

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 28, 2020 at 2:00 p.m.

1.	<u>19-27204-C-13</u> <u>DPC-1</u>	DOMINIC ACCETTOLA Thomas Moore	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-20-19 <u>[14]</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.

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 20, 2019. By the court's calculation, 39 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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The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. The debtors, Dominic Accettola ("Debtor"), has little evidence as to as Debtor's income. Debtor's last filed tax return was in 2013; Debtor's

expenses are “surprisingly low” in some areas; Debtor provided pay stubs from September through November 2019, but left out October 2019. Trustee notes the Debtor is ahead in plan payments, having paid \$3,097.00.

- B. Debtor’s petition does not provide Debtor’s full name which is “Dominic John Accettola.”
- C. Trustee notes the required commitment period is 60 months, although the plan is proposes to (and mathematically does) complete at 30 months paying 100\$ of claims.

DISCUSSION

The Trustee argues the feasibility of the plan is uncertain due to Debtor’s failure to provide a history of income. However, Trustee also notes the Debtor has shown some pay stubs reflecting gross employee pay of \$6,124.61 per month, and that Debtor is ahead of payments.

It is also notable that the plan completes in 30 months, paying 100% of claims. If the Debtor has bitten off more than he can chew with this plan, a longer term plan would (based on Debtor’s current financial affairs) very likely result in a successful plan.

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

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

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

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

IT IS ORDERED that the Objection is overruled, and Dominic Accettola’s (“Debtor”) Chapter 13 Plan filed on November 19, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

THRU #3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 27, 2019. By the court's calculation, 62 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.
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The debtor, Kim Pruitt ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payment of \$522 for 60 months. 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 January 2, 2020. Trustee opposes confirmation on the following grounds:

1. Debtor is \$521 delinquent in plan payments.
2. Debtor's plan proposes valuing the secured claims of Golden One, but no motion has been filed seeking that relief.
3. The Plan indicates a flat attorney fee is used, but that fee is stated to be \$0.00.

DISCUSSION

The current proposed plan has not been demonstrated to be feasible. The debtor is delinquent in payments, the plan relies on the court valuing secured claims and debtor has not started that process, and it is unclear whether the attorney fee was stated accurately. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Kim Pruitt (“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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 30, 2019. By the court's calculation, 29 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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The Objection to Confirmation of Plan is sustained.

Harley-Davidson ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that its claim totaling \$21,267.96 is entirely omitted from the plan. The creditor argues the plan is not feasible because it does not account for the increased payment required to pay its claim.

The Creditor's argument is well-taken. The current proposed plan has not been demonstrated to be feasible because it does not account for the Creditor's secured claim. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Cecilia Smith ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$1,500 be paid through December 2019, and for payments of \$2,850 for 57 months. Dckt. 62 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. 68. The opposition expresses concern that the Motion does not explain the reduction in payments from the original to the amended plan, showing either inability or unwillingness to pay.

DISCUSSION

The original plan, filed September 2019, proposed payments of \$3,152.00 for 60 months, giving a 100% dividend to unsecured claims totaling \$46,780.47. Dckt. 12. The Amended Plan proposes \$1,500 be paid through December 2019, and for payments of \$2,850 for 57 months. Dckt. 62. The proposed dividend to unsecured claims is now just 4% on \$24,007.38.

Debtor's Declaration provides a little detail as to the circumstances here, Debtor explaining:

I have not commenced plan payments because my original bankruptcy attorney did not give me a plan nor did I sign any docs for a plan. He didn't do the job at all! Then he quit without letting me know.

Declaration, Dckt. 63.

While the debtor should have been retaining her all disposable income to put towards her plan, Debtor's story appears truthful. This district has seen several cases involving Debtor's former counsel of record which were grossly mismanaged.

The present plan proposes a payment which incorporates Debtor's Amended Schedules I and J prepared and filed by Debtor's new counsel. Dckt. 72. The Amended Schedules more accurately reflect Debtor's financial situation—the original schedules had errors, including certain plan payment items being included as expenses.

