

- A. Debtor has not filed all required tax returns.
- B. The Debtor's Plan fails Chapter 7 Liquidation Analysis.
- C. The Plan may unfairly discriminate as to general unsecured creditors.
- D. Debtor's first Plan payment of \$2,400.00 will be due on February 25, 2021, which is before the hearing on this objection.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2018 and 2019 tax years have not been filed still. The meeting has been continued to April 22, 2021 at 1:00 p.m., in order to give Debtor sufficient time to file the required returns. Dckt. 22 at 1:28. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals \$183,228.00 and Debtor is proposing a 0% dividend to unsecured creditors. Dckt. 2 at p. 5 § 3.147. According to Trustee, non-exempt assets listed in the Schedules include:

- ◆ Debtor's residence, \$76,528; property in Napa, California valued at \$100,000;
- ◆ A 2000 Chevrolet valued at \$450 (Schedule A/B schedules it at \$1,000);
- ◆ A 2004 Honda valued at \$1,000;
- ◆ A 1994 Toyota valued at \$250; trailers valued at \$1,000;
- ◆ US Savings Bond valued at \$2,500; and
- ◆ 2019/2020 tax refunds in the amount of \$1,500.

Dckt. 1, at 11-16.

Unfair Discrimination Against Unsecured Claims

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(3). Debtor proposes to pay 0.00% to unsecured claims; however, Debtor proposes to pay the unsecured claim of Frank Accettola outside the Plan. Trustee asserts that Debtor

admitted at the First Meeting of Creditors this creditor is his uncle, and the debt is a family loan. Cusick Declaration, Dckt. 24, ¶ 9.

Plan Payment Due Before Hearing on Motion to Confirm Plan

Debtor's first Plan payment of \$2,400.00 will be due on February 25, 2021, which is before the hearing on this objection.

At the hearing the Trustee confirmed the Debtor is current and requested that the matter be continued so that the First Meeting may be concluded and the tax return issue resolved.

Trustee's Status Report

On April 23, 2021 Trustee filed a Status Report informing the court that the meeting of creditors has been concluded and that Trustee's Objection has been resolved. Dckt. 30. Trustee explains that the tax return issue has been resolved; Debtor has agreed that allowed general unsecured claim will be paid 100%, and although Debtor will be paying creditor Frank Accetola this is no longer unfair discrimination as general unsecured claims are to be paid 100%. Dckt. 30. Trustee also states that Debtor has been making payments and that although the plan payment must be increased to \$2,488.79, Trustee believes that Debtor will be able to cure any deficiency within a reasonable time. *Id.*

Regarding the increase of the plan payment, at the hearing Debtor **xxxxxxx**

Debtor having addressed Trustee's concerns, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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 Objection to Confirmation 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 is overruled, and Dominic John Accetola's ("Debtor") Chapter 13 Plan filed on January 1, 2021, as amended at the hearing to increase the monthly plan payment to **xxxxxxx** beginning with the **xxxxxxx**, 2021 payment, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 12, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

Willie Jean Norman ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-25587-E-13C) was dismissed on March 3, 2021, after becoming delinquent due to Debtor's employment being impacted by COVID-19. *See* Order, Bankr. E.D. Cal. No. 19-25587-E-13C, Dckt. 77, March 3, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he was working for a staffing agency and his employment was negatively impacted by COVID-19.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by Willie Jean Norman (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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 February 26, 2021. By the court's calculation, 60 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Demetrius Bellamy ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for:

1. Payments of \$2,950.00 for months 1 through 2,
2. Payments of \$3,000.00 for months 3 through 4,
3. Payment of \$3,100.00 for month 5,
4. Payments of \$0.00 for months 6 through 7,
5. Payments of \$3,200.00 for months 8 through 60,
6. a 100% dividend to unsecured claims totaling \$4,297.43.

Second Amended Plan, Dckt. 49. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on April 13, 2021. Dckt. 57. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor unfairly discriminates against unsecured claims, and
- B. It is unclear if Debtor has a loan modification agreement.
- C. Debtor has not filed amended Schedules I and J to reflect Debtor’s current income and expenses.

DISCUSSION

Unfair Discrimination to Unsecured Claims

Trustee opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes a 100% dividend to class 7 unsecured claims while directly handling deferred student loan debt pursuant to Class 6 of the plan. However, the nonstandard provisions of the Plan indicate that Debtor is to make payments directly to Educational Credit Management Corp. for a student loan that totals approximately \$24,135.23 according to Proof of Claim 3-2. Debtor has offered no evidence that the debt is in deferment or that the creditor has agreed to the treatment.

Debtor filed a Reply on April 19, 2021. Dckt. 60. Debtor argues that the discrimination has a reasonable basis because first, federal student loan collection has been paused pursuant to the Executive Order of President Biden and the Department of Education through at least September 30, 2021; and the student loan creditor’s (ECMC) own filed claim states that collection is “suspended.” Debtor contends that without this reasonable discrimination Debtor would not be able to complete the Chapter 13.

While in temporary deferment, Debtor’s counsel does not show how or why this creditor can be excluded from the plan and payments. The proposed Plan does provide for a 100% dividend to all other creditors holding general unsecured claims. Thus, the creditors holding general unsecured claims in this case are not being prejudiced (except for not being paid interest over the repayment through the Plan) by having the student loan being paid by the Debtor outside the Plan.

Debtor has only (\$4,297.43) in general unsecured claims. As reported by the Trustee, Debtor has paid \$15,000 into the case as of February 2, 2021. Mtn. to Dismiss, Dckt. 40. This is consistent with the amounts to be paid by Debtor under the Second Amended Plan for the period of Months 1 through 7.

