UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

May 7, 2019 at 2:00 p.m.

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

1.	**19-20908-C-13 DPC-1**	**ARMAR/MARICELA WALKER Bruce Dwiggins**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-16-19 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. 14 days' notice is required. That requirement was met.

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. Debtors did not attend the First Meeting of Creditors held on April 11, 2019. The Meeting has been continued to May 9, 2019.

B. Debtors may not be able to make all required Plan payments because the liabilities associated with the filed claims of the IRS and the Franchise Tax Board are not provided for in the Plan.

Trustee's objections are well-taken. Debtors did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). Trustee asserts that the Franchise Tax Board has a secured claim for $35,905.79.. Proof of Claim 5-1, filed on March 21, 2019. Also, Trustee asserts that the Internal Revenue Service has a claim for $49,467.79 in secured debt. Proof of Claim 2-1, filed on March 5, 2019. The Plan does not provide for all secured and priority debts as required by 11 U.S.C. § 1322(a)(2).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by 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.

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2. **18-26917-C-13 WSS-1** **DAVID GRUEBELE**
W. Steven Shumway

MOTION TO VALUE COLLATERAL OF BMW FINANCIAL SERVICES, N.A., LLC
3-14-19 [35]

Thru #3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 14, 2019. 28 days' notice is required. That requirement was met.

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

~~The Motion to Value Collateral and Secured Claim of BMW Financial Services, N.A. ("Creditor") is $9,413.00, and Creditor's secured claim is determined to have a value of $9,413.00.~~

The Motion filed by David Gruebele ("Debtor") to value the secured claim of BMW Financial Services, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 BMW 55i ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $9,413.00 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).

CHAPTER 13 TRUSTEE'S RESPONSE:

The Chapter 13 Trustee filed a Response on April 22, 2019. Dckt. 46. The Trustee flags for the court that the Debtor's declaration does not comply with 28 U.S.C. § 1746 because it was not signed under penalty of perjury that the *statements are true and correct*. The Trustee notes that he does not otherwise object to the Motion.

An Amended Declaration by Debtor was filed on May 2, 2019. Dckt. 52. This Amended Declaration provides the required oath under penalty of perjury.

DISCUSSION:

By this Motion, Debtor accepts the value of the vehicle and secured claim asserted by Creditor in its Proof of Claim, No. 1, filed in this case.

The lien on the Vehicle's title secures a purchase-money loan incurred on July 31, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $12,423.71. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $9,413.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by David Gruebele ("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 BMW Financial Services, N.A. ("Creditor") secured by an asset described as 2011 BMW 55i ("Vehicle") is determined to be a secured claim in the amount of $9,413.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $9,413.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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3. **18-26917-C-13 WSS-2** **DAVID GRUEBELE** **W. Steven Shumway** **MOTION TO CONFIRM PLAN 3-14-19 [39]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 14, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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.

David Gruebele ("Debtor") seeks confirmation of the Amended Plan. Dckt. 41 (Declaration). The Amended Plan proposes a monthly payment of $255.00 a month over a 60 month period with a 2% dividend to general unsecured creditors. Dckt. 42 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor's Plan relies on a Motion to Value. The court notes that the Motion to Value is also set for hearing on May 7, 2019. Dckt. 35.

B. The Debtor's Business Budget does not reflect that Debtor can make the required plan payments. Debtor's non-filing spouse's income for her employment through Debtor's business, as reported on line 5 of Amended Schedule I (Dckt. 34), does not reflect withholdings from her income.

C. Debtor's Plan may unfairly discriminate unsecured creditors because the plan provides for monthly payments of Debtor's spouse's student loans of $350.00 a month, while the general unsecured will only receive a 2% dividend. The Trustee states that he found other payments to creditors not listed on

Debtors schedules including MBNA credit card and Macys.

