UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 31.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–30, attempting to first address the items in which short argument is anticipated.

February 13, 2018, at 3:00 p.m.

1.	**17-27701-E-13** **DPC-1**	**EDWARD/MYLINLINNY STEARNS** **Fred Ihejirika**	**AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-24-18 [34]**

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 January 10, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is overruled.

David Cusick ("the Chapter 13 Trustee") filed his first opposition to confirmation of the Plan on January 10, 2018, due to Edward Stearns and Mylinlinny ("Debtor"): (1) not providing Federal Income Tax Returns and (2) not providing pay advices. On January 16, 2018, Debtor cured the original deficiency.

The Chapter 13 Trustee amended his Objection on the basis that:

A. Debtor's plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtor has not proposed to pay the tax refunds into the plan.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a thirteen percent dividend to unsecured claims, which total $140,547.54, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) includes tax refunds that have not been proposed as being paid into the Plan.

DEBTOR'S RESPONSE

Debtor filed a Response on January 30, 2018, which states that Debtor is amenable to turning over future tax refunds for the life of the Plan to the Chapter 13 Trustee.

RULING

Debtor's Response does not mirror the exact request by the Chapter 13 Trustee for receipt of tax refunds and copies of tax returns, but the spirit of Debtor's statements indicate that Debtor is not opposed to an amendment in the Plan related to tax returns and refunds.

The amendment requested by the Chapter 13 Trustee is that Debtor provide copies of all federal and state tax returns by May 15 of each year and also pay to the Chapter 13 Trustee the total tax refund

amount each year within fifteen days of their receipt during the life of the Plan. The court accepts Debtor's response as agreeing with the Chapter 13 Trustee's proposal.

The Plan, as amended, complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed. FN.1.

FN.1. As a future practice pointer, if Debtor's response had affirmatively stated that Debtor amends the Plan to provide for the payment of the tax refunds to the Chapter 13 Trustee and said amendment shall be stated in the order confirming the plan, the court likely would have disposed of this by final ruling, saving counsel the time and expense of making the appearance. While that is likely what counsel and Debtor meant in saying Debtor was "amenable" to paying over the tax refunds, that is not an affirmative statement that the Plan is amended to "require" the refunds to be paid into the plan. Thus, the appearance of counsel is required so that such intended requirement being part of the Plan is stated on the record at the hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") 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 Edward Stearns and Mylinlinny Stearns's ("Debtor") Chapter 13 Plan filed on November 27, 2017—and as amended to require Debtor to provide copies of all federal and state tax returns by May 15 of each year and also to pay to the Chapter 13 Trustee the total tax refund amount each year within fifteen days of their receipt during the life of the Plan—is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. **14-28613-E-13** **JUSTINE MILES** **MOTION TO AVOID LIEN OF**
PGM-1 **Peter Macaluso** **SPRINGLEAF FINANCIAL SERVICES**
1-29-18 [38]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 29, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the lien of Springleaf Financial Services ("Creditor") against personal property of Justine Miles ("Debtor") commonly known as an LG 52" plasma flatscreen, an LG 55" plasma flatscreen, and an HP laptop ("Property"). The grounds stated with particularity (FED. R. BANKR. P. 9013) are:

A. On October 3, 2014, Springleaf Financial Services, now know as Onemain Financial Services, Inc., filed a secured claim in the amount of $3,228.88.

B. Creditor has a non-possessory, non-purchase money lien on personal property owned by Debtor, consisting of

1. LG 55" Plasma Flatscreen

2. LG 52" Plasma Flatscreen

3. HP Laptop

C. Debtor has claimed exemptions in these items of personal property pursuant to California Code of Civil Procedure § 703.140(b)(3).

D. Creditor's lien impairs Debtor's exemption.

Motion, Dckt. 38. Based on the above, Debtor prays that the lien be avoided. *Id.*

Debtor's Points and Authorities directs the court to 11 U.S.C. § 506(a) (1) for the legal principal that a creditor's secured claim is the value of the collateral. No value for the collateral is alleged in the Motion. In the Points and Authorities (which is not the Motion), no value is stated, but the court is provided with the legal principal that a debtor may testify to value and that debtor may state under penalty of perjury the value of the property in the bankruptcy schedules.

Debtor provides his declaration, providing the court with his legal analysis that Springleaf Financial holds a "secured lien" against the personal property. Debtor then goes on to dictate to the court his personal finding of fact and ultimate conclusion of law that the "secured lien" impairs Debtor's personal property exemption. With Debtor having completed those findings of fact and conclusions of law, there is little left for the court to do, other than have the Clerk of the Court file the order that Debtor signs granting the relief that Debtor has awarded himself. FN.1.

FN.1. The court is unsure of the legal principle being espoused by Debtor in advising the court of Debtor's legal conclusion that this Creditor holds a "secured lien." It appears that Debtor has discovered a legal principle by which a lien, which is security for a debt, is itself secured, thus a "secured lien." Presumably, if the court were to avoid the lien that secures the lien, then the lien that secures the debt remains firmly in place for the full amount of the debt.

The court notes that Schedule A/B, provided as Exhibit B by Debtor, Dckt. 42, does not list the TVs and laptop as assets. Possibly they are included in the generic "Household Goods and Furnishing" with a stated value of $1,350.00. However, they may not be so included, or if Debtor actually testified as to value, such value would be well in excess of such amount.

The court acknowledges that the comments in this footnote and the above paragraph are snide, snarky, and condescending. However, the court is at a loss to understand how Debtor's counsel, who has appeared in this court for decades, is presenting such a declaration to the court. Additionally, as discussed below, the Motion is bereft of legal support or a basis for granting the relief demanded. It appears that the pleadings have not been prepared by or reviewed by counsel, but by a staff person who believes that the court does not attempt to grant relief as properly allowed by law (*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)), but just whatever a party tells the judge to grant.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 31, 2018. Dckt. 44. The Chapter 13 Trustee notes that the confirmed plan does not provide for Creditor's claim. Creditor is listed on Schedule F as "American General Financial/Springleaf Financial" for $2,645.00. Creditor filed Proof of Claim No. 8-1 on October 3, 2014, for a secured amount of $3,228.88. Finally, the Chapter 13 Trustee notes that Debtor claim an exemption on Schedule C in the amount of $1,350.00 for household goods and furnishings.

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2018. Dckt. 47. Debtor notes that Creditor's name originally was American General Finance, then Springleaf Financial, and is now Onemain Financial Services, Inc.

Debtor's attorney states that Creditor was listed as an unsecured claim because the basis of its claim is personal property. Debtor seeks to have Creditor's secured portion provided for in the Plan.

RULING

Debtor specifically filed this Motion as one that seeks to have a lien avoided under 11 U.S.C. § 522(f). Commonly, such relief is sought with respect to a judicial lien. 11 U.S.C. § 522(f)(1)(A). Debtor has not presented any evidence of there being a judicial lien issued to Creditor against Debtor that is secured by Debtor's property.

Though not cited by Debtor, 11 U.S.C. § 522(f)(1)(B) provides relief in authorizing the court as follows:

> (f) (1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is–
>
> (A) [judicial lien]; or
>
> (B) a nonpossessory, nonpurchase-money security interest in any–
>
> > (i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;
> >
> > (ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or
> >
> > (iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

Debtor does allege that the lien is a nonpossessory, nonpurchase-money security interest. Debtor does not provide any testimony as to what was purchased with the credit that makes up Creditor's secured claim in this case.

Proof of Claim No. 8 filed in this case states that the claim is in the amount of $3.228.88, is accruing interest at the rate of 24.99% per annum, and is secured by personal property collateral with a value of $5,000.00. The Attachment to Proof of Claim No. 8 is a "Loan Agreement and Disclosure Statement" for a $5,046.07 loan, with an interest rate of 30.01% per annum, for which Springleaf Financial Services, Inc. is the lender and Debtor is the borrower.

On the Attachment, it appears that of the loan, $5,000.00 was paid to Debtor, and $46.07 was for a "Single Life Premium" for life insurance on Debtor. Under the Security Interest section of the Attachment, it states that Debtor gives lender a security interest in the personal property, which "includes a purchase money security interest if property is being purchased with the proceeds [of the loan . . . ." On the Personal Property Appraisal Form attached to the Loan Agreement, the three items of personal property are listed , with the word "Secondary" placed in parentheses next to the two TVs. The form states that only personal property, not business property or equipment, may be included on the Schedule of the collateral.

Though it might be inferred from the court implying that this could be a hard money, high interest rate loan in which Debtor obtained cash by giving a lien in the pre-existing personal property, Debtor has not been willing to so testify. Rather, there is merely an allegation that the lien is non-purchase money, non-possessory. The Loan Agreement attached to Proof of Claim No. 8 expressly provides for a purchase money security interest if the proceeds of the loan are used to purchase the collateral.

The court declines the opportunity to infer from an implication drawn from an allegation something that Debtor has failed or refuses to actually testify to under penalty of perjury. Additionally, Debtor being willing to testify under penalty of perjury as to his personal conclusions of law, while failing to give any actual testimony puts Debtor's good faith and credibility into question. If Debtor has such legal knowledge, then he would know that such testimony is inadequate and improper. If he does not have such training, he has shown that his "testimony" consists of nothing more than signing under penalty of perjury any document his attorney puts in front of him.

The court could well deny this Motion with prejudice. It will not, at this time. Debtor and counsel will have the opportunity to prepare a motion and declaration, by which Debtor can actually provide personal knowledge testimony—not improper legal opinions and conclusions. Upon reviewing the new pleadings, the court will determine whether the subsequent motion should be granted, denied, or set for an evidentiary hearing to afford Debtor the opportunity to provide his testimony in open court.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Justine Miles ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

3. 17-22614-E-13 WW-3 | **MICHAEL/POLLY LANHAM** | **Mark Wolff** | **MOTION TO CONFIRM PLAN** | **12-21-17 [94]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2017. By the court's calculation, 54 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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.

Michael Lanham and Polly Lanham ("Debtor") seek confirmation of the Amended Plan because their new employment requires adjusting plan payments. Dckt. 96. The Amended Plan will increase the payments to unsecured creditors to be no less than 12.3% of their filed and allowed claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 29, 2018. Dckt. 100. He argues that Debtor has supplied insufficient information relating to the sale of real property in the

eighteenth month of the Plan. Debtor is currently on ninth month of the Plan. Furthermore, Debtor has not filed a motion to employ a realtor.

