plan payments. Further, Debtor proposes that a reasonable time line can be stated in the order confirming the First Amended Plan to accomplish court approval of the listing agreement for sale of the house.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$4,091.84 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).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan calls for monthly payments of \$3,356.50 and non-exempt proceeds from sale of the Debtor's residence estimated to be \$28,000.00, with no specifications as to when the sale will take place or a time line for all related motions.

This is not the first time that the court has expressed concerns with respect to the sale of Debtor's residence. Dckt. 24. In the prior Plan, Debtor also planned for the sale of the residence but failed to file the necessary related motions to do so during the allotted time to file such motions or make any attempt to pay creditors with claims secured by the residence.

Debtor filed this Chapter 13 case on July 30, 2019. Though five months have passed, Debtor has been unable to employ a Realtor to prepare and actively market in a commercially reasonable manner the residence property that is necessary to fund the Plan. While Debtor states that the property will be sold in twelve months, Debtor is now already six months into the bankruptcy case.

This is not Debtor's first recent case. Debtor and his current counsel commenced Chapter 13 case No. 19-21107 on February 25, 2019. That case was dismissed on May 29, 2019. In the prior case, Debtor's proposed Chapter 13 Plan required the Debtor to list the property for "immediate sale" to pay creditors, with Debtor to make only a \$250 a month plan payment. 19-21107; Plan, Dckt. 11. Though the Plan provided for the "immediate sale," Debtor never sought to employ a Realtor during the three months that the prior case was pending.

Debtor and his counsel have been saying since February 2019 that the property will be listed for sale, the property will be sold, and creditors will be paid from the sale. But, Debtor and his counsel have not, or possibly will not, employ a Realtor to actively and in a commercially reasonable manner market the property for sale. Rather, Debtor continues to live in, occupy, and use the property with the possibility of some possible sale, at some possible time.

Using Debtor's statement of value for the property on Schedule A, there is a \$425,000 asset

of the estate to be administered. Dckt. 1 at 11. Debtor has claimed a \$75,000 homestead exemption. *Id.* at 18.

Using the creditor's claims filed in this case, the value to the bankruptcy estate for this property is computed as:

FMV.....	\$425,000
Costs of Sale (est. 8%).....	(\$ 34,000)
Fidelity Bank Secured Claim.....	(\$146,496)
ABS REO Trust V.....	(\$176,165)
=====	
Net Sales Proceeds	\$ 68,339
Debtor's Homestead Exemption	(\$75,000)
=====	
Surplus/Proceeds for Estate	-\$0.00-

It does not appear that there is any value with which the Debtor can fund a plan. It may be that Debtor and Debtor's counsel have a "plan" to delay payment, gambling that value of the property will increase, and Debtor will be able to maximize his exemption before being "forced" to actually sell the property.

Without an accurate picture of Debtor's plan to sell the residence, the court cannot determine whether the Plan is confirmable. Further, it appears that the financial information that Debtor and counsel seek to have the court and creditors rely on is a speculative, future value, not the actual, good faith value of the property.

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, Larry James Bellani ("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 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 delinquent in plan payments.
- B. Debtor failed to provide business documents.
- C. Debtor's Attorney's fees should not be approved.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$755.00 delinquent in plan payments, which represents one month of the \$755.00 plan payment. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Documents Related to Business

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

- A. Questionnaire,
- B. Two years of tax returns,
- C. 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 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Attorney Fees

Trustee opposes approval of a “no look” fee and of any fee for future work where Debtor’s Attorney has been suspended from practice of law beginning January 31, 2020 until reinstated.

On December 2, 2019 Counsel for Debtor notified the court of his suspension from practice of law beginning January 31, 2020 until reinstated. Dckt. 14. The State Bar of California website shows Counsel is presently active and his suspension begins February 1, 2020. *See* <http://members.calbar.ca.gov/fal/Licensee/Detail/40186>.

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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 2, 2019. By the court's calculation, 43 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 without prejudice.

The debtor, Onricka Jermaine Henderson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$400.00 commencing December 25, 2019 for 56 months, and 0% dividend for unsecured claims totaling \$26,614.90. Amended Plan, Dckt. 25. 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. 28.

DEBTOR'S REPLY

Debtor filed a Reply on January 7, 2020. Dckt. 31. Debtor claims that Debtor filed federal tax returns for 2017 and 2018. Further, Debtor argues that attempts have been made to contact the Internal Revenue Service so that their Proof of Claim is amended to reflect that Debtor has filed her taxes and that no balance was owed on either year.

DISCUSSION

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee argues that the plan will not complete in 60 months because Debtor's Plan estimates a priority claims to total \$3,918.34. However, the Internal Revenue Service (Proof of Claim 17) claims a priority debt in the amount of \$15,436.09 with no 2018 tax return filed. Thus, although Debtor's plan allows for priority debt, it appears Debtor's plan payment will not be sufficient for this debt to be paid.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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, Onricka Jermaine Henderson ("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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2019. By the court's calculation, 42 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).