Review of Schedules and Plan Treatment

Debtor's Amended Schedule I indicates that withholdings are not being taken out of the non-debtor spouses income that is derived from Debtor's business. Absent explanation from Debtor regarding the where, or if, tax withholdings are being taken out of the spouses income, the court questions whether all expenses are being properly reflected. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

On Amended Schedule I Debtor lists receiving $4,100.00 a month in gross wages from Halo Management Group, Inc. Dckt. 34 at 11. Debtor also states on Schedule I that his non-debtor Spouse is receiving $1,000.00 a month in gross wages from Halo Management Group, Inc. There are no deductions for federal income taxes, state income taxes, or social security payments.

Debtor also states on Amended Schedule I, under penalty of perjury, that he is receiving a "loan from parents trust" of $1,795.00. *Id.* at 12. This conflicts with his testimony under penalty of perjury in his Declaration that he is receiving a "gift" of $1,795.00 from his parents trust. Dec. ¶ 5, Dckt. 41.

Attached to Amended Schedule I is the Profit & Loss Statement for Halo Management Group, Inc. for the period January 1 to November 1, 2018. Dckt. 41 at 13-14. During that period, it states that the Corporation lost ($134,520.36) from operations. During that period Halo Management Group, Inc. had only $92,436.00 in gross income.

For expenses, there are ($163,866.57) reported as charged to "Eventa, SAF, and Eventa-Singapore, with no information provided about what constituted these expenses. For the identified expenses, there is a ($9,860.00) expense for "Auto Expense-Gas. That is a tremendous amount for gas alone, and may indicate that there is another vehicle being provided Debtor.

For salary and wages, for the ten month period there was only $6,000 paid. That is $600 a month, well less than the $5,100.00 that Debtor states he and his non-debtor Spouse are being paid by the corporation.

Taken as presented, Debtor has provided financial information showing that no plan can be performed, with his sole source of income losing money each month. It appears that Debtor and his non-debtor Spouse are being paid money by creditors of Halo Management Group, Inc. who are not being paid for the goods and services they provide.

In reviewing Amended Schedule J, Debtor lists having monthly transportation expenses (gas, maintenance, registration) of $610.00, which totals $7,320 a year. As stated above, Halo Management Group, Inc. has a huge "Auto Expense-Gas" payment it makes. It appears that the expense for transportation on Schedule J is substantially reimbursed by Halo Management Group, Inc.

Discriminatory Treatment Between Creditors In The Same Class

The Chapter 13 Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 2% to unsecured claims; however, Debtor proposes to pay the non-Debtor spouse's student loan debt's full monthly payment of $350.00 a month.

The Trustee reports that this "payment" is unreported on the Schedules or Plan, and was discovered upon reviewing the Debtor's bank records. Opposition, p.2:16-19, Dckt. 46; Declaration ¶ 4, Dckt. 49. This is stated to be a monthly payment that Debtor makes to his non-debtor Spouse.

While filing an Amended Declaration to provide the testimony under penalty of perjury, the Debtor does not respond to this identified, undisclosed, transfer or special treatment for the creditor.

As the Trustee points out, it has long been established that the Bankruptcy Code does not allow a debtor to discriminate between claims of creditor in the same class. *See In re Sperna*, 173 B.R. 654, 658 (B.A.P. 9th Cir. 1994). In considering the four prongs of the question of whether the proposed plan will "discriminate unfairly" in violation of the Bankruptcy Code, the court determines:

(1) whether the discrimination has a reasonable basis.

(2) Whether the debtor can carry out a plan without the discrimination.

(3) Whether the discrimination is proposed in good faith.

(4) Whether the degree of discrimination is directly related to the basis or rationale for the discrimination. (Does the basis for the discrimination demand that this degree of differential treatment be imposed.)

Though in some cases a debtor may be able to show that the disclosed payment being made on the disclosed debt to the disclosed creditor for the nondischargeable student loan debt does not discriminate against he other creditors holding general unsecured claims, Debtor has not so attempted in this case. Rather, he has hidden the payment and the debt.

Debtor's plan attempts to unfairly discriminate between creditors holding general unsecured claims, by making "off the bankruptcy books" payments to that creditor.