Under the terms of the prior proposed Plan (Dckt. 9), the proposed First Amended Plan (Dckt. 31), and now the Second Amended Plan before the court, the only persons to be paid through the Plan are:

Debtor’s Counsel.....(\$3,500)

Chapter 13 Trustee Fees.....10% of Plan Payment

Class 1 Creditor Carrington Mtg.

Residence Secured Claim

Current Post-Petition Payment

Arrearage Cure.....(\$1,094.57) (Monthly)

Current Post-Petition Payment.....(\$1,543.85) (Monthly)

General Unsecured Claims.....(\$4,297.43) (Gen. Unsecured Claims Filed)

Under the terms of the second Amended Plan, from the \$15,000 paid through month 7 of the Plan, the required payments are:

Chapter 13 Trustee Fees.....(\$1,500)

Class 1 Seven Monthly Payments For

Current Post-Petition Payment.....(\$10,806.95)

Arrearage Cure.....(\$ 7,661.99)

Total Required Payments.....(\$19,968.94)

Plan Payments Made.....(\$15,000.00)

Over/(Under) Funding of Plan.....(\$4,968.94)

Debtor's Plan then provides for monthly payments of \$3,200 a month for Months 8 through 60 of the Plan. For the payments as required under the Plan, there would be the following amount "leftover" each month for cure of the (\$4,968.94) shortfall, Debtor's counsel's (\$3,500) in fees, and the (\$4,297.43) in general (non-student loan) unsecured claims.

Monthly Plan Payment.....\$3,200.00

Chapter 13 Trustee Fees.....(\$ 320.00)

Class 1 Secured Claim

Current Monthly Payment...(\$1,543.85)

Arrearage Cure.....(\$1,094.57)

"Leftover Amount" for.....\$241.58

Post-Petition Arrearage Cure

Counsel Fees

General Unsecured Claims

The \$241.58 a month for 43 months totals \$10,384.94, which would be applied to the post-petition arrearage, Debtor counsel fees, and general unsecured claims which total (\$12,766.37), leaving the plan approximately (\$2,500) underfunded.

Loan Modification

Trustee is unclear as to the loan modification referred to in this proposed plan.

In the Reply Debtor explains that there is no recent loan modification. But that the plan refers to the 2014 loan modification agreement that had one last interest rate step-up to 4.5% in January 2021.

Form 122C

Trustee asserts that the Debtor has failed to amend Form 122C for the additional income that was not factored in as part of the income in the Means Test. Trustee is referring to his previous Opposition to Debtor's First Amended Plan. There, Trustee asserted that Debtor had failed to include the \$300 per week he was receiving as COVID-19 stimulus money.

Debtor asserts the definition of "current monthly income," excludes the stimulus money received. Debtor turns the court to the following language "Payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID- 19)." 11 U.S.C. § 101 10 (B) (ii) (V).

As to the request that Debtor should file "Amended" Schedules to disclose current income and expenses, an "amended" schedule would relate back to and correct an error in the original or prior schedule filed. Here, it appears that Trustee is requesting that Supplemental Schedules be filed to update for changes in employment and expenses.

In responding to this part of the Opposition, Debtor's counsel argues that "Counsel for Debtor is not aware of any amendment needed with respect to Debtor's initially filed Form 122C." That addresses the legal issue of what is "current monthly income." But the Debtor does not address in a declaration whether any changes have occurred in either income or expenses.

Amended Schedule I filed on February 26, 2021 (Dckt. 52) does include \$3,466.67 in gross monthly wages, a VA Disability Benefit of \$1,097.00, Room Rent of \$500, and a Family Contribution of \$1,000.00 which Debtor uses to compute his ability to perform the Plan.

In his Declaration, Debtor testifies that with the COVID-10 lay-offs he lost his job on March 17, 2020 (which pre-dates the July 13, 2020 filing of this case), but has now obtained full-time employment as a customer services agent, earning \$20 an hour. Declaration, ¶ 3; Dckt. 50. The Declaration makes reference to an attachment, but no exhibits were filed in support of the Motion and nothing is attached to the Declaration.

Since Debtor's finances have dramatically changed with his finding of new post-petition employment, the filing of a Supplemental Schedule I is proper, and necessary.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Demetrius Bellamy (“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.

4. [21-20245-E-13](#)
[JGD-5](#)
4 thru 5

AMY MCCLELLAN
John Downing

**MOTION TO VALUE COLLATERAL OF
HUDSON & KEYES LLC**
4-13-21 [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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on April 13, 2021. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

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

The Motion to Value filed by Amy Mary McClellan (“Debtor”) to value the secured claim of Hudson & Keyes LLC, for which Collect Access, LLC is the assignee of record (“Creditor”), is accompanied by Debtor’s declaration. Declaration, Dckt. 63. Debtor is the owner of the subject real property commonly known as 2132 Pine Street, Quincy, California (“Property”). Debtor seeks to value the Property at a fair market value of \$157,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is

evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority deed of trust secures a claim with a balance of approximately \$82,779.00. Amended Schedule D, Dckt. 29. Debtor claimed an exemption in the Property pursuant to 11 U.S.C. §704.030 in the amount of \$100,000, which exempts any equity in the Residence. Dckt. 53. Creditor's judgment lien secures a judgment with a balance of approximately \$25,660.90. Dckt. 64. Therefore, Creditor's claim secured by a judgment lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, 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 Amy Mary McClellan ("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 Hudson & Keyes LLC, for which Collect Access, LLC is the assignee of record (“Creditor”) secured by a judgment lien recorded against the real property commonly known as 2132 Pine Street, Quincy, 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 \$157,000 and is encumbered by a senior lien securing a claim in the amount of \$82,779, and Debtor has claimed an exemption in the Property in the amount of \$100,000, which exceeds the value of the Property that is subject to Creditor’s lien.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on April 13, 2021. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