There is no evidence demonstrating the Debtor intentionally contradicted the plan terms rather than merely not knowing what they were, as she testifies. The Trustee's grounds for opposition have been addressed by Debtor's Declaration.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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, Cecilia Smith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 17, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Ignacio Gonzalez Lopez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$2,120 for 5 months, and \$4,290 55 months. Amended Plan, Dckt. 84. 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 January 7, 2020. Dckt 93. Trustee argues Debtor is delinquent \$6,510.00 in plan payments. Trustee also objects to the use of the flat fee in this case.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$6,510.00 delinquent in plan payments, which represents multiple months of the \$4,290 plan payment. Trustee. 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, Ignacio Gonzalez Lopez (“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.

THRU #7

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

Local Rule 9014-1(f)(2) 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 November 25, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

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

DEBTOR'S RESPONSE

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

DISCUSSION

The docket reflects that Debtor appeared at the continued Meeting of Creditors on January 17, 2019. While Trustee has expressed doubts as to Debtor's ability to make payments due to the having prior unsuccessful cases, no supplemental (or prior) pleading indicates a delinquency in plan payments at this point. Therefore it appears Debtor is capable of making the payments.

The Amended Plan does comply with 11 U.S.C. §§ 1322, 1323, and 1325(a). The Objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, and Angela Rusfeldt's ("Debtor") Chapter 13 Plan filed on October 25, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

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

DISCUSSION

Creditor argues that Debtor's history of past unsuccessful bankruptcy cases demonstrates (1) the plan does not provide for a reasonable schedule and time period for the payment of the arrearages owed to Creditor, and (2) there is not a reasonable likelihood of success, meaning the plan is not feasible.

These arguments are conclusory. Creditor does not explain why the prior cases failed, and why that failure is likely to persist. Many debtors who have prior unsuccessful cases go on to complete their plan.

The Debtor has presented evidence to the Trustee demonstrating Debtor's current income.

Debtor is also current in plan payments. Therefore it appears Debtor is capable of making the payments, a reasonable period for repayment has been provided, and there is a reasonable likelihood of success. .

The Amended Plan does comply with 11 U.S.C. §§ 1322, 1323, and 1325(a). The Objection is overruled and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by CERTIS PN 1, LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Angela Rusfeldt’s (“Debtor”) Chapter 13 Plan filed on October 25, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 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 Trustee on December 23, 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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The Objection to Confirmation of Plan is XXXXXXX
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor admitted at the 341 Meeting to owning a motor home not listed on Debtor's schedules.
- B. Debtor received insurance proceeds not listed on Debtor's schedules.

DEBTOR'S REPLY

Debtor filed a Reply on December 23, 2019, stating that Amended Schedules were filed to address the grounds for opposition. Dckt. 37.

DISCUSSION

Debtor filed Amended Schedule A/B on December 23, 2019, which reflects the mobile home. Dckt. 35. However, there is no mention of potential insurance proceeds in the Schedules or in Debtor's Reply.

At the hearing, Debtor explained whether all property is now disclosed xxxxxxxxxxxxxxxx.

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
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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.

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 January 10, 2020. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is granted.

Richard Allen Chastain ("Debtor") seeks to employ Mara Pilotti, Associate Sales Agent of RE/MAX Gold ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330.

Debtor argues that Broker appointment and retention is necessary to market and sell his real property.

Broker's Declaration was filed in support of the Motion showing Broker's experience, and confirming Broker does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the

professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Mara Pilotti, Associate Sales Agent of RE/MAX Gold as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 47. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

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

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ Mara Pilotti, Associate Sales Agent of RE/MAX Gold, as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 47.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 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 ~~XXXXX~~.

The debtor, Timothy Patrick Janovich ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$1,850 paid through November 2019, and payments of \$1,875 for 34 months (or until the plan is completed through surplus funds from the sale of Debtr's real property). Amended Plan, Dckt. 58. 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 January 14, 2020. The opposition notes that certain details are missing, including how much is necessary to pay off claims, and that the plan relies on Debtor contributing surplus proceeds from the sale of Debtor's real property which have been reported to be upwards of \$200,000.00. Trustee also notes that Debtor filed Amended Schedules I and J which reflect increases to both income and expenses, resulting in roughly the same net.