The Trustee also reports that it appears that other creditors are being paid pre-petition claims "off the bankruptcy books," such as Macy's. Debtor has elected not to respond to this portion of the Opposition.

Debtor's Good Faith

Debtor must not only proposed and prosecute a plan in good faith, but must have also filed the bankruptcy case in good faith. 11 U.S.C. § 1325(a)(3), (7). Here, the Debtor has chosen not to address the previously and currently identified "off the bankruptcy books" payments to a student loan creditor and some other retail creditors. The best financial information to support confirmation is that he and his non-debtor Spouse are being paid $5,100 a month from their corporation, for which Debtor and his non-debtor spouse are exempt from paying income/Social Security taxes, that is losing money and does not have a history of making such payments to Debtor and his non-debtor spouse.

Looking on Amended Schedule J, Debtor purports to be paying ($3,207.00) a month for claims secured by his residence from the $5,100.00 in monthly gross income (63% of gross for housing, property taxes, and insurance [assuming that those additional amounts are included in those payments). Debtor can elect to so continue with those secured claim payments, but that does not mean that the balance of Debtor's expenses stated on Amended Schedule J are shown to be reasonable or accurate. As unrebutted by Debtor the Trustee has identified other "off the bankruptcy books" expenses that Debtor is paying.

On Amended Schedule A Debtor states that the residence securing the claims for which Debtor is dedicating 63% of the gross income has a value of $620,000.00. Dckt. 34 at 2. The obligations secured by the residence total $651,905 as stated in Proofs of Claim Nos. 3 and 4. At such a value, it does not appear reasonable (in good faith) that someone would sink 63% of their gross income.

Debtor then does not have a straight story about whether his parents' trust, in which Debtor purports to have no interest, is giving him a gift of $1,795.00 a month or making him a loan of $1,795.00 a month, with Debtor giving conflicting testimony under penalty of perjury.

Additionally, Proof of Claim No. 4 (p. 2) filed by Bank of America, N.A. states that there is a $4,138.74 pre-petition arrearage owed by Debtor. This proof of claim has not been amended, so as it now sits that claim does not qualify for the Debtor to pay directly as a Class 4 claim, but must be paid as a Class 1 claim until cured. Plan ¶¶ 3.10, 3.07. This was the basis for Bank of America, N.A. Objecting to Debtor's original plan. Opposition, Civil Minutes, Order; Dckts. 20, 27. If this pre-petition arrearage no longer exists, it could well be that the Debtor has managed another set of "off the bankruptcy books" payments, this time to Bank of America, N.A.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Debtor has not shown it to be feasible. Debtor has not proposed it in good faith, having "off the bankruptcy books" debts that he is paying. Debtor unfairly discriminates against his creditors holding unsecured claims by making undisclosed "off the bankruptcy books" payments to student loan debt (that may be only his non-debtor Spouse's obligation and not even a claim that Debtor could pay once he elected bankruptcy protection).

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by David Gruebele, the 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 is denied and the proposed Chapter 13 Plan is not confirmed.

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4. **18-26424-C-13 DPC-1** **WALTER/LINDA RUNYON** **Mark Briden** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-17-19 [40]**

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Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on January 17, 2019. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtors have not provided the Trustee with a copy of the 2017 tax return. The Trustee notes that the Meeting of Creditors has been continued to April 11, 2019 to permit the Debtors to file tax returns.

B. The notes that Claim 2 filed by Ocwen, identified in Class 4 of the Plan, will be paid off in approximately 51 months. The Trustee raises this issue to ensure that the Plan payments account for the full payment of this debt during the life of the Plan. Specifically increasing the Plan payments by $524.00 for the final months of the Plan.

C. The proposed Plan payments may not be feasible due to additional expenses not listed by Debtors. Specifically, Debtors do not identify any income tax withholding on their Schedule I or Business

Income and Expenses statement. Debtors also list vehicles on the Schedules A/B but do not list any insurance premiums on their Schedule J.

D. The Debtors did not provide their Social Security Numbers at the January 10, 2019 Meeting for Creditors.

At the hearing the court continued the hearing to allow Debtors additional time to address the Trustee's concerns.