Debtor changed jobs and filed Amended Schedules I and J documents on December 21, 2017, but Debtor failed to supply the Chapter 13 Trustee with updated pay advices.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has proposed a sixty-month plan by which Debtor proposes to pay: $264 for six months, $300 for one month, $360 for one month, $600 for three months, $900 for forty-nine months, plus a lump sum in the eighteenth month of $35,000. The Chapter 13 Trustee has determined the lump sum is not sufficient to payoff the Plan because Bank of America filed an unsecured claim for $83,259.44. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2018. Dckt. 103. Debtor reports that a real estate agent has not been hired yet. Debtor states that verification of income was not possible because Debtor had not received a full paycheck since changing employment, but Debtor asserts that the most recent paystubs have been provided.

RULING

While the Chapter 13 Trustee's opposition points are well taken, Debtor is committing to a commercially reasonable deadline to get the property sold. While the Motion states that the Plan will be paid upon the sale of the home, which is not an accurate statement of the plan terms, it is the Plan that will control. The Plan commits Debtor to the full sixty months of payments.

Additionally, though the employment of the real estate agent has not yet been approved, Debtor has committed to the sale. If it turns out that the delay in such employment will delay the sale and a modification of the plan is sought, such will not be unanticipated by Debtor or counsel.

If Debtor is not capable of conducting such a sale and performing the Plan, it may be necessary for the court to either convert the case to one under Chapter 7 or appoint a limited purpose personal representative to obtain such a sale and assist Debtor in completing the Plan they are voluntarily confirming.

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 Michael Lanham and Polly Lanham ("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 granted, and the proposed Amended Chapter 13 Plan filed on November 30, 2017, is confirmed. Counsel for Debtor shall prepare and forward to David Cusick ("the Chapter 13 Trustee") a proposed order confirming the Plan, which upon approval by the Chapter 13 Trustee shall be lodged with the court.

4. 17-25215-E-13 SDB-1 | **ENRIQUE GARCIA** **Scott de Bie** | **MOTION TO CONFIRM PLAN** **1-2-18 [30]**

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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 2, 2018. By the court's calculation, 42 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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.

Enrique Garcia ("Debtor") seeks confirmation of the Amended Plan because an extension of the Plan from thirty-six months to sixty months will allow Debtor to repay creditors and keep his monthly payments affordable. Dckt. 33. The Amended Plan requires one payment of $10,000.00, two monthly payments of $3,480.00, and fifty-seven payments of $3,960.00. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 29, 2018. Dckt. 44. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Amended Plan provides that US Bank/Caliber will be paid by the Chapter 13 Trustee $2,680.44 per month in post-petition payments. On November 9, 2017, US Bank filed Proof of Claim 3, indicating monthly payments of $3,053.64. These payments are $373.20 higher than reported. Debtor's plan payment must be at least $4,382.38 per month to pay claims as proposed in sixty months. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has supplied insufficient information relating to 45716 Palm Lane, Lancaster, California, to assist the Chapter 13 Trustee in determining the value of the property. Debtor did not disclose any interest in the property. The Chapter 13 Trustee does not oppose confirmation on this basis, though, because he does not believe Debtor has an interest in the property.

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2018. Dckt. 47. Debtor states that the higher amount is due to an impound account set up to pay property taxes. Debtor also argues that Schedule J shows an ability to pay the property taxes as budgeted.

RULING

The Chapter 13 Trustee's Opposition focuses on the ability to pay the higher plan amount necessary to pay the increased secured claim. Debtor states that this is for a tax impound account for this creditor. Looking at Schedule J, Debtor provides for a $373.21 per month property tax payment. Dckt. 1 at 28. The court reads Debtor's Response to be that this monthly payment goes away, increasing projected disposable income to fund the Plan by $327.21 per month. Though the increase for the tax impound being $50 per month more, the court is confident that Debtor could reduce the monthly entertainment expense by $50 per month to cover this and increase the Plan payment by $373.21 per month.

The Amended Plan, as amended to increase the monthly plan payment to $4,333.21 in the **xxxth month of the 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 Enrique Garcia ("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 granted, and the proposed Amended Chapter 13 Plan filed on January 2, 2018, as

amended at the hearing to increase the monthly plan payment to $4,333.21 in the **xxxth month of the Plan,** is confirmed. Counsel for Debtor shall prepare and forward to David Cusick ("the Chapter 13 Trustee") a proposed order confirming the Plan, which order shall state the above amendment to the Plan, and which upon approval by the Chapter 13 Trustee shall be lodged with the court.

5. 11-41822-E-13 PGM-1 | **MICHAEL/CAROLYN RANGEL** **Peter Macaluso** | **MOTION TO APPROVE LOAN MODIFICATION** **1-26-18 [93]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 26, 2018. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Michael Rangel and Carolyn Rangel ("Debtor") seeks court approval for Debtor to incur post-petition credit. JPMorgan Chase Bank, N.A. ("Creditor"), has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $4,215.57 per month to $2,853.71 per month (principal and interest plus escrow). *See* Notice of Mortgage Payment Change filed on October 4, 2016. The modification will capitalize arrears and include $148,000.00 as a deferred balance. The new principal balance will be $644,265.00 with a 4.00% interest rate.

The Motion is supported by Debtor's Declaration. Dckt. 95. The Declaration affirms Debtor's desire to obtain the post-petition financing.

On January 24, 2018, Creditor filed a Notice of Mortgage Payment Change indicating a new total amount of $2,888.84 owed for principal, interest, and escrow. That amount is $35.13 higher than pleaded in the Motion. At the hearing, the parties confirmed that the increase is **a difference in escrow, not in the agreed upon principal and interest of $2,074.08.**

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve Loan Modification filed by Michael Rangel and Carolyn Rangel ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Michael Rangel and Carolyn Rangel to amend the terms of the loan with JPMorgan Chase Bank, N.A. ("Creditor"), which is secured by the real property commonly known as 12451 Rising Road, Wilton, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 96).

6.	**17-27724-E-13** **DPC-1**	**THOMAS/SHANNON SHUMATE** **Scott Hughes**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-10-18 [25]**

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 January 10, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the First Meeting of Creditors held on January 4, 2018.

B. Debtor is delinquent $599.43 in plan payments.

C. Debtor does not have sufficient equity in the property to pay the secondary liens.

D. Debtor has failed to file any Motions to Value Collateral.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee alleges first that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. According to the Chapter 13 Trustee's report filed on February 1, 2018, Debtor appeared at the Meeting, resolving the first ground of the Objection.

The Chapter 13 Trustee asserts that Debtor is $599.43 delinquent in plan payments, which represents less than one month of the $2,328.00 plan payment. Debtor has paid $1,728.57 into the Plan to date, but $2,328.00 is due. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, Debtor intends to sell property by December 1, 2018, and to pay all liens on the property. Schedule A/B indicates the value of the property as $429,000.00, and Schedule D indicates the first mortgage on the property is $431,514.00. There is insufficient equity in the property to pay the secondary liens.

Second, Debtor cannot make payments under the Plan because Debtor proposes to value the secured claims of Placer County Tax Collector and Ditech Financial in Class 2 of the Plan, but Debtor has failed to file any Motions to Value Collateral to date. Without the court valuing the claims, the Plan is not feasible. 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

7. 15-25827-E-13 DAVID ARESTAD MOTION TO MODIFY PLAN
WW-2 Mark Wolff 12-27-17 [57]

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 creditors and Office of the United States Trustee on December 27, 2017. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

David Arestad ("Debtor") seeks confirmation of the Modified Plan because of changes in income and expenses. Dckt. 59. The Modified Plan will have Debtor paying $1,060.00 for thirty-one months beginning January 25, 2018. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 29, 2018. Dckt. 65. The Chapter 13 Trustee argues that Debtor has not used the correct form plan, pursuant to General Order 17-03, which must be used as of December 1, 2017.

Debtor has supplied insufficient information relating to retirement fund loans and voluntary contributions for retirement plans. Debtor budgets $117.67 per month for repayment of retirement fund loans. He argues that those payments should have ended in month eighteen, and January 2018 is month thirty. Debtor has not modified Schedule J.

Debtor has supplied insufficient information relating to the treatment of Toyota Motor Credit regarding a leased 2014 Lexus GX 460, whether the lease has ended, the vehicle was returned, or the expense is no longer budgeted. The Chapter 13 Trustee is uncertain of the proper treatment for the lease.

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2018. Dckt. 70. Debtor promises to file a new plan on the correct form treating Toyota Motor Credit in Class 7 as a general unsecured claim. Debtor maintains that $25.00 per month for voluntary retirement contributions is reasonable. Debtor also asserts that retirement loan payments are being deducted from paychecks because the loan has not been fully satisfied.

CHAPTER 13 TRUSTEE'S AMENDED RESPONSE

The Chapter 13 Trustee filed an Amended Response on February 7, 2018. Dckt. 73. The Chapter 13 Trustee states that the Reply appears to address all of the concerns raised in the Objection, and the Chapter 13 Trustee does not oppose proposed changes to the Plan as follows:

1. Debtor has filed as Exhibit A a corrected First modified Plan using the new form plan effective December 1, 2017.

2. Debtor offers to increase plan payments by $100.00 in April 2019.

3. Section 7.01 of the Plan shall list Toyota Motor Credit as an unsecured claim with the vehicle securing the claim listed as surrendered and a deficiency balance claim being filed.

RULING

At the hearing, Debtor agreed to the proposed changes.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by David Arestad ("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 xxxxxxx.

8. **17-25627-E-13** **LINDA HUSS** **MOTION TO CONFIRM PLAN**
EJS-1 **Pro Se** **12-21-17 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 21, 2017. By the court's calculation, 54 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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.

Linda Huss ("Debtor") seeks confirmation of the Amended Plan because Debtor is amending her income on Schedule I and expenses on Schedule J. Dckt. 39. The Amended Plan will have Debtor paying $1,482.00, instead of her original plan of $925.50. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") holding a secured claim filed an Opposition on January 11, 2018. Dckt. 51. Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.45%. Creditor's claim is secured by a 2014 Kia Sorento. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a

preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 4.25%, plus a 1.25% risk adjustment, for a 5.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Creditor alleges that Debtor's valuation of the 2014 Kia Sorento (VIN ending in 1320) at $18,000.00 does not pay Secured Creditor the present value of its secured claim. Creditor bases its information derived form the automated NADA Guide and believes the property has a retail, replacement value to Debtor of $20,675.00. In support of its allegation regarding depreciation, Creditor submits the Declaration of Kassandra Jaramillo, as part of its Objection to Confirmation of Debtor's Chapter 13 Plan, filed on January 11, 2018. Dckt. 54. Creditor's arguments about the vehicle's value, though, are not the focus of this Motion. Those arguments would be applicable if the court were determining the vehicle's value under a motion brought by 11 U.S.C. § 506(a). The court does not value the vehicle as part of this Motion.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 19, 2018. Dckt. 65. He reports that Debtor may have sold her house without a court order. The Chapter 13 Trustee also argues that the Amended Plan is not confirmable because it was filed by Debtor's former counsel.