CREDITOR'S OPPOSITION

Creditor U.S. Bank Trust National Association as Trustee of the Chalet Series IV Trust

("Creditor") filed an Opposition on January 14, 2020, arguing that the plan is currently too speculative to be confirmed because it relies on the surplus funds being disbursed. Dckt. 74.

DEBTOR'S REPLY

Debtor filed a Reply on January 21, 2020, noting that Debtor's counsel and counsel for Fay Servicing, LLC, have been working on an agreement to disburse the surplus sale proceeds to the Trustee. Dckt. 76. Debtor requests a continuance to allow time to complete and file that stipulation.

DISCUSSION

At the hearing the Debtor reported the current status of the surplus sale proceeds,
XXXXXXXXXXXXXXXXXX.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Timothy Patrick Janovich ("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
XXXXXXXXXXXX

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)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on October 22, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition.

The Motion to Dismiss is XXXXXX

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Gary D. Duerner ("Debtor"), is in month 59 of the Confirmed Plan, but is delinquent \$4,000.00.
2. The Debtor filed a Motion To Incur Debt set for November 5, 2019, which Trustee has opposed.
3. The Confirmed Plan requires a balloon payment of \$229,000 less adequate protection payments made through the plan.

DEBTOR'S RESPONSE

Debtor filed a Response on November 5, 2019. Dckt. 222. Debtor states he fell delinquent in plan payments because his income from solar sales have taken longer than expected, but that the delinquency will be cured after his Motion To Incur Debt is approved.

DISCUSSION

At the prior hearing, it was reported that if Debtor seeks refinancing, as he is currently doing to complete the plan, the stipulation entered into with U.S. Bank provides for the full \$734,241.31 claim to be secured rather than the stipulated value of \$229,000.00. Dckt. 71.

The parties requested a continuance allow Debtor time to contact U.S. Bank to discuss the issue.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is
XXXXXX

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2019. By the court's calculation, 29 days' notice was provided. 35 days' notice is required.

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

The Motion to Incur Debt is XXXXXX
--

Gary D. Duerner ("Debtor") seeks permission to incur debt in an amount of \$154,000.00 in order to make a balloon payment coming due on his mortgage, and to make two missed plan payments.

NOVEMBER 5, 2019 HEARING

At the November hearing, the court addressed with the Debtor that no financing agreement was actually filed with the Motion for the court to approve. The court continued the hearing to allow Debtor to correct the deficiency with supplemental filings. Civil Minutes, Dckt. 255.

SUPPLEMENTAL FILING

On December 16, 2019, Debtor filed a document entitled Financing Agreement To Refinance Property, which includes a copy of a Mortgage Loan Disclosure Statement. Dckt. 228.

The Statement indicates a potential loan from FMC Lending in the amount of \$235,000.00, with 10.99% interest over 40 years.

DISCUSSION

At the prior hearing, it was reported that if Debtor seeks refinancing, as he is currently doing to complete the plan, the stipulation entered into with U.S. Bank provides for the full \$734,241.31 claim to be secured rather than the stipulated value of \$229,000.00. Dckt. 71.

The parties requested a continuance allow Debtor time to contact U.S. Bank to discuss the issue.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Incur Debt filed by Gary D. Duerner (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXX**

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

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

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

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

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

JANUARY 14, 2020 HEARING

At the January 14, 2020, hearing the court continued the hearing to January 28, 2020. Dckt. 52.

DISCUSSION

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

The court finds that the proposed adequate protection payment is sufficient. The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2019. By the court's calculation, 67 days' notice was provided. 14 days' notice is required.

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, Dolores Patricia Lynn Burnett ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$2,199.37 for 60 months. 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 4, 2019. Dckt. 28. Trustee opposes confirmation on the following grounds:

1. Debtor is \$4,398.74 delinquent in plan payments.
2. The plan purports to determine the trustee's fees, which is contrary to 28 U.S.C. § 586.
3. The plan payment is \$2,199.37 while Debtor's net income is \$1,219.91.