DEBTORS' SUPPLEMENTAL RESPONSE:

On April 16, 2019, Debtors' counsel filed a Supplemental Response. Dckt. 45. Debtors stated that their tax returns will be completed by May 9, 2019.

Debtors agreed to increase Plan Payments by $500.00 a month for the final 10 months. Debtors state that their Ocwen Mortgage will be paid as a Class 2 creditor instead of Class 4.

The Debtors state they are setting aside $1,400.00 a month to pay personal income taxes as listed in their Business Income and Expenses as "other taxes." Lastly, Debtors state their have provided their Social Security numbers.

TRUSTEE'S SUPPLEMENTAL OPPOSITION:

On April 23, 2019, the Trustee filed a Supplemental Opposition. Dckt. 47. The Trustee states that Debtors have provided their required business tax returns but have not yet provided their individual income tax returns. The Trustee is not opposed to the Debtors proposed plan payment modifications to address the opposition that the Plan was not the Debtors' best effort. The Trustee notes that Debtors have provided their Social Security Numbers. Lastly, the Trustee is still not sure whether the insurance payment of $766.00 listed on their business budget includes vehicle insurance.

DEBTORS' SECOND SUPPLEMENTAL RESPONSE:

On April 30, 2019, Debtors' counsel filed a response stating that the federal and State individual income tax returns will be provided to the Trustee prior to the hearing and that the insurance payment includes vehicle insurance. Dckt. 49.

DISCUSSION:

At the hearing -----

Absent evidence that Debtors have filed all required tax returns and demonstrated that the Plan payments are feasible, 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 having

been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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5. **18-27728-C-13 ETW-1** **SCOTT/MELINDA BROWN** **Gary Fraley** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **3-6-19 [55]**

DAVID MEYERS VS.

Thru #6

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 6, 2019. 28 days' notice is required. That requirement was met.

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

The Motion for Relief from the Automatic Stay is denied without prejudice.

David C. Meyers ("Movant") seeks relief from the automatic stay with respect to Scott Brown and Melinda Brown's ("Debtors") real property commonly known as 1704 10th Avenue, Olivehurst, California ("Property"). Movant has provided the Declaration of David C. Meyers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The David C. Meyers Declaration states that there are twp post-petition defaults in the payments on the obligation secured by the Property, with a total of $1,709.12 in post-petition payments past due. The Declaration also provides evidence that there are seven pre-petition payments in default, with a pre-petition arrearage of $5,981.92. Movant also asserts that the property is not insured.

DEBTORS' OPPOSITION:

Debtors filed an Opposition on March 18, 2019. Dckt. 73. Debtors asserts that they have been current on all proposed Plan payments and have provided proof to the creditor that the property is insured.

CHAPTER 13 TRUSTEE'S RESPONSE:

David Cusick ("the Chapter 13 Trustee") filed a Response on March 19, 2019. Dckt. 75. The Trustee asserts that Debtor has paid to the Trustee a total of $2,311.00 to date. The Trustee has disbursed 2 mortgage payments to Movant totaling $1,709.12 on February 28, 2019.

CHAPTER 13 TRUSTEE'S SUPPLEMENTAL RESPONSE:

On April 16, 2019 the Trustee filed a Supplemental Response stating that Trustee issued a check payable to David C. Meyers in the amount of $657.16 to be paid to the arrears claim. Dckt. 100.

DEBTORS' SUPPLEMENTAL DECLARATION:

On April 16, 2019, Debtors filed a supplemental Declaration to address several concerns raised at the April 2, 2019 hearing. Debtors assert that the cars parked in the font yard of the house have been removed, that the Creditor would be included as the "Loss Payee" on the rental insurance policy, that their Plan Payments remain current, and they are addressing any discrepancies related to property taxes.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $144,314.00 (as secured by Movant's first deed of trust), as stated in Movant's Declaration and Schedule D. The value of the Property is determined to be $167,100.00, as stated in Schedules A and D.