<p>The Motion to Confirm the Modified Plan is denied without prejudice.</p>
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The debtor, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") seek confirmation of the Modified Plan to extend the time to sell Debtor's residence by four months to allow a reasonably sufficient time period for marketing and sale of their residence. Declaration, Dckt. 157 at p. 2:22-24. Declaration, Dckt. 157. The Modified Plan provides for the following: payments of \$0.00 for 1 month, \$5,000.00 per month for 13 months, the \$5,450.00 per month for 24 months, \$6,000.00 per month for 12 months, \$6,550.00 per month for 10 months, and a \$359,000.00 lump sum payment in month 18; and a 100% percent dividend to unsecured claims totaling \$42,464.88. Modified Plan, Dckt. 156. 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 17, 2019. Dckt. 159.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5,450.00 delinquent in plan payments, which represents one month of the \$5,450.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

However, Trustee states that there is a pending transaction dated December 16, 2019 on the TFS for \$5,450.00. If this payment goes through Debtor will be current on the November payment.

Supplemental Schedules I and J

Trustee requests that Debtors file updated Schedules I and J. Debtor's last Schedules I and J were filed March 14, 2018. Debtor's moved from California to Arizona according to a Change of Address filed on August 9, 2019. Dckt. 148. Indeed, their Third Modified Plan filed last June 18, 2019 expressly stated Debtor would file updated Schedules I and J but none were filed. Thus, Trustee's request is not an unreasonable request. Debtor should file Supplemental Schedules I and J.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. Trustee's calculations show that the plan payment will result in the Plan completing in 73 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In the Motion to Confirm, counsel for Debtor lays out a series of events which could derail an otherwise diligently prosecuted sale as required under the confirmed Third Modified Amended Plan.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

13. [19-26520-E-13](#) COURTNEY WILSON OBJECTION TO CONFIRMATION OF
[DPC-2](#) Scott Hughes PLAN BY DAVID P CUSICK
12-10-19 [29]

WITHDRAWN BY M.P.

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

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

14. [19-25327-E-13](#) KIM BRILL MOTION TO CONFIRM PLAN
[KJB-1](#) Pro Se 12-9-19 [54]

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*), Chapter 13 Trustee, creditors, parties requesting special notice, and on December 9, 2019. By the court’s calculation, 36 days’ notice was provided. 42 days’ notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is denied.

Kim Jo Brill (“Debtor”) seeks to modify the confirmed plan. Debtor filed a Notice of Conversion on December 27, 2019, however, converting the case to a proceeding under Chapter 7. Dckt. 65.

Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on December 27, 2019. *McFadden*, 37 B.R. at 521.

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, Kim Jo Brill (“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 Modified Plan is denied.

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2019. By the court's calculation, 32 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 Exeter Finance LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$18,000.00.

The Motion filed by Debra LaChele Thompson ("Debtor") to value the secured claim of Exeter Finance LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 50. Debtor is the owner of a 2014 Lexus ES Sedan ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$18,000.00 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).

Proof of Claim, No. 15-1, was filed by Creditor on November 13, 2019. The Proof of Claim asserts a secured claim on the amount of \$27,290.57.

DISCUSSION

Debtor's Declaration provides factual details as to the condition of the Vehicle, including: high mileage, a bent right fender, a dented back left fender and back bumper on left side, car keyed on all

of driver's side panels, check engine light comes on, and tire pressure lights remain on. Dckt. 50. Debtor's testimony is substantial evidence that has rebut the presumption of validity as to the Proof of Claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018).

The lien on the Vehicle's title secures a purchase-money loan incurred on February 24, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$27,290.57. Proof of Claim, No. 15-1. 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 \$18,000.00, 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 Debra LaChele Thompson ("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 Exeter Finance LLC ("Creditor") secured by an asset described as 2014 Lexus ES Sedan ("Vehicle") is determined to be a secured claim in the amount of \$18,000.00, 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 \$18,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2019. By the court's calculation, 32 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 NPRTO California, LLC (“Creditor”) is granted and the secured claim is determined to have a value of \$300.00.

The Motion filed by Debra LaChele Thompson (“Debtor”) to value the secured claim of NPRTO California, LLC (“Creditor”) is accompanied by Debtor's declaration. Declaration, Dckt. 59. Debtor is the owner of furniture, specifically, a bunk bed, mattress, futon, and a chest (“Property”). Debtor seeks to value the Property at a replacement value of \$300.00 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 Property secures a purchase-money loan incurred on July 2016, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$3,292.42. Proof of Claim, No. 13-1.

Value of Secured Claim

Creditor's claim secured by a lien on the asset title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$300.00, 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 Debra LaChele Thompson ("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 NPRTO California, LLC ("Creditor") secured by an asset described as bunk bed, mattress, futon, and chest ("Furniture"), is determined to be a secured claim in the amount of \$300.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Furniture is \$300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the January 14, 2019 hearing is required.