4. The proof of service was filed together with the plan as one document.

DEBTOR'S RESPONSE

Debtor filed a Response on January 16, 2020, stating (1) that Debtor agrees trustee fees are not set by the plan; (2) Debtor's net income included the mortgage payment; and (3) Debtor will file documents separately in the future. Dckt. 47.

DISCUSSION

While Debtor filed a Response addressing most of Trustee's grounds for opposition, the delinquency of \$4,398.74 was not addressed. 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, Dolores Patricia Lynn Burnett ("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 18, 2019. By the court's calculation, 71 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, Gary Alan Howe ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$6,675 for 3 months, and \$9,350 thereafter until months 12. Amended Plan, Dckt. 53. 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 20, 2019. Dckt. 61. Trustee opposes confirmation because Debtor is \$6,675.00 delinquent in plan payments, which shows the plan is not feasible. Trustee also opposes confirmation because the plan proposes selling unidentified real property of the Debtor, and does not propose payments to Class 1 arrearages or Class 2 claims until after sale.

CREDITOR'S OPPOSITION

Creditor DDM Development, Inc. ("Creditor") filed an Opposition on January 14, 2020. Dckt. 65. Creditor argues its fully matured obligation should have been classified as Class 2, not 1; that the plan provides for a postpetition of \$1,200 where that payment is actually \$1,541.66; and that the plan fails to provide sufficient information about the proposed sale.

DEBTOR'S REPLY

Debtor file a Reply on January 16, 2020. Dckt. 69. The Reply notes Debtor has an offer on Debtors Bradshaw property for \$1,100,000, though contingencies are still being discussed. Debtor agrees to relief from stay if the property is not sold by August of 2020.

DISCUSSION

The Debtor is delinquent in plan payments, and those payments are set to increase from \$6,675 to \$9,350. Meanwhile, Debtor's income appears very volatile, with the Debtor reporting \$10,721 in business income in September 2019, and then filing a supplement indicating income of \$13,015 in November 2019. Dckts. 16, 56. The current proposed plan has not been demonstrated to be feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Gary Alan Howe ("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 December 20, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Ricardo Castro ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for payments of \$2,275 for 60 months. Plan, Dckt. 26. 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 January 13, 2020, opposing confirmation on the following grounds:

1. Trustee is not certain all disposable income is being contributed to the plan. The Debtor included conflicting information on his filing documents about what his business income and expenses are. Additionally, Debtor did not include an attachment to Schedule I itemizing the claimed income and expenses.
2. Trustee opposes use of the flat fee in this case.

3. The plan does not specify the step payments for arrearage dividends.
4. Debtor claimed exemptions pursuant to CCCP section 703 without filing a spousal waiver.
5. Debtor has not provided all business documents, and has not provided the non-filing spouse's pay advices for 60 days.

DISCUSSION

The current proposed plan has not been demonstrated to be feasible. As discussed by the Trustee in the Motion, there are inconsistencies as to the stated business income and expenses. without a clear picture of Debtor's finances, the plan is not confirmable. 11 U.S.C. § 1325(a)(6).

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

- A. 2017 tax return
- B. Six months of profit and loss statements,,
- C. Six months of bank account statements

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

Additionally, the Debtor has not filed the spousal waiver to enable use of CCCP section 703. Therefore there are likely nonexempt assets and the plan fails the liquidation test. 11 U.S.C. § 1325(a)(4).

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

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

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

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

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

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

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 20, 2019. By the court's calculation, 39 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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The Objection to Confirmation of Plan is sustained.

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

- A. The Debtor uses an Ensminger provision, but proposes adequate protection payments of \$50 for the first 15 months.
- B. Schedule J shows net disposable income of \$175.95 monthly, which is substantially less than plan payment of \$2,170.
- C. Schedule I lists income from Debtor's daughter. The daughter's declaration has not been filed showing evidence of this contribution.
- D. Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year.

DISCUSSION

Schedules I and J reflect disposable monthly income of only \$175.95. This is inclusive of a \$1,900 rent/homeownership expense, which is also provided for through the plan. Dckt. 12. Thus, it appears Debtor actually has \$2,075 in monthly disposable income. Because this amount is less than the proposed payment, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's lack of evidence filed in support of the daughter's contribution also casts doubt as to feasibility.