The Chapter 13 Trustee asserts that Debtor is $1,482.00 delinquent in plan payments, which represents one month of the $1,482.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

DEBTOR'S RESPONSE

Debtor filed a Response on February 5, 2018. Dckt. 79. She continues to relate to the court the bad blood that existed between her and former counsel over what she perceived to be ineffective communication. The court has allowed Debtor to substitute herself as the attorney of record in this case, addressing such issues.

Debtor states that she "does not wish to confirm [the Amended P]lan." *Id.* at 2:11.

RULING

Debtor no longer wanting to prosecute the Amended Plan, and there being sufficient grounds in opposition, 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 Linda Huss ("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.

9. 17-28028-E-13 NDILE NJENGE — **CONTINUED MOTION TO SUBSTITUTE ATTORNEY**
Randall Ensminger — **12-18-17 [15]**

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 Not Provided. No Proof of Service was filed for the Motion. The court set a hearing for 3:00 p.m. on January 9, 2018. Dckt. 16.

The Motion to Substitute Attorney 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 Substitute Attorney is xxxxx.

Ndile Njenge ("Debtor") filed a "Substitution of Attorney" on December 18, 2017, in which Debtor asserts to be "the attorney in Pro-Per of record in the above bankruptcy case." Dckt. 15. No motion was set for hearing, no notice was filed, no service was provided, no declaration was submitted, and no grounds were pleaded for the Motion.

The court set the matter for hearing on January 9, 2018, and ordered that Debtor and counsel appear personally. Dckt. 16.

JANUARY 9, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on February 13, 2018, to allow Debtor's Counsel to file and serve a Notice of Substitution of Attorney to all parties in this case. Dckt. 32.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring

any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

DISCUSSION

Here, Debtor appears to be the party who wants new representation. Nevertheless, no information has been provided about why Debtor wants to be self-represented, and the proper procedure for substitution has not been followed.

Debtor's Counsel has not filed and served a Notice of Substitution of Attorney. Instead, after the prior hearing, Debtor's Counsel filed a Notice of Continuance Meeting of Creditors on January 16, 2018. Dckt. 33. That Notice begins by stating that "D. Randall Ensminger . . . , on behalf of Ndile George Njenge . . . ." *Id.* at 13.5. With no other pleadings filed, it appears that the parties no longer wish to pursue this Motion.

At the hearing, the parties reported **xxxxxxxx**.

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 Substitute Attorney filed by Ndile Njenge ("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 Substitute Attorney is **xxxxxx**.

10. 17-27629-E-13 MEIKO HILL
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-10-18 [18]

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 (*pro se*) on January 10, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Meiko Hill ("Debtor") is delinquent in plan payments;

B. Tax returns have not been provided;

C. Pay advices have not been provided;

D. The Plan is not feasible; and

E. Debtor submitted the prior plan form.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $100.00 delinquent in plan payments, which represents one month of the $100.00 plan payment. Before

the hearing, another plan payment will be due. Debtor has not paid any money into the plan. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The plan payment of $100.00 is insufficient to make the proposed monthly payment to the creditor as well as Trustee fees, totaling at least $385.00 per month. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has not used the correct form plan, pursuant to General Order 17-03, which must be used as of December 1, 2017.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

11. 17-27740-E-13 DPC-1 | **RANDY KEMP** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-10-18 [21]**

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 (*pro se*) on January 10, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Randy Kemp ("Debtor") is delinquent in plan payments;

B. Debtor failed to appear at the First Meeting of Creditors;

C. Tax returns have not been provided;

D. Pay advices have not been provided;

E. The Plan is illegible;

F. The Plan fails the liquidation analysis;

G. Debtor cannot make plan payments; and

H. Debtor filed incorrect forms for monthly income statements.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is $2,013.00 delinquent in plan payments, which represents one month of the $2,013.00 plan payment. Before the hearing, another plan payment will be due. Debtor has not paid any money into the plan. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The meeting has been continued to April 05, 2018.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor's plan filed December 4, 2017 is not a readable plan, and the Chapter 13 Trustee cannot determine the feasibility of the Plan or identify the creditors to be paid.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor's non-exempt assets total $77,346.54, and he cannot determine from the Plan the percentage to be paid to general unsecured claims.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan payments total $100.00 per month, but Debtor listed $0.00 as his income on Schedule I. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor used the incorrect form for his statement of currently monthly income. Debtor Filed a Chapter 7 Statement of Current Monthly Income. That is an incorrect form for a Chapter 13 case.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

12. 18-20040-E-13 MS-1 | **ARARAT GALSTYAN** / **Mark Shmorgon** | **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** / **1-4-18 [9]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 4, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Ararat Galstyan ("Debtor") commonly known as 1945 Edwin Way, Sacramento, California ("Property").

CREDITOR'S OPPOSITION

Capital One Bank (USA), N.A. ("Creditor") filed an Opposition on January 26, 2018. Dckt. 23. FN.1. Creditor argues that its lien does not impair Debtor's exemption. Creditor opposes Debtor's assertion of value because it is based on personal testimony, instead of on any appraisal. Creditor argues that estimates of value from three different websites indicate that the Property's value at the petition date ranged between $217,700.00 and $256,473.00.

FN.1. Creditor filed the Opposition, Declaration, Exhibits, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Creditor argues that using any of the value estimates shows that there is additional equity to support its lien.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("Chapter 13 Trustee") filed a Non-Opposition on January 29, 2018. Dckt. 21. The Chapter 13 Trustee does not oppose the Motion.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of $4,588.87. An abstract of judgment was recorded with Sacramento County on June 2, 2015, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $200,000.00 as of the petition date. Dckt. 1. Creditor objects to that valuation and argues that information from three websites supports a higher valuation. Unfortunately for Creditor, while it opposes Debtor's estimate because it is not based upon an appraisal, Creditor also has not presented an appraisal or other credible evidence of value, instead relying upon estimates that range in value from $217,700.00 to $256,473.00 from internet sites. Creditor does not provide the court why or how some data from an internet site, spouting some value is credible, properly authenticated, admissible evidence (either as expert testimony or other admissible properly authenticated evidence).

The unavoidable consensual liens that total $100,491.74 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Amended Schedule C. Dckt. 19.

Considering the evidence presented by Creditor, the court finds Debtor's owner's opinion to be credible evidence of value. This well outweighs the internet data presented by Creditor's counsel. FN.2.

FN.2. The court could well imagine the howls from Creditor Capital One Bank, N.A.; Bank of America, N.A.; Wells Fargo Bank, N.A.; Bank of the West, Santander Bank, N.A.; Golden 1 Credit Union, Safe Credit Union, the Internal Revenue Service; the Small Business Administration; and the like if the court allows debtors to have secured claims' value based on whatever a debtor could print off the internet.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ararat Galstyan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Sacramento County Case No. 34-2014-00165835, recorded on June 2, 2015, Book 20150602 and Page 1272, with the Sacramento County Recorder, against the real property commonly known as 1945 Edwin Way, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. **17-27247-E-13** **JOSE AGUIAR** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Eric Gravel** **PLAN BY DAVID P. CUSICK**
1-10-18 [20]

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 January 10, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Jose Aguiar ("Debtor") is delinquent in plan payments, and

B. Debtor's plan may not be Debtor's best effort.

The Chapter 13 Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is $767.68 delinquent in plan payments, which represents one month of the $767.68 plan payment. Before the hearing, another plan payment will be due. Debtor has not paid any money into the plan. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor testified at the First Meeting of Creditors held on January 4, 2018, that his spouse has a part-time job at a restaurant. That income is not disclosed on Schedule I. The Chapter 13 Trustee has not received any pay advices for Debtor's spouse.

The Chapter 13 Trustee's review of the Debtor's 2016 federal income tax return indicates a refund of $5,345.00. The Plan does not propose to pay in tax refunds over the life of the Plan. The Chapter 13 Trustee requests any tax refunds in excess of $2,000.00 be paid into the Plan each year for the life of the Plan.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

14. **17-27247-E-13** **JOSE AGUIAR**
PPR-1 **Eric Gravel**

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
11-17-17 [11]

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 November 17, 2017. By the court's calculation, 88 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Bank of New York Mellon ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan does not cure pre-petition arrears, and

B. The Plan contains an impermissible modification of a claim secured only by an interest in Jose Aguiar's ("Debtor") principal residence.

Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $6,555.76 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the

surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Creditor argues that Debtor's Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim, asserting that it is secured by a deed of trust against the property commonly known as 21 Grennan Court, Vallejo, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

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 Bank of New York Mellon ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

15. 17-27751-E-13 HDR-2 | **MISAEL/LUZ BAUTISTA** **Harry Roth** | **MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCE CORPORATION** **1-10-18 [53]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 10, 2018. By the court's calculation, 34 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of American Honda Finance Corporation dba Honda Lease Trust ("Creditor") is denied.

The Motion filed by Misael Bautista and Luz Bautista ("Debtor") to value the secured claim of American Honda Finance Corproation dba Honda Lease Trust ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Honda Civic ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $9,896.00 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).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on January 24, 2018. Dckt. 68. Creditor asserts that the Vehicle is subject to a lease agreement. Creditor asserts that a lease agreement does not create a purchase money security interest.

Creditor asserts that it is entitled to reasonable attorney's fees based on the lease agreement. Creditor includes in the prayer a request for $200.00 in attorney's fees.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 29, 2018. Dckt. 74. The Chapter 13 Trustee notes that the Vehicle appears to be subject to a lease agreement that has not been assumed by the proposed plan. The Chapter 13 Trustee notes that the lease may have expired. He notes that Creditor states that the lease agreement has been extended, though.