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

The Motion to Value filed by Amy Mary McClellan (“Debtor”) to value the secured claim of Resurgence Financial LLC, for which Collect Access, LLC is the assignee of record (“Creditor”), is accompanied by Debtor’s declaration. Declaration, Dckt. 68. Debtor is the owner of the subject real property commonly known as 2132 Pine Street, Quincy, California (“Property”). Debtor seeks to value the Property at a fair market value of \$157,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority deed of trust secures a claim with a balance of approximately \$82,779.00. Amended Schedule D, Dckt. 29. Debtor claimed an exemption in the Property pursuant to 11 U.S.C. §704.030 in the amount of \$100,000, which exempts any equity in the Residence. Dckt. 53. Creditor's judgment lien secures a judgment with a balance of approximately \$25,660.90. Dckt. 64. Therefore, Creditor's claim secured by a judgment lien 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 Amy Mary McClellan ("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 Resurgence Financial LLC ("Creditor") secured by a judgment lien recorded against the real property commonly known as 2132 Pine Street, Quincy, 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 \$157,000 and is encumbered by a senior lien securing a claim in the amount of \$82,779, and Debtor

has claimed an exemption in the Property in the amount of \$100,000, which exceeds the value of the Property that is subject to Creditor's lien.

6. [18-23365-E-13](#)
[JB-7](#)

TENA ROBINSON
Jason Borg

MOTION TO MODIFY PLAN
2-22-21 [[183](#)]

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 February 22, 2021. By the court's calculation, 64 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Tena H. Robinson ("Debtor") seeks confirmation of the Modified Plan on the basis that Debtor's expenses and income have changed. Declaration, Dckt. 184. The Modified Plan provides:

1. Payments of \$0.00 for the months 1 through 5,
2. Payments of \$2,450.00 for months 6 through 14,
3. Payments of \$2494.75 for months 15 through 24,
4. Payments of \$2,628.72 for months 25 through 26,
5. Payments of \$2,360.00 for months 27 through 40 (the plan is for only 40 months), and

6. a zero (0) percent dividend to unsecured claims totaling \$311,639.79.

Modified Plan, Dckt. 181. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 13, 2021. Dckt. 191. Trustee opposes confirmation of the Plan on the basis that Nonstandard Provision number 3 does not appear to take into account the court's August 24, 2018 order granting the Motion to Avoid Lien pertaining to property located at 5611 34th Avenue, Sacramento, California. Dckt. 73.

The court's order provides that the judgment lien is avoided for all amounts in excess of \$79,227.45. Order, Dckt. 73. However, in reviewing the Docket, it appears that this order, and the Civil Minutes for the August 21, 2018 hearing contain a clerical error.

The entire claim subject to the judicial lien was asserted in the amount of \$79,227.45. The court determined that the deeds of trust senior to the judgment lien totaled \$394,349.57. Civil Minutes, p. 3; Dckt. 69. However, the property subject to the judgment lien had a value of "only" \$237,000.00. *Id.*, p. 2. Therefore, the court concluded that there was no value in the property to secure the judgment lien.

Some confusion on the court's part arose because Bosco Credit, LLC has two claims. Proof of Claim No. 2-1 filed on July 11, 2018, is a secured claim for \$153,184.89. The security for this claim is a recorded deed of trust, and was not the subject of the motion to avoid judicial lien.

Debtor filed a Motion to Value the secured claim of Bosco Credit, LLC. Motion, DCN:JB-1; Dckt. 29. The court granted that Motion and determined that Bosco Credit, LLC's claim secured by the Deed of Trust (Proof of Claim 2-1) had a value of \$0.00 as a secured claim. Order, Dckt. 103. The Debtor and Bosco Credit, LLC stipulated to the secured claim having a value of \$0.00, with the value of the property being consumed by the obligation secured by the senior deed of trust. Stipulation, Dckt. 99; Civil Minutes, Dckt. 101.

Bosco Credit, LLC also filed Proof of Claim 4-1 in the amount of \$79,227.45, stating that this is an unsecured claim and the basis of it is money loaned. POC 4-1 ¶¶ 7-9. It appears this may be the judgment that is the subject of the Motion to dismiss.

Bosco Credit, LLC has stipulated that the property subject to its deed of trust recorded on March 10, 2006 (Proof of Claim 2-1, p. 22, Deed of Trust Attachment) has no value to secure the claim pursuant to the 2006 Deed of Trust. The judgment lien of Bosco Credit, LLC identified by the parties has a 2012 recording date, making it junior to the Bosco Credit, LLC Deed of Trust for which there is no value in the Property. Exhibit 1, Dckt. 36.

The Court will issue an Order to Show Cause why the court should not correct the clerical error (Fed. R. Civ. P. 60(a), Fed. R. Bankr. P. 9024) in the order to state that the judgment lien claim has a secured value of \$0.00. ^{FN.1.}

FN. 1. The court notes that all counsel should feel free to reference this clerical error by the court if in the future the court takes too "high and mighty" a position when counsel make a clerical error.

DISCUSSION

A review of Debtor's Plan shows that it provides for the balance of Bosco Credit LLC's to be treated as a Class 7 general unsecured claim. Debtor filed a Reply on April 22, 2021 correctly asserting that while the lien was avoided, the claim is treated as a general unsecured claim.