The court notes that it denied Movant's prior request for relief from stay (Dckt. 52) because there was only one post-petition payment in default and the Debtors had an equity cushion in the property. Since the court entered its Order, Movant claims that Debtors have continued to not make post-petition payments and have not put forth a confirmable Plan. The Trustee's response states that Debtors have been making payments to the Trustee and the Trustee has disbursed payments to the creditor. The court also notes that Debtors proposed an Amended Plan on March 27, 2019 with a confirmation hearing set for May 5, 2019. Dckt. 85.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

The court shall issue an order denying Movant's request without prejudice.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by David C. Meyers ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Stay Relief is denied without prejudice.

No other or additional relief is granted.

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6. **18-27728-C-13** **SCOTT/MELINDA BROWN** **MOTION TO CONFIRM PLAN**
FF-2 **Gary Fraley** **3-27-19 [86]**

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Final Ruling: No appearance at the May 7, 2019 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is denied.

Scott and Melinda Brown ("Debtors") seek confirmation of the Amended Plan and provides no specific reason how the Amended Plan rectifies the issues raised in their originally filed Plan. Dckt. 88. (Declaration). The Amended Plan proposes an average monthly payment of $1,750.00 over 60 months and proposes a 0% dividend to the general unsecured creditors. Dckt. 89 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Secured Creditor David C. Meyers ("Creditor") holding a secured claim filed an Opposition on April 8, 2019. Dckt. 97. The Creditor asserts that Debtor does not provide for the arrears identified in the filed Proof of Claim No. 1-1, the Debtor does not provide for the correct interest rate on the payments, and Debtor's despite stating they are paying property taxes have not identified the payment on their Schedules.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 23, 2019. Dckt. 104. The Trustee notes, as the court did above, that Debtors have not provided any explanation what have been amended in the Plan they are seeking to confirm. Debtor's proposed Pan will require 75 months to complete, exceeding the allowed 60 months. Debtor again raised an issue with the Plan as it does not

designate any provision for payment of attorneys fees in Section 3.05.

DEBTORS' RESPONSE:

Debtors responded on April 30, 2019 that they will be filing a Second Amended Plan to address the issues raised by the Trustee. Dckt. 107.

RULING:

The court construes the Debtors response to be a concession that the Motion should not be granted. Accordingly, the Amended 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 Motion to Confirm the Amended Chapter 13 Plan filed by Scott and Melinda Brown ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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7. **18-27631-C-13** **EUGENE NIERI** **MOTION TO MODIFY PLAN**
MRL-1 **Mikalah Liviakis** **3-6-19 [20]**

****

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2019. 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). That requirement was met.

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

The Motion to Confirm the Modified Plan is xxxxx.

Eugene Nieri ("Debtor") seeks confirmation of the Modified Plan in order to cure missed payments due to a two month period of unemployment. Dckt. 22 (Declaration). The Modified Plan proposes $0.00 payments for two months and payments of $4,980.00 for 58 months with a 2% dividend to general unsecured creditors. Dckt. 23 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 23, 2019. Dckt. 31. The Trustee asserts that Debtor is delinquent $430.00 in proposed plan payments. Additionally, the Trustee argues that the proposed Plan payments are insufficient for the Plan to complete within 60 months and would need to be increased to $5,000.00.

DEBTOR'S RESPONSE:

Debtor responded on May 1, 2019 by way of a Declaration that the $430.00 payment was made. Additionally, the Debtor asserts that the proposed monthly payment of $4,980.00 should be sufficient due to

Debtor's ability to make catch up payments. Dckt. 34. Debtor requests a two week continuance to allow Debtor to become current.

DISCUSSION:

At the hearing -----

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 6, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

****

8. **16-25337-C-13 PLC-2** **DEWAYNE WILLIAMS** **Peter Cianchetta** **MOTION TO VACATE DISMISSAL OF CASE** **4-22-19 [117]**

DEBTOR DISMISSED: 03/25/2019

****

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, parties requesting special notice, and Office of the United States Trustee on April 22, 2019. 14 days' notice is required. That requirement was met.