The Plan also fails to confer adequate protection as to the claim secured by Debtor's primary residence. \$50 a month for 15 months is less than half of a single post-petition payments.

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

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.

**No Telephonic Appearances Permitted for
Debtor Robert D. Wagner or
For Bruce Rorty, Debtor's Counsel**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney, Chapter 13 Trustee, and Office of the US Trustee as stated on the Certificate of Service on December 20, 2019. The court computes that 39 days' notice has been provided.

The Order to Show Cause is sustained.

On October 29, 2019, US Bank Trust N.A. as Trustee of the Chalet Series III Trust ("Creditor"), filed a motion seeking dismissal of the case (the "Motion"), arguing the debtor Robert D. Wagner ("Debtor") materially breached the confirmed Chapter 13 plan when a direct May 2015 mortgage payment was not made. Dckt. 226.

The Motion was supported by the declarations of Kristin Zilberstein, counsel for Creditor, and Jessica Watson, an employee of Creditor's servicer. Dckts. 228, 229. Both declarations presented testimony that Creditor tried to contact Debtor's counsel Bruce Vail Rorty ("Debtor's Counsel") about the missed direct payment, but received no response. Id.

Debtor and Debtor's Counsel did not file a responsive pleading to the Motion, which was set for November 26, 2019, hearing on Local Bankruptcy Rule 9014-1(f)(1) notice procedure. That Local Rule requires written opposition 14 days before the hearing.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a response on November 8, 2019, noting that the case had been completed, with \$99,121.05 in postpetition and \$40,604.79 in prepetition arrearage payments made to Creditor. Dckt. 233.

While no responsive pleading was filed as required, Debtor's Counsel sought to appear telephonically at the November hearing date. Civil Minutes, Dckt. 240. In light of the circumstances the court permitted the appearance, and Debtor's Counsel argued he had not received the Creditor's correspondence because he had been ill, and could not make it to his post office box. The court continued the hearing to allow the parties to resolve the dispute, but specifically ordered Debtor and Debtor's Counsel to appear at the December 10, 2019, continued hearing. Id.; Order, Dckt. 241.

At the continued hearing on December 10, 2019, Debtor and Debtor's Counsel did not appear. Civil Minutes, Dckt. 243; Order, Dckt. 244. It was reported by Creditor's counsel that the parties had reached an agreement resolving the contested matter, and that Debtor's Counsel indicated ahead of the hearing he would not attend for that reason.

In light of Debtor and Debtor's Counsel's failure to comply with this court's order, the court issued an Order To Show Cause requiring debtor, Robert D. Wagner, and debtor's counsel, Bruce Vail Rorty, show cause in writing filed on or before January 14, 2019, why corrective sanctions should not be imposed for failing to comply with the December 4, 2019, Order (Dckt. 241), and why this should not be referred to the Chief Judge of the District Court for the exercise of that Court's corrective and punitive sanction powers. Dckt. 246. The court further ordered those parties to appear in person at the January 28, 2020, hearing.

DISCUSSION

The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *In re Lehtinen*, 564 F.3d at 1058.

Despite the court's Order requiring the filing of written response on or before January 14, 2020, nothing has been filed. Therefore, the Order To Show Cause is sustained. The court shall issue an order providing that debtor's counsel, Bruce Vail Rorty, shall pay a corrective sanction of \$2,500.00.

The court shall further continue the hearing for a determination whether this matter should be referred to the Chief Judge of the District Court for the exercise of that Court's corrective and punitive sanction powers.

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 Order to Show Cause 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 Order to Show Cause is sustained.

IT IS FURTHER ORDERED that the hearing is continued to February 11, 2020, at 2:00p.m. for determination whether this matter should be referred to the Chief Judge of the District Court for the exercise of that Court's corrective and punitive sanction powers.

IT IS FURTHER ORDERED that debtor's counsel, Bruce Vail Rorty, shall pay a corrective sanction of \$2,500.00.