DISCUSSION

According to the agreement that Creditor has provided in opposition to this Motion, the Vehicle is subject to an lease agreement with an illegible term. Exhibit 2, Dckt. 70. Creditor argues that the lease term has not expired, which would indicate that it has the ownership interest in the Vehicle, not Debtor. *See* 11 U.S.C. § 365. The lease agreement provides for an option for Debtor to purchase the Vehicle at the end of the thirty-six month lease for $11,588.40. Thus, the claim securing the Vehicle is not one that can be valued under 11 U.S.C. § 506(a). The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Misael and Luz Bautista ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

16. 17-27751-E-13 DPC-1 | **MISAEL/LUZ BAUTISTA** Harry Roth | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-18-18 [61]**

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 January 18, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Misael Bautista and Luz Bautista ("Debtor") may not be able to make plan payments;

B. An intended adversary proceeding has not been filed;

C. The Plan relies on a motion to value;

D. The Plan may not be feasible if Debtor does not understand the documents written in English; and

E. The Plan is not Debtor's best effort.

The Chapter 13 Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Schedule D lists three claims secured by Debtor's residence, but the Plan only provides for two: Chase Bank and Mortgage Relief Services, LLC. The Plan fails to provide for Cheryl Filarksy, Guardian for Brian Filarsky's secured lien against the residence.

When a plan does not provide for a secured claim, the remedy is not necessarily denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

At the First Meeting of Creditors, Debtor indicated that an adversary proceeding would be filed to determine the validity of the lien of Mortgage Relief Services, LLC. Debtor has not yet filed that adversary proceeding.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan relies on the Motion to Value Collateral of Honda Financial Services. If the motion is not granted, Debtor's plan does not have sufficient monies to pay the claim in full. The hearing on that Motion is set for February 13, 2018. **The court's ruling on the Motion to Value was denied, based on the creditor's claim being for a lease, not a debt secured by property of the Debtor.**

Furthermore, the Chapter 13 Trustee is not certain the Court can rely on the Plan, Schedules, and Statement of Financial Affairs without an additional declaration from Debtor that they understand English and the forms they signed. At the First Meeting of the Creditors on January 11, 2018, an adult relative translated the documents for Debtor. Without additional information, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor's projected disposable monthly income listed on Schedule J totals $2,146.50, but Debtor is proposing a plan payment of only $2,002.00. Thus, the court may not approve the Plan under 11 U.S.C. § 1325(b)(2).

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17. 17-27751-E-13 VVF-1 | **MISAEL/LUZ BAUTISTA** **Harry Roth** | **OBJECTION TO CONFIRMATION OF PLAN BY HONDA LEASE TRUST 1-5-18 [47]**

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 January 5, 2018. 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 ----------.

The Objection to Confirmation of Plan is sustained.

Honda Lease Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it attempts to modify Creditor's secured claim against a vehicle that is subject to a lease agreement. Creditor argues that Debtor has no ownership interest the underlying agreement and is prevented from proposing a plan term that would modify Creditor's rights.

Creditor's objection is well-taken. Debtor has attempted to value Creditor's secured claim, and has filed a motion to do that, but the underlying lease agreement is not one that can be valued. 11 U.S.C. § 365(b). Without the court valuing the claim, the Plan is not feasible. 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 Honda Lease Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

18. 15-20352-E-13 PGM-3 — GREGORY/CLARICE BRIDGES — Peter Macaluso — MOTION TO MODIFY PLAN — 1-2-18 [131]

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 2, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

Gregory Bridges and Clarice Bridges ("Debtor") seek confirmation of the Modified Plan because of health issues and recent retirement. Dckt. 133. The Modified Plan calls for $74,438.92 to be paid through August 2017 and then payments of $3,025.00 for twenty-nine months. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 29, 2018. Dckt. 142. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in sixty-three months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Chapter 13 Trustee notes that the Plan calls for two additional months of post-petition arrears payments to Class 1. Currently, a principal payment of $1,762.18 is due. The Chapter 13 Trustee also questions Supplemental Schedules I and J filed because they make numerous changes without explanation (such as, home maintenance reduced from $150 to $0, HOA fees increased from $0 to $240, food and housekeeping reduced from $875 to $375).

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2018. Dckt. 145. Debtor requests that the plan payments be increased to $3,140.00 in the order confirming and that the order confirming change the Class 1 mortgage arrears payments to be $1,762.18 (one post-petition mortgage payment).

RULING

Even though Debtor has subsequently amended Schedule J, again, Debtor has not provided any explanation how the changes to the expenses are reasonable or credible. *See* Dckt. 148. At the hearing, Debtor explained that they can make the plan payments because xxxxxxxxxxxx.

The Chapter 13 Trustee reported at the hearing that he agrees / does not agree with Debtor's proposed amendments to the Modified Plan.

The Modified Plan xxxxxxxxxxxxxxxxx.

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 Gregory Bridges and Clarice Bridges ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is xxxxxxxxx.

19. 17-26064-E-13 MARTIN/MARIA ORTEGA MOTION TO CONFIRM PLAN
PGM-4 Peter Macaluso 12-26-17 [76]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 26, 2017. By the court's calculation, 49 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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.

Martin Ortega and Maria Ortega ("Debtor") seek confirmation of the Amended Plan because they thought that the David Cusick ("the Chapter 13 Trustee") would pay the balance on car payments after a car was sold without court permission. Dckt. 78. The Amended Plan calls for $5,150.00 paid in through December 2017, with plan payments of $2,545.00 for fifty-seven months through January 2018. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 19, 2018. Dckt. 85. The Chapter 13 Trustee notes that his objection in Debtor's prior case (No. 15-27210) was because Debtor had attempted to sell property of the estate without court permission. He states now that he has received subsequent e-mails from the purported buyer relating to the purchase of Debtor's vehicle.

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2018. Dckt. 90. Debtor states that they have no opposition to including language in the order confirming "that upon payoff of said vehicle, and as a condition of discharge as to these 'pro per' creditors, that title be transferred within 30 days of notice thereof." *Id.* at 2:8–11.

RULING

In this case, Debtor presents the court with quite a challenge. Debtor's prior Chapter 13 case was not filed and prosecuted in pro se, but with Debtor represented by the same counsel as in this case. 15-27210; Petition, Dckt. 1. That case was dismissed due to Debtor defaulting in the Plan payments in that case. *Id.*; Notice of Default, Order; Dckts. 56, 59.

In the prior case Debtor paid $13,670.00 into their Plan, of which $3,000 (22%) was paid to Debtor's counsel and $896.61 (6.5%) was paid to the Chapter 13 Trustee. *Id.*; Trustee's Final Report, Dckt. 62 at 2. No monies were disbursed to creditors holding general unsecured claims. *Id.* at 2–3. $9,773.39 was paid to two creditors having secured claims (the Lincoln and the Passat secured claims). *Id.*; Final Report, Dckt. at 3, and Chapter 13 Plan, Dckt. 42 at 3.

The Chapter 13 Trustee's Final Report in the prior case states that no disbursements were made on unsecured claims. *Id.*, Final Report, Dckt. 62 at 2–3.

The Chapter 13 Trustee's Notice of Default filed in the prior case includes a Notice of Receipts. *Id.*, Dckt. 56 at 3–4. The Notice of Receipts shows a $3,600.00 payment on January 12, 2017, which is in addition to the normal January 2017 payment.

Debtor's assertion that the $3,600.00 was disbursed to creditors holding general unsecured claims in the prior case is inaccurate. Reply ¶ 3, Dckt. 90. Other than the Chapter 13 Trustee fees of only $896.61, all of the money went to pay either Debtor's secured claims or Debtor's counsel. 15-27210; Chapter 13 Trustee's Final Report, Dckt. 62 at 2–4.

The Wells Fargo Bank, N.A. claim filed in this case for which the Lincoln is the collateral, Proof of Claim 3, is in the amount of $2,488.94. In the prior bankruptcy case, Wells Fargo Bank, N.A. filed a proof of claim for this same debt, secured by the 2005 Lincoln, with said claim being $4,357.65. 15-27210, Proof of Claim 4.

In the prior case, Debtor's payments were $90.00 per month to Wells Fargo Bank, N.A. In that case, the Chapter 13 Trustee reports that he made $2,324.90 in principal payments to the bank. While in the general magnitude of amount, those do not quite line up but are consistent.

Debtor's Plan proposes to pay wells Fargo Bank, N.A. for a car Debtor claims to have sold. Debtor has taken at least $1,000.00 of the proceeds from the unauthorized sale and diverted them around the Plan. In substance, Debtor is asking creditors to pay off the car loan, have a portion of the proceeds from the unauthorized sale having accelerated the pay down of the obligation on Debtor's other car Debtor is

keeping, and let Debtor keep the extra thousand dollars, diverting all of those monies away from creditors holding general unsecured claims.

Debtor's offer to withhold transferring title until paying more money on his secured claims does not address the ills created by the unauthorized sale and Debtor retaining a portion of the sale proceeds.

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 Martin Ortega and Maria Ortega ("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.

20. **17-28076-E-13** **AMBER HOWELL** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
1-17-18 [15]

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 (*pro se*) on January 17, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Amber Howell ("Debtor") failed to appear at First Meeting of Creditors;

B. Debtor failed to complete Class 1 Checklist and Authorization to Release Information to the Chapter 13 Trustee;

C. Debtor's Plan may fail the Chapter 7 liquidation analysis;

D. Debtor may be unable to make plan payments;

E. Debtor's plan may not be Debtor's best effort;

F. Debtor failed to provide tax returns; and

G. Debtor failed to sign Page 8 on the Voluntary Petition and the Plan.

The Chapter 13 Trustee's objections are well-taken.

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

The plan may not comply with applicable law under 11 U.S.C. § 1325(a)(1). Debtor provides for the cure of mortgage arrears in Section 3.01/Class 1 of the plan but fails to allow for ongoing mortgage payments to be paid by the Chapter 13 Trustee. Debtor was required to provide a complete Class 1 Checklist and Authorization to Release Information to the Chapter 13 Trustee and has not to date.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that there is $99,638 in non-exempt equity in Debtor's residential real property. Debtor lists no unsecured claims. The Chapter 13 Trustee is uncertain all debts have been reported. If there are unsecured claims, the Chapter 13 Trustee believes the Plan may fail the liquidation analysis.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor reports two sources of income, including $1,640 from unemployment and $1,000 from family assistance. Debtor also reports having been unemployed since May 2017. The Chapter 13 Trustee is uncertain the Debtor can afford plan payments where her unemployment benefits will end soon and when Debtor fails to provide supplemental declarations. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a zero percent dividend to unsecured claims, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $435.00. Thus, the court may not approve the Plan.

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

Finally, the Chapter 13 Trustee notes that Debtor failed to sign Page 8 of the Voluntary Petition and the Plan.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

21. **17-27883-E-13** **DENISE ASHLEY** **OBJECTION TO CONFIRMATION OF**
APN-1 **Aubrey Jacobsen** **PLAN BY KIA MOTORS FINANCE**
1-2-18 [24]

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 January 2, 2018. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on February 27, 2018.