The Motion to Vacate 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 Vacate is granted, and the order Dismissing the Case (Dckt. 113) is vacated.

Dewayne Williams ("Debtor") filed the instant case on August 15, 2019. Dckt. 1. A Modified plan was confirmed on March 27, 2018, and an order confirming the plan was entered on April 16, 2018. Dckt. 78 & 80.

On December 10, 2018, David Cusick ("the Chapter 13 Trustee") filed a Motion to Dismiss the Case due to Debtor being delinquent in approximately 3 payments. Dckt. 112. On January 1, 2019, a hearing on the Motion to Dismiss was continued to allow Debtor time to file an Amended Plan. On March 20, 2019, a continued hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 112.

On April 22, 2019, Debtor filed this instant Motion to Vacate, claiming that due to the death of Debtor's former counsel he was unable to prepare and file a new plan prior to receiving a dismissal. Debtor has since filed a new plan concurrently with the request to vacate the dismissal.

The court notes that the Trustee filed an Opposition but based on Debtor's supplemental declaration filed on April 26, 2019, has stated that he no longer opposes the relief. Dckts. 123; 132; and 134.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case

analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Here the court has determined that Debtor has presented sufficient evidence to support vacating the dismissal as Debtor's prior counsel died and Debtor has since retained new counsel and appears to be actively attempting to prosecute his case.

Therefore, in light of the foregoing, the Motion is granted, and the order Dismissing the Case (Dckt. 113) is vacated.

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 Vacate filed by Dewayne Williams ("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 order Dismissing the Case (Dckt. 113) is vacated.

****

9. **19-21449-C-13** **JOHN WILSON** **CONTINUED MOTION TO EXTEND**
JKM-1 **Jin Kim** **AUTOMATIC STAY**
3-18-19 [10]

****

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Impose the Automatic Stay is xxxx.

John Wilson ("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. However, contrary to Debtor's Motion, this is Debtor's third, not second, bankruptcy petition pending in the past year. Debtor's prior bankruptcy cases (No. 18-24431) and (18-20287) were dismissed on February 21, 2019 and on July 12, 2018 respectively, after Debtor not make all required plan payments. *See* Order, Bankr. E.D. Cal. No. 18-24431, Dckt. 36; Order, Bankr. E.D. Cal. No. 18-20287, Dckt. 21. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor incurred unanticipated vehicle expenses and missed work due to an illness. Dckt. 12. The Debtor states that he has employer approved overtime, adjusted his withholdings, and has family members who have offered to help him make all required Plan payments.

REVIEW OF PRIOR CASES

Case 18-24431

Debtor commenced Chapter 13 Case 18-24431 on July 16, 2018, with it being dismissed seven months later on February 21, 2019. Debtor confirmed a Plan on September 11, 2018. 18-24431; Order, Dckt. 19. The confirmed Chapter 13 Plan required monthly payments of $4,260.00 by the Debtor. *Id.*; Plan, Dckt. 2. From this the Class 1 payments were $2,195.00 for the current monthly mortgage payment and $430.36 a month (starting in the fourth month of the Plan) to cure the arrearage on the mortgage. *Id.*; Plan ¶ 3.07(c). The balance of the monthly plan payment was to be disbursed to creditors holding Class 2 secured claims and $45,725 in priority unsecured claims, with there being must a 0.5% dividend to creditors holding $90,730 in general unsecured claims.

The Chapter 13 Trustee filed a Motion to Dismiss on December 11, 2018. *Id.*, Dckt. 28. The motion was based on Debtor being delinquent $4,361.12 in plan payments (one payment) as of the end of November 2018. Debtor's opposition was merely that there was "confusion" as to when the first payment was suppose to start and that Debtor would be current as of the January 9, 2019 hearing. *Id.*; Reply, Dckt. 32. Though not current as of the January 9, 2019, the court continued the matter based on Debtor's representation that there was a "payroll issue" (different from the reason stated in the Reply) that caused the default. *Id.*; Civil Minutes, Dckt. 34. Though continued a month, Debtor did not resolve the "payroll issue" and the default, with the court ordering the bankruptcy case dismissed. *Id.*; Civil Minutes, Dckt. 35; Order, Dckt. 26.