**No Telephonic Appearances Permitted for
Debtor Robert D. Wagner or
For Bruce Rorty, Debtor's Counsel**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 29, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to February 11, 2020, at 2:00p.m.

Creditor US Bank Trust N.A. as Trustee of Chalet Series III Trust, its successors and/or assignees ("Creditor") filed this Motion To Dismiss on the basis that the debtor, Robert D. Wagner ("Debtor"), materially breached the Confirmed Plan.

Debtor's Fourth Amended Plan was confirmed on August 2, 2016. Dckts. 206, 215, 217. While the Confirmed Plan provided for Creditor's claim as a Class 1 to be paid through the Plan, Section 6.02 of the additional provisions stated the following:

*The Debtor failed to direct his May 2015 ongoing mortgage payments in month one to the Trustee, but did make the payments directly to his mortgage companies. Class I payments through the Trustee began the second month of the Plan, in this case June 2015.

Dckt. 206.

Creditor asserts that after a recent audit, it was discovered Debtor never made the May 2015 payment. Creditor filed the Declaration of Jessica Watson and a Payment History (Exhibit D) as

evidence the May 2015 payment was not made. Dckts. 228, 230.

Creditor argues that failing to make the May 2015 payment was material breach of the Plan.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on November 8, 2019. Dckt. 233. Trustee asserts that Debtor has completed all payments made through the plan (including \$99,121.05 in post-petition mortgage and \$40,604.79 in arrearage payments to Creditor's claim).

Trustee states he hopes Creditor and Debtor's counsel will resolve the dispute over the May 2015 payment.

NOVEMBER 26 HEARING

At the November 26, 2019, hearing date the court continued the hearing to allow the parties to discuss resolution of the matter. Dckt. 240. In light of Debtor's counsel's failure to respond to the Motion before the hearing date (as required by the Local Rules when the hearing is set on (f)(1) notice), the court ordered Debtor and Debtor's counsel to appear in-person. Dckt. 241.

DISCUSSION

Debtor did not file any responsive pleading to the motion. However, the court has an independent duty to make certain that the requirements for confirmation have been met. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010).

Creditor argues and provides evidence that Debtor breached the Confirmed Plan terms by failing to make a payment in May 2015. The Plan requires that the first month's payment be made directly to Creditor and not through the Chapter 13 Trustee.

In that this dispute concerns a payment not made through the Plan but directly by the Debtor, it appears that the correct avenue is for the creditor to seek foreclosure on its collateral.

No party filed any responsive pleading after the prior hearing. The court issued an Order To Show Cause based on Debtor and Debtor's counsel's failure to comply with its Order. That Order was sustained and further continued to allow the parties to comply (or for issuance of further corrective sanctions).

The hearing on this Motion will be continued to be heard alongside the OSC.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13

January 28, 2020 at 2:00 p.m.

Page 39 of 58

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 hearing on the Motion to Dismiss is continued to February 11, 2020, at 2:00p.m.

FINAL RULINGS

20. [19-25086-C-13](#) **THUAN TRAN** **MOTION TO CONFIRM PLAN**
[AVN-1](#) **Anh Nguyen** **11-26-19 [25]**

Final Ruling: No appearance at the January 28, 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 26, 2019. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Thuan Tan Tran ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition. Dckt. 30. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on October 8, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 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).

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

The hearing on the Motion to Confirm the Modified Plan is continued to February 11, 2020, at 2:00p.m.

The debtor, Ronald Wayne Gadreault ("Debtor") seeks confirmation of the Modified Plan to cure a plan payment delinquency. The Modified Plan provides for \$20,436 paid through December 2019, and payments of \$1,710 for the remaining plan term. Modified Plan, Dckt. 58. 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 January 7, 2020. Dckt. 67. Trustee argues the plan was not filed in good faith because new deductions of \$653.95 for mandatory and \$193.72 for voluntary retirement contributions are made monthly where those deductions were previously at \$0.00, where Debtor fell \$8,000 delinquent under the prior plan, and where 0% is paid to unsecured claims. Trustee also notes several increased expenses, some of which not having been explained.