Though the court will issue an order to show cause and provide notice to the parties before correcting the obvious clerical error, it is sufficiently a clear error to be corrected that the court's error does not stand as an impediment to the granting of the present motion.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is granted, and the proposed Third Modified Chapter 13 Plan filed on February 19, 2021 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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 April 7, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor failed to provide proof of his social security number at the meeting of creditors,
- B. Debtor failed to file a detailed statement showing business receipts and expenses,
- C. Debtor failed to provide the Trustee with business documents.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANKR. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Failure to File Business Documents Required by Schedule I

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.” Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Failure to File Documents Related to Business

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

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

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 28, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXX.

Metropolitan Life Insurance Company ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor fails to provide for the curing of pre-petition arrearage in the amount of \$9,933.70.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$13,907.64 in pre-petition arrearage. The Plan does not propose

to cure those arrearage. Instead, the plan classifies Creditor's claim as a Class 4 claim to be paid directly by Debtor, where these claims mature after the completion of the plan and are not in default.

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 arrearage.

At the hearing Debtor stated possible grounds to resolve the Objection, and the hearing is continued for supplemental pleadings.

SUPPLEMENTAL PLEADINGS

On February 9, 2021, Debtor filed a Supplemental Pleading with Debtor and Creditor Bayview Loan Servicing suggesting the following two options in order to resolve Creditor Metropolitan's Objection to Confirmation:

1. Adding the COVID-19 forbearance amount to the end of the loan (which the Debtor prefers and is pending reviewing by the Creditor); or
2. that language be added to the Order Confirming Plan providing that the Debtor make direct payments to Bayview to cure the arrears starting in May 2021 through the pendency of the plan until they are paid in full.

Dckt. 25.

Trustee filed a Response on February 12, 2021 informing the court that Debtor is current in plan payments and further stating the following regarding Debtor and Creditor Bayview's proposed resolutions of the issues:

1. As to what seems to be the proposition of a loan modification adding the forbearance period arrearage to the end of the loan, Trustee believes that this option is speculative since Creditor is still reviewing this option. Moreover, this option would require the court's approval to ensure that the Plan is feasible.
2. Trustee argues that the second option would require amending the Plan (and setting it for hearing) since this option has the Debtor paying Creditor directly for the forbearance arrearage and listing Creditor as a Class 1 creditor where a Class 4 would no longer be the proper classification for this creditor.
3. Trustee does not oppose the first option provided the parties come up with an agreement that is approved by the court.
4. Trustee opposes the second option on the grounds that it does not comply with our Local Bankruptcy Rules or the language in the Form Plan itself.

5. Trustee does not oppose a continuance of this Objection's hearing for 60-90 days to allow for Debtor and Creditor to come to or finalize an agreement under the first option.

Dckt. 26.

February 23, 2021 Hearing

At the hearing counsel for Debtor reported that an agreement has been reached with Creditor to place the COVID forbearance payments at the end of the existing loan.

The Debtor will file an *ex parte* motion, which is approved by the Chapter 13 Trustee, for approval of the loan modification. Upon the granting of that Motion, Creditor will dismiss this Objection to Confirmation and then the Debtor will transmit a confirmation order to the Chapter 13 Trustee.

April 27, 2021 Hearing

As of the court's drafting of this pre-hearing disposition no further pleadings or documents have been filed.

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, and Office of the United States Trustee on October 21, 2020. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtors, Shawn Scott Dickinson and Monique Denee Dickinson (“Debtor”) seek confirmation of the Chapter 13 Plan. The Plan provides for payments of \$1,774.27 for five (5) months, followed by payments of \$1,959.00 for 55 months, and a 100 percent dividend to unsecured claims totaling \$12,237.62. Plan, Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on November 24, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan is overextended.
- B. Debtor has failed to disclose child support debt.
- C. Debtor has failed to file all applicable tax returns.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 97 months due to mortgage arrears, priority taxes, and child support are higher than scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee does not know if the \$666.25 listed on Schedule I as “Domestic support obligation” is the actual ongoing payment, an arrears payment, or an amount set by Debtor. Trustee request that Debtor amend Schedules D and E/F so they may reflect domestic support obligations.

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

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2017, 2018, and 2019 tax years have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor filed a Supplemental to the Motion and a Declaration on December 4, 2020. Dckts. 53, 54. Debtors testify under penalty of perjury that:

1. Domestic Support Obligations are post-petition current, and the pre-petition arrearage is provided for under Section 3.12 of the plan.

That section provides for payment of an estimated \$10,616.65 in priority unsecured claims.

2. All the tax returns for the last four years prior to the filing of this case have been filed.

The court notes that Debtor fails to address Trustee’s concerns regarding the tax returns. Debtor testifies that all taxes have been filed but no evidence is presented and there still is a Proof of Claim from the Franchise Tax Board for \$658.96 and a Proof of Claim from the Internal Revenue Service for \$32,826.51.

Debtor has also failed to explain the amount listed for the “Domestic Support Obligation.”

At the hearing, counsel for the Trustee reported that the returns appear to have been filed pre-petition. The Domestic Support Checklist has been provided.

Debtor’s counsel requested that this be continued to March 23, 2021, to allow for documentation of the tax returns, in the COVID-19 environment. The Trustee concurred with the request for a continuance.

March 23, 2021 Hearing

As of the preparation of the pre-hearing disposition for March 23, 2021, no further pleadings or documents have been filed.

At the hearing, counsel for the Trustee reported that an amended Franchise Tax Board has been filed, showing that state tax returns have been filed. Debtor's counsel has confirmed with the Trustee support information.