Kia Motors Finance ("Creditor") holding a secured claim opposes confirmation of the Plan on several grounds. First, the Chapter 13 Plan values Creditor's secured claim at $11,707.00 while Creditor values it at $15,925.00 based on the high NADA retail value. (Unauthenticated Exhibit C, Dckt. 27.) Creditor has elected not to file a proof of claim in this case, forgoing the provision in the Chapter 13 Plan that states that the amount stated in the proof of claim controls on this point, unless the court enters an order valuing the claim.

Creditor further asserts that the proposed interest rate under the Plan of 5.00% is not reasonable under the principles enunciated in *Till vs. SCS Credit Corp.*, 541 U.S. 465 (2004). Creditor suggests that an upward adjustment up to 3% from the stated 4.25% prime rate is reasonable. The court notes that the Plan already provides a 0.75% premium in the interest rate for Creditor.

The Objection states no grounds upon which the court could find there is any risk to Creditor being paid on its secured claim in this case. As this court has earlier addressed with counsel, here Creditor is protected by the Bankruptcy Code, the payments are made through the Chapter 13 Plan, Debtor cannot "fool with" Creditor's collateral, and the Chapter 13 Trustee is closely monitoring the case in the event of a default.

Creditor offers no evidence as to the amount of its claim. As stated above, Creditor has elected not to file a proof of claim, leaving the court to make this determination based upon the evidence presented by Debtor in the Schedules.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on February 2, 2018. Dckt. 44. The Chapter 13 Trustee agrees that the plan should not be confirmed, and he asserts that the ground that the Plan relies upon an unfiled motion to value.

The Motion to Value has been filed and is now pending before the court. (It was originally filed in an incorrect name for the creditor.) The hearing has been continued to 3:00 p.m. on February 27, 2018, to allow the parties to conduct discovery and address the $4,000 difference in values being asserted by the two parties. In the declaration in support of the Motion to Value, Debtor declined the opportunity to provide the court and Creditor with information concerning the condition of the car and any photographs of the car. Declaration, Dckt. 15.

RULING

With respect to the issue of the amount of Creditor's secured claim, such is the subject of pending litigation in Contested Matter DCN:TAG-1.

As to the interest rate issue, Creditor has not provided the court with any basis for concluding that the proposed 5.00% interest does not adequately protect the interests of Creditor in this 2015 Kia Soul (three model years old). The 0.75% enhancement over the prime rate more than adequately provides for Creditor's interest in its collateral.

The hearing on the Objection to Confirmation is continued to 3:00 p.m. on February 27, 2018, to be conducted in conjunction with the continued hearing on the motion to value the secured claim at issue.

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 Kia Motors Finance ("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 hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on February 27, 2018.

22.	**17-27888-E-13** **DPC-1**	**MEEGAN WILLIAMSON** **Steele Lanphier**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-17-18 [23]**

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 January 17, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan relies upon a a motion to value collateral, and

B. Meegan Williamson ("Debtor") failed to provide tax returns.

The Chapter 13 Trustee's objections are well-taken. A review of the docket shows that a motion to value has been filed, and is set for hearing on March 6, 2018. While that file could be cause to continue the hearing on this Objection, there is an additional, independent ground for denying confirmation.

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

23.	**13-23157-E-13 PGM-1**	**HOSSEIN BAKTVAR AND LALEH MOGHADAM Peter Macaluso**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TRULITE WSG, LLC 1-3-18 [107]**

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2018. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is xxxxxxxxxxxx.

Hossein Baktvar and Laleh Moghadam, Chapter 13 Debtor, ("Debtor") request that the court approve a compromise and settle competing claims and defenses with Trulite WSG, LLC ("Creditor"). The claims and disputes to be resolved by the proposed settlement are related to Proof of Claim No. 23.

Debtor and Creditor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 111):

A. Debtor shall pay to Creditor $15,000.00 in full payment of its claim.

In the Motion, it is stated that the $15,000.00 has already been paid "from the working capital of their business." Motion, p. 2:7–8; Dckt. 107. Debtor's confirmed Chapter 13 Plan is for sixty months. The case having been filed in March 2013, it appears that the Plan is still in full force and effect during this settlement period and payment.

On the Petition, Debtor lists having several "AKAs and DBAs" in which Debtor does business. On Schedule B, Debtor lists having a sole proprietorship only, with no corporations, partnerships, limited liability companies, or other business entities listed as assets. Dckt. 1 at 14. On Schedule I, Debtor lists both debtor and co-debtor as being self-employed at their glass business. *Id.* at 33.

In his declaration, debtor Hossein Baktvar states under penalty of perjury that he has settled this adversary proceeding, prior to court approval, by making a $15,000.00 from monies in his business. Declaration ¶ 2, Dckt. 109. With this settlement, he states that he can then buy more materials in the future. Further, he states that he needed this money to work on future projects, and he "hopes" that he will not need such monies until he has "recouped these funds and/or get a deal on inventory as I paid [reflecting a past payment of the $15,000] him off." *Id.*

Schedule B does not show Debtor having an "extra" $15,000.00 in "working capital" lying around. The Motion and Declaration raise concerns that Debtor actually has $15,000.00 + in additional profits not disclosed to the court. Debtor's Plan, based on Debtor's dire finances committed to making only a 0.00% dividend to creditors holding general unsecured claims. But, Debtor did have enough projected disposable income (based on the financial information provided under penalty of perjury) to make the monthly payment on his Mercedes Benz, residence (a "necessary" $3,437.00 monthly payment), and Debtor's nondischargeable tax obligation to the California EDD. Plan, Dckt. 5.

Dispute to Be Settled

The Motion identifies the dispute being settled to be for Proof of Claim No. 23 filed in this case in the amount of $58,365.26. Proof of Claim No. 23 was filed by Western States Glass Corporation ("Creditor"). It was filed by Creditor's attorney. It is filed in the amount of $58,365.26, for goods sold, and as an unsecured claim.

The Attachments to Proof of Claim No. 23 do not include any list of the goods asserted to be sold to Debtor. Rather, they appear to relate to court costs, interest, process servers, and clerk fees. Proof of Claim No. 23, Attachments 1 and 2. It appears that there are no "goods" that make up the Claim No. 23.

The present Motion is not to approve a compromise with Western States Glass Corporation, the Creditor filing Proof of Claim No. 23 (it being filed under penalty of perjury, the court accepts as truthful the statement by Creditor's counsel that Western States Glass Corporation is the Creditor).

It appears that this settlement actually relates to the Motion for Allowance of an Administrative Expense ("Expense Motion") filed by Trulite WSG, LLC ("Trulite"). Motion, DCN:JPT-1; Dckt. 67. In that Motion, Trulite alleges:

A. Debtor purchased glass from Trulite for Debtor's business operations.

B. These purchases were made after March 8, 2013, the date Debtor commenced the current bankruptcy case.

C. Debtor did not disclose to Trulite that Debtor was operating in a bankruptcy case.

D. The sales of glass to Debtor occurred during the period August 1, 2013 to November 26, 2013.

E. Trulite received a partial payment of $17,652.53 from the general contractor on the project when the glass was used based on Trulite's mechanic's lien. Trulite then computes the remaining amount of its unpaid balance to be $32,579.31 in principal and $3,755.54 in finance charges (18% per annum) as of May 7, 2014. It is asserted that an additional $10,769.92 in finances had accrued as of the filing of the Motion.

F. The sales were actually made to a corporation called Zagros, Inc., which the Expense Motion states was a corporation of Debtor's that had been suspended by the State of California. Trulite originally sued Zagros, Inc. for the debt, and in that case discovered the suspension of the corporation and Debtor's bankruptcy. The state court action against the suspended corporation was dismissed.

Expense Motion, Dckt. 67.

Dismissal of Expense Motion

On December 22, 2017, Trulite filed its dismissal, "for valuable consideration received," of the Expense Motion. Dismissal, Dckt. 103.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant argues that both parties have mutually achieved a settlement and release of the claim. Movant does not actually address their probability of success in any litigation with Settlor.

Difficulties in Collection

Movant argues that there is no difficulty in collection because Movant was able to use working capital from their business to make the settlement payment.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation has been avoided by the settlement.

Paramount Interest of Creditors

Movant argues that the settlement does not affect creditors because this settlement allows them to continue running their business and generating income.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing **----------**.

Consideration of Additional Issues

The court is presented with a difficult situation. Here, Debtor operated its business, obtained product, and did not pay its expenses during the early stages of this case. Debtor obtained the product and appears to have had higher "profits" by not paying its current expenses.

Now, even though Debtor is purporting to fund the Chapter 13 Plan with Debtor's projected disposable income, Debtor has an "extra" $15,000.00 to pay Trulite. The statement that there was $15,000.00 of "working capital" lying around is not adequate.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the circumstances surrounding the creation of this post-petition obligation, and the information concerning the ability of Debtor to have the "extra" $15,000.00 of "working capital" to have paid the settlement before it was approved by the court, the court determines **xxxxxxxxxxxxxxxxxxxxxxxx**.

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

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

The Motion to Approve Compromise filed by Hoessein Baktvar and Laleh Moghadam, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Trulite WSG, LLC ("Settlor") is **xxxxxxxxxxxxx**.

24. 17-27958-E-13 APN-1

CHRISTOPHER/CHAUNDRA HEFFERNAN
Stephen Murphy

OBJECTION TO CONFIRMATION OF PLAN BY SYSTEMS AND SERVICES TECHNOLOGIES, INC.
1-18-18 [17]

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 January 18, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

Systems & Services Technologies, Inc. ("Objector") as the loan servicer for creditor for Medallion Bank ("Creditor"), holding a secured claim (Proof of Claim No. 2) opposes confirmation of the Plan on the basis that the Plan proposes an interest rate for its claim that will not provide it with the present value of its claim. The Objection is stated on several grounds, which are:

A. Creditor has a secured claim in an unstated amount. The collateral for the claim is a 2011 Jayco Jay Select 29L

B. The original obligation was for $18,900.00, for which the interest rate for the financing was 17.95%.

C. Using a NADA Guide, Creditor asserts that the collateral has a value of $14,600.00. Exhibit C, Dckt. 19, which has been authenticated by Dana Dorssom, the "Compliance Officer" for Creditor. Declaration, Dckt. 21.

D. In looking at Exhibit C, the NADA Report actually states that the retail value for such collateral is in the range of $12,100 to $14,600—not just the $14,600 as alleged in the Motion or as stated by Ms. Dorssom under penalty of perjury.