Case 18-20287

Debtor commenced Chapter 13 Case 18-20287 on January 18, 2018, with it being dismissed six months later on July 12, 2018. Debtor confirmed the Chapter 13 Plan in case No. 18-20287 on March 13, 2018. 18-20287; Order, Dckt. 14. The Chapter 13 Plan in Case No. 18-20287 required monthly plan payments of only $2,965.00. *Id.*; Plan, Dckt. 5. That plan provided for only paying the Class 1 mortgage and arrears, with a 7% dividend for $125,004 in general unsecured claims.

The Chapter 13 Trustee filed a Motion to Dismiss on March 30, 2018, asserting a default of $5,930.00, which was two monthly payments. *Id.*; Motion, Dckt. 18.

APPLICABLE LAW

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

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

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the

terms of a plan confirmed by the court; or

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

11 U.S.C. § 362(c)(4)(D).

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

DISCUSSION

As discussed above, the Debtor has been unable to perform plans in two prior cases. Looking at Schedules I and J in this case may show a reason for this inability to perform the Chapter 13 Plans. On Schedule I Debtor shows monthly take home income of $6,152.00 (which includes $1,000 of overtime). Dckt. 15 at 28-29.

On Schedule J Debtor lists no dependents. *Id.* at 30. Debtor lists having monthly expenses of ($1,815.00). *Id.* at 31-32. This shows the Debtor having monthly net income of $4,337.00 to fund a plan. This is the amount necessary to fund the proposed Plan in the current case, which does provide a 13% dividend to creditors holding general unsecured claims.

In Case No. 18-24431 Debtor listed having take home pay of $5,437. 18-24431; Schedule I, Dckt. 1 at 32-33. On Schedule J Debtor listed having expenses of only $1,177.00, yielding monthly net income to fund a plan of $4,260.00. *Id.* at 34-35. This was the number necessary to fund the Chapter 13 Plan that was proposed in the prior case, which only the secured claims.

In the present motion it is alleged that debtor "incurred large vehicle repair bills and missed work after I became [Debtor, not the attorney signing the Motion] ill." Motion ¶ 6, Dckt. 10. In his Declaration Debtor provides no testimony about the "large vehicle repair bills" or "missed work" due to illness, but just makes the same generic references as in the Motion. Declaration ¶ 3, Dckt. 12.

At the hearing, the court continued the hearing for supplemental pleadings. Debtor's counsel reported that there was no foreclosure sale or other matter for which the stay needed to be immediately

imposed. In light of the incorrect characterization as relief being sought pursuant to 11 U.S.C. § 362(c)(3)(B), but Creditor filing an opposition based on 11 U.S.C. § 362(c)(4)(B) relief, and the lack of specific testimony by Debtor, the court continues the hearing rather than denying the Motion. Debtor's prior cases were dismissed after Debtor did not make required Plan payments. *See* Order, Bankr. E.D. Cal. No. 18-24431, Dckt. 36; Order, Bankr. E.D. Cal. No. 18-20287, Dckt. 21.

DEBTOR'S SUPPLEMENTAL DECLARATION:

On April 16, 2019, Debtor filed a supplemental Declaration stating that Debtor has filed two bankruptcy cases in prior year (Case Nos. 18-20287 and 18-24431). Dckt. 27. Debtor states that the last proceeding was dismissed due to failed plan payments due to unanticipated car expenses. In support of being able comply in the current proceeding Debtor states that he has approved overtime to fund plan payments, that he is attempting to adjust income tax witholdings, that anticipated tax refunds will be intercepted to pay the IRS' $60,000.00 claim, and that he will address the arrears to Creditor Wells Fargo through the Chapter 13 Plan.