Debtor requested that the hearing be continued to allow Debtor the opportunity to document the remaining issues.

Debtor's Declaration

Debtor filed a Supplemental Declaration on April 12, 2021. Dckt. 58. Debtor testifies that they filed their 2017 and 2019 state and federal tax returns on April 20, 2021 but that signed copies were mailed top both the Internal Revenue Service and the Franchise Tax Board on January 6, 2021. Declaration, ¶¶ 2, 6, and 7. Apparently, afer reviewing the returns, the Franchise Tax Board amended their Proof of Claim to show that a balance due of \$0.00. *Id.*, ¶ 8. However, the Internal Revenue Service has not yet amend their proof of claim. *Id.*, ¶ 9. Moreover, Debtor testifies that domestic support obligations have been addressed and Debtor is now post-petition current. *Id.*, ¶ 11-18.

Trustee's Amended Response

Trustee filed an Amended Response on April 19, 2021. Dckt. 60. Trustee requests the court confirm Debtor's proposed plan now that Debtor has provided information addressing Trustee's concerns and based on Trustee's belief that the Internal Revenue Service's claim is overstated.

April 27, 2021 Hearing

At the hearing **xxxxxxx**

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 April 5, 2021. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan was not filed in good faith, and
- B. The plan is not feasible.

DISCUSSION

Creditor's objections are well-taken.

Good-Faith Filing

Creditor alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and**
- 11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Here, Creditor argues that the plan was not proposed in good faith because Debtor has filed three bankruptcies in the last six years. Creditor states that the first case was filed shortly after a notice of default on the Property was recorded. Then Debtor filed a second and a third case shortly after each dismissal which has made the property subject to the automatic stay for over five years. Creditor asserts that Debtor's Chapter 13 Plan would extend that to an additional 5 years – which amounts to a 10 year reorganization. Thus, Creditor alleges this is an abuse of the Bankruptcy Code, and prejudicial to Creditor.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Creditor, Debtor's Plan depends on a \$500.00 contribution by her son. Debtor does not offer any admissible evidence pursuant to a declaration under penalty of perjury indicating an

ability or willingness on the part of her son to make this contribution for the next 60 months. The feasibility of the Plan is dependent on this contribution. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Additionally, in looking at Schedule I, Debtor states under penalty of perjury of having \$4,500.00 wages as a caregiver, \$239 a month from EDD, \$334.00 in trust distributions, \$2,000 in rental income from the Hillcrest Property, and \$750.00 a month in rental income from boarders in her residence, for a total of \$7,823.00 in income. Dckt. 1 at 33-34.

On Schedule J Debtor lists \$504 a month in expenses for "caregiver 1099 taxes." *Id.* at 36. However, no expenses are show for maintaining, repairing, and upkeep for either the rental property or the residence. No expenses are shown for being a residential landlord, including liability insurance, property taxes, rental taxes, repairs, and the like.

At the hearing, Debtor's counsel **XXXXXXX**

~~————— 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 Wells Fargo Bank, N.A. ("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.~~

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 April 7, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. The Plan will complete in approximately 66 months and thus exceeds the maximum amount of time allowed under the Bankruptcy Code.
- B. Bankruptcy petition documents are not accurate.
- C. Debtor is a serial filer.

DISCUSSION

Trustee's objections are well-taken.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 66 months due to Debtor having scheduled Carrington Mortgage Services, secured by the Debtor's real property, as a Class 1 creditor, with ongoing payments of \$1,726.37 and an arrearage of \$63,000.00 to be paid a dividend of \$1,050.00 per month, where Creditor's filed Proof of Claim states an amount of \$69,303.57 for arrears. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor's petition documents do not accurately reflect her finances. The Debtor may not have listed all her assets. (Dckt. 1, Pages 12-17.)

The Debtor has not checked the "No" or "Yes" boxes to questions #7 (electronics) and #12 (jewelry), where it can be assumed that Debtor has a cell phone and a wedding ring, since the Debtor admitted at the First Meeting of Creditors that she was recently married.

Further, Trustee informs the court that Debtor admitted at the First Meeting of Creditors that she omitted an outstanding debt owed to PG&E in Schedule E/F and that her non-filing spouse collects unemployment, which has not been included in the Debtor's budget on Schedule I. Lastly, according to Trustee, Debtor admitted at the First Meeting of Creditors, that she rents a separate building on her property, yet Debtor has failed to identify any expenses to maintain that building in Schedule J.

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

Serial Filer

Trustee notes that Debtor is a serial filer. Debtor has filed four prior bankruptcy cases, of those cases, three were filed, and dismissed, in the last five years:

Case 16-27298, filed 11/2/16 dismissed 8/25/17;

Case 17-26717 filed 10/16/17 dismissed 1/2/19;

Case 19-24921 filed 3/3/19 dismissed 7/8/20.

Debtor admitted, at the Meeting of Creditors, due to her profession and COVID, that she was laid last year, which resulted in case #19-24921 being dismissed.

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:

2005-13 (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the Plan is not feasible and fails to provide for the entire amount in pre-petition arrearage owed to Creditor.

DISCUSSION

Feasibility and Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor has filed a timely proof of claim in which it asserts \$69,303.57 in pre-petition arrearage. The Plan proposes to cure an arrearage in the amount of \$63,000. 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).

Moreover, Creditor asserts that the plan may not be feasible because it understates the ongoing mortgage payment; the Plan requests the Trustee pay \$1,726.37 for the monthly ongoing payment when it is currently \$1,822.47. Thus, Debtor’s proposed Chapter 13 Plan appears not feasible at the higher pre-petition arrears listed in Proof of Claim No. 2 when combined with the higher ongoing mortgage payments. Creditor also argues that the Debtor’s schedules “I” and “J” indicate a reliance on substitute teaching and rental income while expenses appear to represent an “extremely tight budget.”