E. In her Declaration, Ms. Dorssom offers no testimony of any obligation being owed to Creditor. (As discussed below, Proof of Claim No. 2 has been filed by Creditor in the amount of $16,601.99.)

F. Objector objects to the Plan stating that the secured claim is in the amount of $13,500.00. (Having filed Proof of Claim in the amount of $16,601.99, Objector and Creditor know that it is the value stated in the proof of claim that controls, not some value stated in the Plan. FN.1.)

G. Objector states that "Secured Creditor's security interest will be severely diminished on collateral which already depreciates at a rapid rate during the normal course of its use." Objection ¶ 4. No evidence is presented of there being such rapid depreciation of a vehicle or trailer home that is now nine model years old.

H. Objector states that it objects to a $250.15 per month payment because "the value of Secured Creditor's security will depreciate at a much higher rate than that at which Secured Creditor will receive adequate protection payments under the Plan." Again, Objector offers no basis for there being such rapid depreciation on this nine model year old trailer home.

I. Objector also asserts that the 4.25% interest rate, which is stated is not adequate to protect Creditor from the risk of non-payment, citing *Till vs. SCS Credit Corp.*, 541 U.S. 465 (2004). Objector does not provide the court with any basis for concluding that there is a risk of non-payment from Debtor who is otherwise presenting a feasible plan for which the payments must be made monthly through the Chapter 13 Trustee.

FN.1. The Chapter 13 Plan to which Objector takes exception clearly states:

> "A. Proofs of Claim
> . . .
> 3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.|
>
> Plan ¶ 3.02, Dckt. 5.
>
> The Objector bases its objection on a grounds that is clearly erroneous raises the specter whether all of the grounds are merely a "form objection," made without regard to the actual facts and grounds relating to the claim and collateral.
> **----------**

Creditor's objections are not well-taken. First, the fact that Debtor has listed in the Plan a $13,500.00 secured claim does not control because Debtor has not filed a motion pursuant to 11 U.S.C. § 506(a) to value the secured claim, the $16,601.09 amount of the secured claim in Proof of Claim No. 2 controls. That is true, at least for this case, notwithstanding Objector and Creditor appearing to waive that provision of the Plan and admitting that the $13,500.00 amount stated by Debtor in the Plan controls.

With a $14,600.00 secured claim, as admitted in the Objection, and assuming a 4.25% interest rate, the monthly payment on Creditor's Class 2 Claim as asserted in the Objection would have to be $270.53 over the sixty months of the Plan (a minor $20 per month difference than using the value listed by Debtor in the Plan, which over the life of the Plan would be only $1,200). With the $4,895.00 monthly plan payment and the claims as filed (with the other filed secured claims coming in at a lower value than stated in the Plan), there does appear to be adequate funding for this increased amount—if Debtor were to elect to forgo an 11 U.S.C. § 506(a) valuation, figuring that Creditor's admitted value of $14,600.00 value is "close enough" and the $1,200 different does not warrant the attorneys' fees and costs in prosecuting a valuation motion. FN.2.

FN.2. Based on Objector's evidence, it appears that Debtor's statement of value at $13,500.00 in the Plan may well have been a good faith estimate, closer to the value than asserted by Objector. Objector provided the court with the showroom ready, highest possible value for a used trailer home. Experience shows that by the time a person is driven to file bankruptcy, his or her vehicles are not in "showroom ready" condition. It appears that Creditor may obtain such showroom ready valuation in light of the economically minor difference in the payment amounts.

Objector next objects to the confirmation of the Plan on the basis that the Plan because it provides for adjusting the interest rate on its claim to 4.25% from the 17.95% originally extracted from Debtor. Though Objector may argue that the 17.95% interest rate was warranted because at the time of the loan Creditor was making a loan that was sure to default because Creditor knew Debtor was in financial extremis, Congress has remedied that with the Bankruptcy Code.

Debtor no longer has creditors picking at the financial flesh remaining on Debtor's financial bones. Creditors are not able to impose exorbitant interest rates as Debtor makes improvident financial decisions. Debtor is now locked into a reasonable payment plan that is financially feasible, subject to the close scrutiny of the Chapter 13 Trustee on a monthly basis. If there is a default, the Chapter 13 Trustee knows immediately. All creditors know immediately.

If there is a default, creditors with secured claims can quickly access this federal court in which the case is pending to obtain relief from the automatic stay. If the process to obtain possession through state court is too cumbersome due to the overwhelming case load in that court, the creditors know that the adversary proceeding process in the bankruptcy court (able to exercise exclusive federal jurisdiction over all property of the debtor as of the commencement of the case and all property of the bankruptcy estate, 11 U.S.C. § 1334(e)) is very swift, the judges in the bankruptcy court having been specially appointed to promptly address such bankruptcy and bankruptcy-related issues.

Objector asserts that the prime rate, to allow for the time value of money, is 4.25%. Objection ¶ 7, Dckt. 17. No evidence is provided to support such a contention. Debtor has proposed a 4.25% interest rate in the Plan. The court may infer that Debtor was proposing the prime rate in the Plan.

In considering the *Till* factors and lack of evidence by Objector of any risk or rapid depreciation for this nine model year old trailer home, and taking into account that Debtor is now not only protected from creditor economic distributions by the Chapter 13 Plan, but is being closely monitored by both the Chapter 13 Trustee and creditors, the 4.25% interest is proper to provide for Creditor's secured claim. The Chapter 13 Plan and the federal court jurisdiction over the collateral provides Creditor additional protection for its interests in the collateral. Debtor cannot move or transfer the collateral without court authorization. If Debtor defaults, it is not just as to creditor, but all claims in this case. To save Debtor's home, Debtor must make the plan payment to the Chapter 13 Trustee, which includes the required payment to Creditor. Creditor is not subject to the risk that Debtor will selectively not pay Creditor and hide the collateral.

Objector and Creditor have not provided the court with a basis to deny confirmation. Creditor has admitted to having a secured claim in the amount of $14,600.00 which the court accepts. The objection to confirmation of the Plan on this basis is overruled. FN.3.

FN.3. The rejection of this Objection may be but a Pyrrhic victory for Debtor, given the grounds for Objecting presented by the Chapter 13 Trustee.

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 Systems & Services Technologies, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled.

25.	**17-27958-E-13** **DPC-1**	**CHRISTOPHER/CHAUNDRA HEFFERNAN** **Stephen Murphy**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-17-18 [13]**

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 January 17, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Christopher Heffernan and Chaundra Heffernan ("Debtor") may not have provided for all secured claims in Class 1;

B. Debtor's stated attorney's fees are conflicting;

C. Debtor has additional unreported expenses; and

C. Debtor listed an automobile and travel trailer incorrectly as Non-Purchase Money Security Interest.

The Chapter 13 Trustee's objections are well-taken.

Objection Grounds 1

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, Debtor's Plan provides for Freedom Mortgage Corp. in Class 1 of the Plan. On Schedule D, Debtor list Freedom Mortgage as claim 2.2 for $257,716 and claim 2.3 for $7,450. The Chapter 13Trustee is unable to determine if both claims are provided in Class 1 of the Plan or if both claims shall be paid through the Plan.

Freedom Mortgage Corp. has clarified this issue, filing its claim for $257,563.56, which amount controls unless the court issues an order valuing the secured claim at a different amount. Proof of Claim 11; Plan ¶ 3.02, Dckt. 5. Proof of Claim 11 states that there is a $7,951.04 arrearage. The Class 1 treatment for the Freedom Mortgage Corp claim is structured to pay a pre-petition arrearage of $14,517.00, over stating the arrearage amount. The Plan adequately provides for the claim of Freedom Mortgage Corp.

Objection Grounds 2

The Plan indicates attorney's fees totaling $5,500, but the information conflicts with the Disclosure of Compensation of Attorney for Debtor form, which reports fees totaling $6,000.

The Plan provides for the payment of $2,000.00 of attorney's fees through the Plan. It appears that Debtor and counsel may have agreed to reduce the payment of the remaining balance to make the Plan work.

Objection Grounds 3

At the First Meeting of Creditors, Debtor Christopher Heffernan admitted to having a $1,000 per month expense not listed on Schedule J. Because the expense is not reported on Schedule J and because Debtors' disposable income on the document is $4,905, and the Plan payment is $4,895, it appears the Debtor does not have sufficient income to fund the plan.

Debtor provided for payment of two secured claims in Class 2B, a 2013 Honda Pilot and 2014 Jayco travel trailer. The claims are listed as non-purchase money security interests. Debtor indicated both claims are original purchase agreements. Therefore, Debtor incorrectly claimed these vehicle as Non-Purchase Money Security Interest, when these claims are entitled to Purchase Money Security Interest payments prior to confirmation.

With respect to the claim secured by the Honda Pilot, Proof of Claim No. 7 for the obligation secured by that vehicle has been withdrawn. January 24, 2018 filed Notice of Withdrawal of Claim. The

Creditor having affirmatively withdrawing its claim and informing the court there is no secured claim to be paid.

As to the claim of Medallion Bank secured by the Jayco trailer, Proof of Claim 2, in its Objection to Confirmation the Bank has made an admission that its secured claim is $14,600.00, higher than the amount stated in the Plan but less than the amount stated in Proof of Claim 2. In the order confirming the Plan, the court can authorize the Chapter 13 Trustee to immediately make any pre-confirmation disbursements to Medallion Bank for its purchase money claim.

Finally, the additional $1,000.00 per month expense is for child support to debtor Christopher Heffernan's former spouse. In looking at Debtor's expenses shown on Schedule J, there does not appear to be any "fat" in the budget to cover this expense. In fact, such budget looks unrealistically lean. For two adults and four children (ages 12 to 20), Debtor lists a monthly food expense of only $790, transportation expense of only $350, clothing expense of only $50, and no payment of any state, federal, or self-employment taxes on Debtor's monthly net income. Schedules I and J, Dckt. 1 at 33–36.

It is on the final objection that Debtor's plan flounders. In considering this point, there are further feasibility issues that arise when considering the expense information (and lack of any tax payment information).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed. FN.1.

FN.1. Though the court found ways to address the various objections raised by the Chapter 13 Trustee, that does not diminish the value of such objections. First, all were valid grounds that had to be addressed by the parties and court. Second, even if overruled, they demonstrate the close scrutiny that the Chapter 13 Trustee applies to these cases and that confirmation is not merely a perfunctory process if the debtor is able to slip it by creditors. As this court has commented before, the U.S. Supreme Court in *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), has made it clear that the court is to grant relief to a party only when it is warranted on the facts and the law.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

26. **17-27368-E-13** **ROCHELLE WARD** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Nima Vokshori** **PLAN BY DAVID P. CUSICK**
1-10-18 [20]

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 January 10, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it relies upon an unfiled motion to value.