Local Rule 9014-1(f)(2) Objection—No 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on December 24, 2019. Dckts. 31, 33. Filing a new plan is a de facto withdrawal of the pending plan. 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 Confirmation 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 sustained, and the proposed Chapter 13 Plan is not confirmed.

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

The case having previously been dismissed, the Objection is overruled 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 Objection to Confirmation of Plan 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 Objection is overruled as moot, the case having been dismissed.

Final Ruling: No appearance at the January 14, 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 Debtor, creditors, and Office of the United States Trustee on November 6, 2019. By the court’s calculation, 69 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 24 of LVNV Funding, LLC is sustained, and the claim is disallowed in its entirety.

Ronald Hassett and Michele Catherine Hassett, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of LVNV Funding, LLC (“Creditor”), Proof of Claim No. 24 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$374.39. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was August 29, 2008. The date of last payment on the Statement of Account Information attached to the Proof of Claim states January 19, 2008.

DISCUSSION

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

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

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

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

The California Legislature made a substantive amendment to California Code of Civil Procedure § 337 in 2018, which became effective January 1, 2019, that moves the expiration of the statute of limitations on a contract action from an affirmative defense to affirmative bar on a creditor seeking to enforce the obligation.

(d) When the period in which an action must be commenced under this section [contract, instrument, book account, account stated, open account, rescission of a written contract] has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360.

Cal. C.C.P. § 337(d).

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

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

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

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

A review of Proof of Claim No. 24 lists the charge off date as August 29, 2008. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after January 19, 2008. Thus, the four-year statute of limitations expired on January 19, 2012.

This bankruptcy case was filed on August 22, 2019—4,233 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor’s claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of LVNV Funding, LLC (“Creditor”) filed in this case by Ronald Hassett and Michele Catherine Hassett, Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 24 of LVNV Funding, LLC is sustained, and the claim is disallowed in its entirety.

Request for attorneys’ fees and costs, if any, shall be made as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

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, Chapter 13 Trustee, creditors, 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. 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.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Naomi Davis ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on December 4, 2019. Dckt. 35. 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, Naomi Davis ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on November 19, 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.

21. [19-25662-E-13](#) **ELIZABETH ROBINSON** **MOTION TO CONFIRM PLAN**
[PLG-1](#) **Rabin Pournazarian** **11-25-19 [29]**

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, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 25, 2019. By the court’s calculation, 50 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, Elizabeth Olga Robinson (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 27, 2019. Dckt. 37. 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, Elizabeth Olga 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 is granted, and Debtor’s Amended Chapter 13 Plan filed on November 25, 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.

22. [18-21070-E-13](#) **LARRY ROBERTSON** **MOTION TO MODIFY PLAN**
[GB-2](#) **Geva Baumer** **11-13-19 [47]**

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 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 Rule 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). 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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Larry Darnell Robertson (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on January 7, 2020. Dckt. 61. 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, Larry Darnell Robertson (“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 November 13, 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 Trustee will submit the proposed order to the court.

23.	<u>19-26878</u> -E-13 <u>DPC-1</u>	LOUIS JAVAR Scott Hughes	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-17-19 [18]
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Final Ruling: No appearance at the January 14, 2019 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 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Subsequent to the filing of this Objection, Debtor filed an Amended/Modified Plan and corresponding Motion to Confirm on January 3, 2019. Dckts. 24, 27. Filing a new plan is a de facto withdrawal of the pending plan. 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 Confirmation 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 sustained, and the proposed Chapter 13 Plan is not confirmed.

24. <u>19-26781</u> -E-13 <u>AP-1</u> 24 thru 26 DEBTOR DISMISSED: 12/16/2019 JOINT DEBTOR DISMISSED: 12/16/2019	EDDIE/CARYN GARDNER Peter Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL ASSOCIATION 12-12-19 <u>[30]</u>
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Final Ruling: No appearance at the January 14, 2020 hearing is required.

The case having previously been dismissed, the Objection is overruled 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 Objection to Confirmation of Plan 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 Objection is overruled as moot, the case having been dismissed.

25.

19-26781
APN-1

EDDIE/CARYN GARDNER

OBJECTION TO CONFIRMATION OF

PLAN BY FINANCE

11-12-19 [[16](#)]

DEBTOR DISMISSED:

12/16/2019

JOINT DEBTOR DISMISSED:

12/16/2019

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

The case having previously been dismissed, the Objection is overruled 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 Objection to Confirmation of Plan 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 Objection is overruled as moot, the case having been dismissed.

DEBTOR DISMISSED:

12/16/2019

JOINT DEBTOR DISMISSED:

12/16/2019

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

The case having previously been dismissed, the Objection is overruled 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 Objection to Confirmation of Plan 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 Objection is overruled as moot, the case having been dismissed.