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

The Plan having been not complying with the Bankruptcy Code pursuant to Trustee’s Objection, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Plan is also not confirmed pursuant to the grounds presented by Creditor. 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, F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR REGISTERED HOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2005-13 (“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.

FINAL RULINGS

13. [19-25608-E-13](#)
[PGM-4](#)

CECILIA SMITH
Peter Macaluso

**MOTION TO APPROVE LOAN
MODIFICATION AND/OR MOTION TO
BIFURCATE PAYMENTS TO CHAPTER
13 TRUSTEE
3-25-21 [137]**

Final Ruling: No appearance at the April 27, 2021 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 March 25, 2021. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification filed by Cecilia Smith ("Debtor") seeks court approval for Debtor to incur post-petition credit. Guild Mortgage/Vitek Mortgage Group ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a trial loan modification that will reduce Debtor is to make three (3) payments in the amount of \$1,277.68 beginning April 1, 2021, with the last payment under trial loan modification to be made by June 1, 2021.

Debtor seeks to bifurcate the current payment to the Chapter 13 Trustee to allow her to make direct payments to the lender during the trial period. Beginning March 2020, Debtor will pay \$1,277.68 to Guild Mortgage and \$1,897.32 to the Chapter 13 Trustee, to equal our current Plan payment of \$3,175.00.

The Motion is supported by the Declaration of Cecilia Smith. Dckt. 139. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S NON-OPPOSITION

On April 13, 2021, the Chapter 13 Trustee, David Cusick ("Trustee") filed a Non-Opposition. Dckt. 142. Trustee does not oppose the trial loan modification but notes that Debtor's request is a direct conflict of Debtor's confirmed plan, Dckt. 112. Moreover, Trustee contends that a modified plan is likely required in any event as Debtor is delinquent under the confirmed plan.

DISCUSSION

This post-petition financing is not consistent with the confirmed Chapter 13 Plan in this case and may conflict 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 Cecilia Smith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Cecilia Smith to amend the terms of the loan with Guild Mortgage/Vitek Mortgage Group ("Creditor"), which is secured by the real property commonly known as 4405 Calcutta Way, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 140).

IT IS FURTHER ORDERED that Debtor is authorized to make direct monthly payments on the trial loan modification, pending approval of a final loan modification, in the amount \$1,277.68 to Creditor and \$1,897.32 to the Chapter 13 Trustee (as the adjusted Plan payment after allowing for this direct payment), which amounts equal the current Plan payment of \$3,175.00, beginning with the month of March 2020 and continuing through July 2021.

Final Ruling: No appearance at the April 27, 2021 hearing is required.

Local Rule 9014-1(f)(2) Motion—No 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 March 30, 2021. By the court’s calculation, 28 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees 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.

In light of the modest amount of the final fee request and the prior interim approval of 96% of the total fees, the Chapter 13 Trustee’s Statement of Non-Opposition, Debtor having completed the Chapter 13 Plan successfully, and the cost of requiring an appearance of Applicant in light of these factors, the court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Allowance of Professional Fees is granted.

Gerald L. White, the Attorney (“Applicant”) for Sandra Marie Mendoza, the Chapter 13 Debtor (“Client”), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 9, 2019, through March 12, 2021. A retainer agreement between Client and Applicant was signed on September 12, 2017. Exhibit A, Dckt. 40. Applicant requests fees in the amount of \$285.00. The total attorney fees and costs already approved in this case are \$6,025.00.

Trustee has no opposition to the fees requested. Dckt. 43.

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)).

Lodestar Analysis

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). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (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)).

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 demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. 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 [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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

A review of the application shows that Applicant’s services for the Estate include general case management. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Post-Confirmation General Case Administration: Applicant spent 1.35 hours in this category. Applicant reviewed Trustee’s reports, reviewed transfer of claims, and emailed Client.

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
Gerald L. White, Partner	1.35	\$300.00	\$405.00
Total Fees for Period of Application			\$405.00

Applicant has offered a courtesy discount in the amount of \$120.00, bringing the total fees requested to \$285.00.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$285.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay the fees allowed by the court.

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

Fees	\$285.00
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pursuant to this Application as final fees and costs 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 Gerald L. White (“Applicant”), Attorney for Sandra Marie Mendoza, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gerald L. White is allowed the following fees and expenses as a professional of the Estate:

Gerald L. White, Professional employed by Chapter 13 Debtor

Fees in the amount of \$285.00

The fees pursuant to this Motion, and fees in the amount of \$285.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Applicant is authorized payment of the fees from the funds held in trust.

Final Ruling: No appearance at the April 27, 2021 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 April 7, 2021. By the court’s calculation, 20 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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on April 21, 2021. Dkts. 35, 31. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the April 27, 2021 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 and Debtor's Attorney on March 25, 2021. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Alejandro Rodriguez and Rosemarie Rodriguez's ("Debtor") claimed exemptions under California law because Debtors are not entitled to claim exemptions using both California Code of Civil Procedure § 703 and California Code of Civil Procedure § 704.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

A review of Debtor's Amended Schedule C shows that Debtor claims exemptions under C.C.P. § 703.140 for their bank accounts while other assets are exempted under C.C.P. § 704. California Code of

Civil Procedure § 703.140(a) provides that the exemptions provided in subsection (b) may be elected in lieu of all other exemptions by this chapter. Thus, Debtor may not use both exemptions pursuant to C.C.P. § 703 and C.C.P. § 704. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

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

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

IT IS ORDERED that Objection is sustained, without prejudice, and all of the claimed exemptions under California Code of Civil Procedure § 703 and California Code of Civil Procedure § 704 are disallowed in their entirety.