The Chapter 13 Trustee's objection is well-taken. Rochelle Ward ("Debtor") may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Lobel Financial Corp. Debtor has failed to file a Motion to Value the Secured Claim of Lobel Financial Corp., however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Two subsequent Amended Plans have been filed since this Objection was filed. *See* Dckt. 24 (First Amended Plan filed on January 31, 2018), 27 (Second Amended Plan filed on February 5, 2018). Neither of those plans have been set for a confirmation hearing, however.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

27. 17-27692-E-13 DPC-1 | **ELIZABETH MANZO**
Peter Cianchetta | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
1-10-18 [29]

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 on January 10, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxx.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that the First Meeting of Creditors was held, but Debtor was not fully examined. The Chapter 13 Trustee notes that there are five real estate properties transferred to a self-settlement trust or similar device on March 30, 2016, as part of a separation.

The Chapter 13 Trustee asserts that the property transfers need to either be reversed, or the statute of limitations needs to be preserved for a plan to be confirmable in this case. The Chapter 13 Trustee asserts that at this stage, Elizabeth Manzo ("Debtor") may not be able to make plan payments even though the plan is proposed as a 100% plan. Additionally, the Chapter 13 Trustee cannot determine that the Plan and case have been filed in good faith.

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on February 5, 2018. Dckt. 39. The Chapter 13 Trustee states that the Continued Meeting of Creditors was held on February 1, 2018. At that meeting, Debtor reported that her spouse had filed Chapter 13 Case No. 18-20290. Based upon the Schedule A/B in that case, the Chapter 13 Trustee's good faith objection remains. The Chapter 13 Trustee cannot determine that the Plan and case have been filed in good faith.

RULING

At the hearing, the Chapter 13 Trustee reported that he cannot determine if the Plan or this case have been filed in good faith because xxxxxxxxxxxxx.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is xxxxxxxxxxx.

28. **17-27692-E-13** **ELIZABETH MANZO** **OBJECTION TO CONFIRMATION OF PLAN BY ESTEBAN CARDIEL**
FWP-1 **Peter Cianchetta** **1-11-18 [33]**

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, and Chapter 13 Trustee, on January 11, 2018. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Esteban Cardiel ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it does not provide for his secured claim.

Creditor's objection is well-taken. Creditor asserts a claim of $111,469.64 in this case. Debtor's Schedule D and Plan do not include the claim.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

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 Esteban Cardiel ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

29. **14-29494-E-13** **MARCELO BAUTISTA** **MOTION TO AVOID LIEN OF**
SDB-2 **Scott de Bie** **PATELCO CREDIT UNION**
12-29-17 [46]

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—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 December 29, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Lien is denied without prejudice.

This Motion requests an order avoiding the lien of Patelco Credit Union ("Creditor") against property of Marcelo Bautista ("Debtor") commonly known as 967 Griffin Drive, Vallejo, California ("Property").

Debtor argues that Creditor's lien was subject to the court's order on a motion to value that established Creditor's secured claim at $0.00, with the balance treated as a general unsecured claim. Then, Debtor argues that completion of the plan and certification that the estate has been fully administered renders Creditor's claim satisfied, thus releasing the lien.

Debtor seeks an order declaring that Creditor's lien has been satisfied and is released.

APPLICABLE LAW

Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. *See* Declaratory Relief Act, 28 U.S.C. § 2201. FN.1. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2)

a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

FN.1. 28 U.S.C. §2201,

> § 2201. Creation of remedy
>
> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
>
> (b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief when there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

> As discussed in Moore's Federal Practice, Vol. 12, § 57.04[3] (emphasis added):
>
> "Traditionally, courts were permitted to act only when a party became entitled to coercive relief in the form of a judgment for damages or injunctive relief. However, declaratory relief permits an early adjudication of the rights and legal remedies involved in a dispute, regardless of whether claims for damages or injunctive relief have arisen or would otherwise need to be tried in the future. This remedy permits parties to minimize the accrual of avoidable losses and damages, and affords a party threatened with a lawsuit an opportunity to seek an adjudication without waiting for the opposition to institute proceedings. Stated differently, declaratory judgment relief creates means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached a stage at which either party may seek a coercive remedy or in which a party entitled to a coercive remedy fails to sue. However, **declaratory relief is inappropriate to adjudicate past conduct, such as when the damages have already accrued.** Stated differently, a **declaratory judgment is a form of relief, based on completed or threatened actions, that**

operates to adjust the rights of the parties when the award of a prospective coercive judgment is inappropriate for any number of reasons."

RULING

A request for declaratory relief must be sought as part of an adversary proceeding, not as part of a contested matter. FED. R. BANKR. P. 9014. Debtor has not properly sought the requested relief. Additionally, Debtor has not presented an actual controversy to the court upon which it could grant relief. Debtor has not presented that Creditor is somehow acting in violation of the court's order on a motion to value or is somehow trying to collect on its debt even though the Estate has been administered.

No points and authorities has been filed providing the court with a legal basis for reaching out and affirmatively avoiding an otherwise valid lien. The Motion does not make reference to any statutory or case law authority for such an affirmative act destroying a creditor's property right. The Motion does make reference to Federal Rule of Bankruptcy Procedure 5009(d), which provides:

> "(d) Order declaring lien satisfied. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint."

The language of this *Rule* states that if: (1) a claim, (2) that was secured by property of the estate, (3) is subject to a lien under nonbankruptcy law, then (4) the debtor may request, (5) an order declaring that the secured claim has been satisfied, (6) and the lien released, (7) under the terms of a secured plan. The terminology used in this *Rule* (though apparently well intentioned; FN.1.) is somewhat confusing and at odds with both the Plan and applicable law.

FN.1. The Notes of the Rules Advisory Committee for the 2017 amendment to add this paragraph (d) state:

> "Subdivision (d) is added to provide a procedure by which a debtor in a chapter 12 or chapter 13 case may request an order declaring a secured claim satisfied and a lien released under the terms of a confirmed plan. A debtor may need documentation for title purposes of the elimination of a second mortgage or other lien that was secured by property of the estate. Although requests for such orders are likely to be made at the time the case is being closed, the rule does not prohibit a request at another time if the lien has been released and any other requirements for entry of the order have been met."

It appears the Rules Committee was attempting to provide a procedure for declaratory relief in the Chapter 13 completed plan "lien strip" situation. That *Rule* appears to be premised on a plan which, in and of itself,

releases an otherwise valid lien by operation of the plan itself, not merely addressing the payment of the secured claim.

The *Rule* appears to apply to a lien on a creditor's secured claim. (The odd "a claim...secured by property...subject to a lien" language.) Then, the lien, which is on the claim secured by property, must have been "released" by the Chapter 12 or 13 plan.

Debtor has not shown that any lien (whether the lien on the claim secured by property or the lien which is the security for the claim) has been *released* by the Chapter 13 Plan. The Chapter 13 Plan in this case provides that with respect to the Patelco Class 2 secured claim,

> "(d) Lien retention. Each Class 2 creditor shall retain its existing lien until completion of the plan and, unless not required by Bankruptcy Court, entry of Debtor's discharge."

Plan ¶ 2.09(d). While the plan term states the minimum time that a Class 2 creditor's claim will retain its lien ("shall"), it does not state any affirmative *release* of any such property right of the creditor or the legal basis for such *release* of a property right.

What Debtor appears to seek is a court order stating that its prior order actually has the effect that it stated it had. The court does not issue such redundant orders. The Motion is denied without prejudice. FN.2.

FN.2. Debtor may cry that it is unfair that Debtor incur the substantial legal fees and expenses of a quiet title action. Here, the alleged offending creditor is Patelco Credit Union, a very well know and apparently solvent credit union. Most likely, both the note and deed of trust have attorney's fees provisions for litigation over the rights and obligations of the parties—including reconveying the deed of trust when there is longer an obligation to be secured. Debtor may also find statutory provisions under the California Civil Code for statutory damages and attorney's fees when a creditor fails to reconvey a deed of trust. Debtor may also review this court's prior ruling in *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013) addressing this issue, including footnote 18 which includes the following observations,

> "A consumer debtor and the court do not serve as a "for free title department" processing reconveyances for a creditor. Prevailing plaintiffs may seek recovery of their attorneys' fees and expenses, as this Plaintiff has, for the reasonable attorneys' fees and costs to clear a cloud on title following completion of a confirmed Chapter 13 Plan. Such litigation requires an experienced, sophisticated attorney who understands the interplay between state real property law and federal bankruptcy law to effectively prosecute an action to enforce the Plaintiff's rights obtained through completion of the Chapter 13 Plan. Such attorneys' fees are not inexpensive, as the Plaintiff must go through multiple steps in not only filing and properly serving the Complaint, and having the default entered, but prosecuting a motion providing the

court with the sufficient legal and evidentiary basis for entry of a judgment in the litigation."

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

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

The Motion to Avoid Lien pursuant to filed by Marcelo Bautista ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

30. 13-30998-E-13 MET-7 | **RALPH SETTEMBRINO** **Mary Ellen Terranella** | **MOTION TO MODIFY PLAN** **1-2-18 [147]**

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 2, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxxxxxxx.

Ralph Settembrino ("Debtor") seeks confirmation of the Modified Plan because his income temporarily decreased in the last quarter of 2017 due to the fall fires. Dckt. 150. The Modified Plan provides for plan payments of $2,201.19 per month for fifty-two months and $2,628.74 per month for eight months, with the delinquency of $8,154.29 to be paid incrementally or with a lump sum payment prior to the end of the sixty-month plan term. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 30, 2018. Dckt. 158. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, the Chapter 13 Trustee is uncertain whether the delinquency of $8,154.29 will be paid incrementally over the remaining eight months or in a lump sum. Debtor has not proposed specific dates or amounts when due. Additionally, Debtor's Schedule I does not support being able to pay the delinquency.

Secondly, the proposed plan payments for the remaining eight months totaling $29,184.21 does not work without the lump sum payment. Proposed plan payments are short $2,589.76 of the amount needed to complete the Plan.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxx**.

The Modified Plan **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 Modified Chapter 13 Plan filed by Ralph Settembrino ("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 **xxxxxxxxxxxxxx**.