DEBTOR'S REPLY

Debtor filed a Reply on January 21, 2020, indicating Debtor suffered a stroke and is no

longer working his second job with critical intervention. Dckt. 71. Debtor states amended schedules need to be filed, and requests a continuance of the hearing.

DISCUSSION

In light of the Debtor's request and good cause appearing, the court shall continue the hearing on the Objection to February 11, 2020.

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

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

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

IT IS ORDERED that the hearing on the Motion to Confirm the Modified Plan is continued to February 11, 2020, at 2:00p.m.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney December 9, 2019. By the court’s calculation, 50 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Discharge is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), objects to Alberto Jose Leiva and Emilia Esperanza Leiva’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on October 31, 2017. Case No. 17-27239. Debtor received a discharge on February 12, 2018. Case No. 17-27239, Dckt. 15.

The instant case was filed under Chapter 13 on October 8, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on February 12, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 17-27239, Dckt. 15.

Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-26322), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-26322, the case shall be closed without the entry of a discharge.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 10, 2019. By the court's calculation, 49 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 14 of LVNV FUNDING, LLC is sustained, and the claim is disallowed in its entirety.

Georgina Garcia Cota, the debtor ("Objector"), requests that the court disallow the claim of LVNV FUNDING, LLC ("Creditor"), Proof of Claim No. 14 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$611.22. 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 charge off date was May 8, 2008. The date of last payment on the Statement of Account Information attached to the Proof of Claim states September 29, 2007. .

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 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. 14 lists the charge off date as May 8, 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 September 29, 2007. Thus, the four-year statute of limitations expired on September 29, 2011.

This bankruptcy case was filed on August 5, 2019—several years 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 Georgina Garcia Cota, the debtor ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 14 of LVNV FUNDING, LLC is sustained, and the claim is disallowed in its entirety.

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

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

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

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

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

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

DISCUSSION

A review of the docket shows that each motion to value secured claim has been granted, addressing Trustee's grounds for opposition.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

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

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

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

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

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

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

The Motion to Value Collateral and Secured Claim of BBVA Compass Bank (“Creditor”) is granted.

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

At the January 14, 2020, hearing the court addressed the lack of evidence on the date the PMSI debt was incurred, and whether 11 U.S.C. § 1325 prohibited valuation of Creditor's claim. The court continued the hearing, and Debtor filed the agreement as an Exhibit. Dckt. 57.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on August 13, 2015,

which is more than 910 days prior to filing of the petition. Creditor's secured claim is determined to be in the amount of \$10,000.00, 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 Patricia Ann Michael ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of BBVA Compass Bank ("Creditor") secured by an asset described as 2015 Nissan Rogue Automobile ("Vehicle") is determined to be a secured claim in the amount of \$10,000.00, 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 \$10,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

The Objection to Confirmation is dismissed without prejudice.

Partners For Payment Relief DE III, LLC (“Creditor”), having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on January 8, 2020, Dckt. 89; no prejudice to the responding party appearing by the dismissal of the Objection; Creditor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Leonid Banar and Lyudmila Banar (“Debtor”); **the Ex Parte Motion is granted, Creditor’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on March 26, 2019, is confirmed.**

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

THRU #28

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 14, 2019. By the court's calculation, 75 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 Solano First Federal Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$3,561.00.

The Motion filed by Leonard Coffee ("Debtor") to value the secured claim of Solano First Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 11. Debtor is the owner of a 2013 Volksagon Passat ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$3,561.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on March 24, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,000. Declaration, Dckt. 11. 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

\$3,561.00, 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 Leonard Coffee (“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 Solano First Federal Credit Union (“Creditor”) secured by an asset described as 2013 Volksagon Passat (“Vehicle”) is determined to be a secured claim in the amount of \$3,561.00, 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 \$3,561.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

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

The Objection to Confirmation of the Plan is overruled.

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

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

DISCUSSION

A review of the docket shows Debtor’s motion to value secured claim of Solano First Federal Credit Union was granted.

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

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

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

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

IT IS ORDERED that the Objection is overruled, and Leonard Coffee’s (“Debtor”) Chapter 13 Plan filed on October 31, 2019, is confirmed. Counsel for

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