IT IS FURTHER ORDERED that Debtors Alejandro and Rosemarie Rodriguez shall file and serve on the Chapter 13 Trustee and any parties requesting special notices on or before May 31, 2021, an Amended Schedule C if Debtors intend to claim exemptions in this Bankruptcy Case.

Final Ruling: No appearance at the April 27, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 March 24, 2021. By the court's calculation, 34 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).

Movant did not provide sufficient notice as required by the Bankruptcy Code and the local rules. However, in light of there being only a one day shortfall in notice, the facts and circumstances of this Motion and the bankruptcy case, and the dollar amounts at issue, the court shortens the notice period to that given.

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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Approval of Compromise is granted.

Advantis Credit Union, creditor holding a secured claim ("Creditor"), requests that the court approve a stipulation with Forrest Sylvan Gardens ("Debtor") which settles the treatment of Creditor/Movant's claim secured by a 2011 Acura TSX Sedan while allowing both parties to avoid the costs of litigation.

Trustee does not oppose the agreement where no objection was made and the latest claim has been amended to a value matching the Stipulation which the Trustee believes will not make the plan exceed 60 months, (only \$652.80 more than the plan). Dckt. 27.

Creditor and Debtor stipulating to an order regarding the secured claim, subject to approval by the court on the following terms and conditions as stated in the Stipulation (Dckt. 16):

- A. Creditor has a valid security interest in a 2011 Acura TSX Sedan.
- B. Creditor's claim will be treated as a Class 2 claim with a value of \$6,229.80 at an interest rate of 5.5% and a secured claim of \$6,229.80, with the balance as an unsecured claim.
- C. Creditor shall retain its lien until completion of the plan and, unless not required by the bankruptcy court, entry of Debtor's discharge.

DISCUSSION

Here, Debtor and Creditor stipulate as to the treatment of Creditor's claim secured by a 2011 Acura TSX Sedan. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 34 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on Debtor's debt owed to Creditor and secured by a 2011 Acura TSX Sedan where Debtor has not yet filed the motion necessary to value Creditor's claim as stated in Debtor's proposed plan. Debtor had listed Creditor as a Class 2 claim and proposed to reduce the claim to \$5,577.00. In order to avoid litigation related to this valuation, the parties have stipulated to the value of \$6,229.80.

Counsel, Debtor, and Creditor have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Debtor to move on.

The Motion is granted.

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

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

The Motion to Approve Stipulation filed by Advantis Credit Union, creditor with a secured claim ("Creditor") 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 Stipulation between Movant and Forrest Sylvan Gardens is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed on March 5, 2021 (Dckt. 16).

Final Ruling: No appearance at the April 27, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 March 23, 2021. By the court’s calculation, 35 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Approval of Compromise is granted.

The Chapter 13 Debtor, Forrest Sylvan Gardens (“Debtor”) requests that the court approve a stipulation with Advantis Credit Union (“Creditor”) which settles the treatment of Creditor/Movant’s claim secured by a 2013 CMH MANUFACTURING WEST “KARSTEN-AVALON” (16” x 16”) MOBILEHOME, located at 1399 Sacramento Avenue, Space 100, West Sacramento, California, while allowing both parties to avoid the costs of litigation.

Trustee does not oppose the stipulation but notes that unless the compromise is allowed, the confirmed plan will not complete within 60 months. Dckt. 25.

STIPULATION

Creditor and Debtor stipulate to an order regarding the secured claim, subject to approval by the court upon the following terms as summarized in the Motion (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Exhibit A, Dckt. 20):

- A. Advantis shall have only one secured claim (secured by the Subject Property) in the amount of \$35,000.00 (the “Secured Claim”) to be amortized over sixty (60) months at 5.00% interest per annum, which shall be paid by Debtor through a chapter 13 plan at the rate of \$660.49 per month.
- B. In the event Advantis does not receive a disbursement of funds for a period exceeding sixty (60) days, Advantis shall contact the Chapter 13 Trustee to confirm the Debtor’s account is delinquent. Upon such confirmation, Advantis shall provide written notice via certified mail to Forrest Sylvan Gardens 1399 Sacramento Avenue, West Sacramento, California, and to the Debtor’s attorney of record.
- C. The parties agree that the terms of this stipulation are incorporated into Debtor’s chapter 13 plan and/or any subsequently filed chapter 13 plan of reorganization in this case or subsequent case. Upon the Debtor paying the full amount of the Secured Claim, the claim of Advantis secured by a Certificate of Title, is satisfied and Debtor will be entitled to full reconveyance of the Certificate of Title.

DISCUSSION

Here, Debtor and Creditor stipulate as to the treatment of Creditor’s claim secured by a 2013 mobile home. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 35 days notice was provided with oppositions and responses to be heard at the hearing. The Motion’s Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on Debtor’s debt owed to Creditor and secured by a 2013 mobile home where Creditor filed Proof of Claim 6-1 in the amount of \$53,384.64, and terms of the Stipulation are reflected in Debtor’s confirmed plan.

Counsel, Debtor, and Creditor have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Debtor to move forward.

The terms having been accepted pursuant to the confirmed Plan, and both parties specifically agreeing to the terms, the Motion is granted.