FINAL RULINGS

31.	**14-27114-E-13 MJD-2**	**SHAUN/AMANDA STAUDINGER Matthew DeCaminada**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF SAGARIA LAW, P.C. FOR MATTHEW J. DECAMINADA, DEBTORS' ATTORNEY 1-5-18 [97]**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

Sagaria Law, P.C., the Attorney ("Applicant") for Shaun Staudinger and Amanda Staudinger, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case. FN.1.

FN.1. The Motion identifies Applicant as Ssagaria Law, P.C., instead of as Sagaria Law, P.C. The court treats the typo as a mere scrivener's error that does not impact the court's ability to rule on the Motion.

Fees are requested for the period May 5, 2015, through December 4, 2017. Applicant requests fees in the amount of $1,000.00, reduced from $2,370.00.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on January 26, 2018. Dckt. 106. The Chapter 13 Trustee does not oppose fees for responding to two motions to dismiss and for filing two motions to modify.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's for the Estate include defending motions to dismiss and prosecuting confirmation of a modified plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims

filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES REQUESTED

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

Post-Confirmation Work: Applicant spent 10.15 hours in this category. Applicant responded to two motions to dismiss this case, communicated with Client and with the Chapter 13 Trustee, and filed two motions to modify the Plan in this case.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Matthew DeCaminada, attorney	3.75	$300.00	$1,125.00
Scott Sagaria, attorney	1.00	$300.00	$300.00
Garrett Lenox, paralegal	5.40	$175.00	$945.00
Total Fees for Period of Application			$2,370.00

FEES ALLOWED

The unique facts surrounding the case, including post-confirmation prosecution of motions to dismiss and motions to modify the Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the reduced amount of $1,000.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,000.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Sagaria Law, P.C. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Sagaria Law, P.C. is allowed the following fees and expenses as a professional of the Estate:

Sagaria Law, P.C., Professional Employed by Shaun Staudinger and Amanda Staudinger ("Debtor")

Fees in the amount of $1,000.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

32. 16-22214-E-13 SDB-2 | **LYDIA RAMIREZ** **Scott de Bie** | **MOTION TO MODIFY PLAN** **12-29-17 [45]**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2017. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Lydia Ramirez ("Debtor") has filed evidence in support of confirmation. David Cusick (the Chapter 13 Trustee") filed a

Response indicating non-opposition on January 30, 2018. Dckt. 53. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Lydia Ramirez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on December 29, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

33. 17-26420-E-13 MARK TURPIN — MOTION TO CONFIRM PLAN
MMM-1 Mohammad Mokarram — 12-14-17 [21]

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 14, 2017. By the court's calculation, 61 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Mark Turpin ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on January 29, 2018. Dckt. 28. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Mark Turpin ("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 14, 2017, is confirmed. Debtor's Counsel shall

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

34. 15-28322-E-13 MJD-2 | **LISA TOLBERT** **Matthew DeCaminada** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SAGARIA LAW, P.C. FOR MATTHEW J. DECAMINADA, DEBTOR'S ATTORNEY(S) 1-8-18 [134]**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 8, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

Sagaria Law, P.C., the Attorney ("Applicant") for Lisa Tolbert, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case. FN.1.

FN.1. The Motion identifies Applicant as Ssagaria Law, P.C., instead of as Sagaria Law, P.C. The court treats the typo as a mere scrivener's error that does not impact the court's ability to rule on the Motion.

Fees are requested for the period August 9, 2016, through December 18, 2017. Applicant requests fees in the amount of $1,000.00, reduced from $1,412.50.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on January 26, 2018. Dckt. 139. The Chapter 13 Trustee does not oppose the award of additional fees in this case for defending two motions to dismiss and for presenting to motion to modify.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's for the Estate include defending against two motions to dismiss and presenting to motions to modify. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims

filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES REQUESTED

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

Post-Confirmation Work: Applicant spent 5.00 hours in this category. Applicant opposed two motions to dismiss, prepared amended schedules, and prosecuted two plan modifications.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Matthew DeCaminada, attorney	4.30	$300.00	$1,290.00
Garrett Lenox, paralegal	0.70	$175.00	$122.50
Total Fees for Period of Application			$1,412.50

FEES ALLOWED

The unique facts surrounding the case, including opposing motions to dismiss and filing modified plans, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,000.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,000.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Sagaria Law, P.C. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Sagaria Law, P.C. is allowed the following fees and expenses as a professional of the Estate:
>
> Sagaria Law, P.C., Professional Employed by Lisa Tolbert ("Debtor")
>
> Fees in the amount of $1,000.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

35. 17-28028-E-13 DPC-1 | **NDILE NJENGE** **Randall Ensminger** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **1-5-18 [28]**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 5, 2018. By the court's calculation, 39 days' notice was provided. 28 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.

David Cusick, the Chapter 13 Trustee, ("Objector") filed the instant Objection to Ndile Njenge's ("Debtor") discharge on January 5, 2018. Dckt. 28.

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 filed in the last four years.

Debtor filed a Chapter 7 bankruptcy case on June 30, 2015. Case No. 15-25260. Debtor received a discharge on October 13, 2015. Case No. 15-25260, Dckt. 20.

The instant case was filed under Chapter 13 on December 11, 2017.

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 October 13, 2015, which is less than four years preceding the date of the filing of the instant case. Case No. 15-25260, Dckt. 20. 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. 17-28028), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick ("[the Chapter 13 Trustee") 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. 17-28028, the case shall be closed without the entry of a discharge.

36. 17-27449-E-13 DPC-1 | **BONITA MELENDEZ** / **Rick Morin** | **OBJECTION TO DEBTORS 11 U.S.C. SEC. 1328 CERTIFICATION BY DAVID P. CUSICK**
12-21-17 [14]

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 21, 2017. By the court's calculation, 54 days' notice was provided. 28 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.

David Cusick, the Chapter 13 Trustee, ("Objector") filed the instant Objection to Bonita Melendez's ("Debtor") discharge on December 21, 2017. Dckt. 14.

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on January 12, 2018. Dckt. 32. Debtor does not oppose the Objection.

DISCUSSION

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 August 8, 2014. Case No. 14-28030. Debtor received a discharge on March 23, 2016. Case No. 14-28030, Dckt. 94.

The instant case was filed under Chapter 13 on November 10, 2017.

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 March 23, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 14-28030, Dckt. 94. 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. 17-27449), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick ("the Chapter 13 Trustee") 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. 17-27449, the case shall be closed without the entry of a discharge.

37. **17-27250-E-13** **VIKTOR KRIVOSHEY** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-2 **Pro Se** **12-21-17 [37]**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

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

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

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

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

38. **17-24875-E-13** **LINDA VANPELT** **MOTION TO VALUE COLLATERAL OF**
PGM-2 **Peter Macaluso** **WELLS FARGO BANK, N.A.**
1-10-18 [73]

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 10, 2018. By the court's calculation, 34 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 Wells Fargo Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Linda VanPelt ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7824 English Hills Road, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $500,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 30, 2018. Dckt. 90. The Chapter 13 Trustee notes that Wells Fargo Home Mortgage is listed on Schedule D as being secured in the amount of $56,191.68 on a second mortgage. The Plan values that claim at $0.00.

The Chapter 13 Trustee notes that HSBC Bank USA, National Association as Trustee filed Proof of Claim No. 5 for $956,617.00. He also notes that SunTrust Bank is listed as holding a disputed line of credit against the Property for $165,025.35.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $956,617.00. Creditor's second deed of trust secures a claim with a balance of approximately $56,191.68. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Linda VanPelt ("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 Wells Fargo Bank, N.A. ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 7824 English Hills Road, Vacaville, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $500,000.00 and is encumbered by a senior lien securing a claim in the amount of $956,617.00, which exceeds the value of the Property that is subject to Creditor's lien.

39. 17-24875-E-13 PGM-3 | **LINDA VANPELT** **Peter Macaluso** | **MOTION TO VALUE COLLATERAL OF SUNTRUST BANK** **1-10-18 [79]**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 10, 2018. By the court's calculation, 34 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 Suntrust Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Linda VanPelt ("Debtor") to value the secured claim of Suntrust Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7824 English Hills Road, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $500,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 30, 2018. Dckt. 87. The Chapter 13 Trustee notes that Creditor's claim is listed on Schedule D in the amount of $165,025.35. Schedule D also lists Wells Fargo Home Mortgage as holding a claim for $242,242.48 for a first mortgage.

He notes that HSBC Bank USA, National Association as Trustee filed Proof of Claim No. 5 for $956,617.00.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $956,617.00. Creditor's third deed of trust secures a claim with a balance of approximately $165,751.35. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Linda VanPelt ("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 Suntrust Bank ("Creditor") secured by a third in priority deed of trust recorded against the real property commonly known as 7824 English Hills Road, Vacaville, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $500,000.00 and is encumbered by a senior lien securing a claim in the amount of $956,617.00, which exceeds the value of the Property that is subject to Creditor's lien.

40. **17-27477-E-13** **LORI TYLER** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
1-10-18 [30]

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.

41. 17-27988-E-13 DPC-1 | **SHERRY EVANS** **Chad Johnson** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-17-18 [16]**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 17, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on February 27, 2018.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Sherry Evans ("Debtor") failed to appear at the First Meeting of Creditors. The meeting has been continued to February 8, 2018.

The Chapter 13 Trustee reports that Debtor's counsel had a conflict and filed a Notice of Continued Meeting of Creditors. The Chapter 13 Trustee requests that the court continue this matter to 3:00 p.m. on February 27, 2018, to allow time to examine Debtor.

Sufficient grounds have been shown that this matter should be continued so that the Chapter 13 Trustee may examine Debtor at the Continued Meeting of Creditors. The hearing on this matter is continued to 3:00 p.m. on February 27, 2018.

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

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on February 27, 2018.

42. 17-27997-E-13 DPC-1 | **SHANNON BREEDLOVE** **Paul Bains** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-16-18 [19]**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 16, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on February 27, 2018.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Shannon Breedlove ("Debtor") failed to appear at First Meeting of Creditors. The meeting has been continued to February 8, 2018.

The Chapter 13 Trustee states that Debtor had a calendar conflict and has rescheduled the meeting. The Chapter 13 Trustee requests that this hearing be continued to 3:00 p.m. on February 27, 2018, to allow him time to examine Debtor.

Sufficient grounds have been presented to continue the hearing on this matter. The hearing is continued to 3:00 p.m. on February 27, 2018, to allow Debtor to appear at the continued meeting and be examined by the Chapter 13 Trustee.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on February 27, 2018.