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

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

The Motion to Approve Stipulation filed by Forrest Sylvan Gardens, the Chapter 13 Debtor (“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 for Approval of Stipulation between Debtor and Advantis Credit Union is granted, and the respective rights and interests

of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit A in support of the Motion (Dckt. 20).

19. [21-20591](#)-E-13
[EAT-1](#)

JAMES DADE
Chad Johnson

**OBJECTION TO CONFIRMATION OF
PLAN BY AJAX MORTGAGE LOAN
TRUST 2018-G
4-6-21 [24]**

Final Ruling: No appearance at the April 27, 2021 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, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 6, 2021. By the court’s calculation, 21 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.

The hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on May 25, 2021.

Ajax Mortgage Loan Trust 2018-G, Mortgage-Backed Securities, Series 2018-G, by US Bank National Association, as Trustee (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan is not feasible on the basis that it fails to provide for payment of delinquent pre-petition Property taxes.

DISCUSSION

Debtor filed a Response on April 13, 2021. Dckt. 30. Debtor asserts that historically it is Creditor who has made the property tax payments as they are held by Creditor in escrow to make such payments and that Debtor never received notice from Creditor that the property taxes were no longer to be paid through Creditor. Debtor asserts that Creditor should have made the December 2020 property tax payment and the escrow advance should be included in the pre-petition arrearage amount of their claim.

On April 20, 2021, the parties filed a Joint Request for Continuance of the hearing on the instant Objection. Dckt. 33. The parties inform the court that they have been working in resolving the issues raised by this Objection and request the hearing be continued to 2:00 p.m. on May 25, 2021.

Based on this request, the court continues the hearing to 2:00 p.m. on May 25, 2021 to allow for the parties to resolve the issues.

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 Ajax Mortgage Loan Trust 2018-G, Mortgage-Backed Securities, Series 2018-G, by US Bank National Association, as Trustee (“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 2:00 p.m. on May 25, 2021.

IT IS FURTHER ORDERED that Creditor shall file and serve on or before May 18, 2021 any reply to Debtor’s Response.

Final Ruling: No appearance at the April 27, 2021 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 March 31, 2021. By the court’s calculation, 27 days’ notice was provided. 28 days’ notice is required.

Movant did not provide sufficient notice as required by the Bankruptcy Code and the local rules. However, in light of this Motion, the prior proceedings, the Chapter Plan, and the parties efforts to address these issues, the court shortens time to the 27 days given,

The Motion to Allow Informal Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), the court shortening time by one day. 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 Allow Informal Claim is sustained.

Reno Real Estate Solutions, creditor with a secured claim (“Creditor”) requests the court allow its late claim regarding asset 1980 Skyline Corp Mobile Home and real property 6013 Semaphore Rd, Portola, California. Creditor argues that the claim was informally filed with the Creditor’s objection to Debtor’s Plan.

The Claim is asserted to be secured in the amount of \$105,635.72. The Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is October 13, 2021. Notice of Bankruptcy Filing and Deadlines, Dckt. 22. Creditor filed their Proof of Claim on January 22, 2021. Proof of Claim 13-1.

Trustee filed a Non-Opposition to the relief requested and notes that Creditor is included in Debtors' confirmed plan, no objection to the Proof of Claim has been filed and Trustee has disbursed \$3,277.49 to creditor Reno Real Estate Solutions LLC David Lysne, to date, with the last 2 disbursements totaling \$839.69 being disbursed on March 31, 2021. Dckt. 101.

DISCUSSION

A review of Creditor's Objections to Debtor's proposed plan shows that both Objections included as a supportive document the unfiled Proof of Claim.

Creditor cites to *In re Holm*, where the court outlined that for the an attached document to constitute an informal proof of claim, the document "must state an explicit demand showing te nature and amount of the claim against the estate, and evidence an intent to hold the debtor liable." *In re Holm*, 931 F.2d 620, 622 (9th Cir. 1991). Creditor argues that their supportive document / attachment constitutes an in formal proof of claim where it clearly states the amount due as required by 11 U.S.C. § 501 and Federal Rule of Bankruptcy Procedure 3002.

Additionally, Creditor argues that the informal claim meets the five requirements as stated in related case law for the requirements of an informal claim. First, the document filed as an exhibit was entitled "Proof of Claim;" it was filed as a support document well before the claim bar date; it was filed with an Objection which showed Creditor's intent to be paid by the Debtor and objecting to Debtor's treatment of their claim. Lastly, the attachment included the note, deed of trust, security agreement and a breakdown of the missed payments, fees, and costs. Thus, Creditor argues the document meets the requirements for an informal claim and as such should be allowed.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Creditor is requesting the court grant relief for this untimely-filed proof of claim. Neither Debtor nor Trustee have objected to the untimely Proof of Claim. Debtor has not filed an Opposition to this Motion.

The court finds that Creditor's attachment in both Objections to Debtor's proposed plan meet the requirements of an informal proof of claim. Debtor was aware of Creditor's claim as Creditor presented their objection and the details of the debt owed on two occasions. Moreover, Exhibit C, filed in support of Creditor's opposition to Debtor's proposed plan, is a copy of the unfiled Proof of Claim. The documents include: a completed the Proof of Claim form and the Mortgage Proof of Claim Attachment. Dckt. 69.

Debtor has acknowledged such debt and it is provided by the confirmed plan. Trustee has disbursed payment.

Based on the evidence before the court, Creditor's claim is allowed as an informal claim. The Motion to Allow Informal Claim 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 Allow Informal Claim by Reno Real Estate Solutions filed in this case by Reno Real Estate Solutions, creditor holding a secured claim (“Creditor”) 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 Proof of Claim 13-1 claim is allowed in its entirety.