At the hearing ------.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by John Wilson ("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 imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.~~

****

10. 18-23460-C-13 DRE-2 GREGORY/CHERIE BORGERSON D. Randall Ensminger MOTION TO APPROVE LOAN MODIFICATION 4-17-19 [45]

****

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 Debtors, Debtors, Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is xxxxx.

The Motion to Approve Loan Modification filed by Gregory Borgerson and Cherie Borgerson ("Debtors") seek court approval for Debtors to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's current adequate protection mortgage payment from the current $1,692.01 per month to $1,139.17 per month ($1,942.22 with estimated Escrow payments). The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 2.82% to 2.82% over the next 215 months (approximately 18 years).

The Motion is supported by the Declaration of Gregory Borgerson and Cherie Borgerson . Dckt. 48. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

OPPOSITION OF CREDITOR HOLDING SECOND DEED OF TRUST:

On April 23, 2019, Deutsche Bank National Trust ("Objector") filed an opposition. Dckt. 50. Deutsche Bank National Trust, as Certificate Trustee on behalf of Bosco Credit II Trust Series 2010-1, is the holder of the second deed of trust associated with the subject property. Objector asserts that the loan modification increases the unpaid principal balance from $266,432.11 to $333,872.89, leaves the interest

unchanged, extends the maturity date of the loan, and increases the monthly payments. Objector asserts that the changes to the loan are prejudicial to it as the junior lien holder and if not consented to, cause the prejudicial condition to be subordinate to their lien.

DEBTORS' RESPONSE:

On April 30, 2019, Debtors' responded to Creditor Deutsche Bank's Opposition by requesting that the hearing be continued to allow time for the holder of the First Deed of Trust Ocwen Loan Servicing, LLC time to be served with the Opposition and respond, because the Opposition does not appear to have been served on the Creditor.

DISCUSSION:

In reviewing this case, the court notes that Proof of Claim No. 11 filed by HSBC Bank USA, N.A., as Trustee, for the obligation secured by the senior deed of trust states that the pre-petition arrearage is ($84,817.61).

Under the confirmed Chapter 13 Plan, Dckt.5, Debtor is providing the projected disposable income of $3,090 a month for sixty (60) months, which totals $185,400 in plan payments. After allowing for a Chapter 13 Trustee's fee projected to be (at 8%) $14,832, there will be $170,568 of plan funds for disbursement to creditors and administrative expenses, which will have to include the payment on the two secured claims.

The confirmed Chapter 13 Plan also acknowledges that there are substantial arrearages owed on the secured claim of Deutsche Bank, secured by the second deed of trust. In Proof of Claim No. 3 Deutsche Bank states that its of $239,245.12 is all due in full, thus, the entire amount is the pre-petition "arrearage."

The confirmed Chapter 13 Plan does not provide for paying the Deutsche Bank claim, but make only adequate protection payments while the Debtor diligently prosecutes a loan modification with Deutsche Bank.

In opposing the present Motion Deutsche Bank argues that the proposed loan modification that capitalizes the arrearages, keeps the interest rate at 2.8%, does not create any new debt, and extends the final balloon payment, is of prejudice to it's current position. That is a little hard to understand unless Deutsche Bank is waiving a cashier's check to pay off the first and protect itself from being foreclosed out.

The opposition may arise from what appears to be Debtor's unwillingness to provide for creditor payments in the Plan. As stated above, Debtor will have $170,568 in plan payments to creditors. Of that, $2,000 will go to pay the attorney's fees for counsel for Debtor.

Under the proposed Modification, $116,533.20 (assuming payments for 60 months) would go to Owen Loan Servicing for payment on the modified obligation secured by the senior deed of trust. That would leave $54,000 for the Deutsche Bank claim secured by the second deed of trust (without taking into account the proposed 11% dividend for creditors holding general unsecured claims.

With a claim of $239,245.12 and there being $900.00 a month ($54,000/60 months = $900.00) for the Deutsche Bank claim, it appears that there would have to be a major modification of the Deutsche Bank obligation for there to be any modified plan confirmed in this case.

Deutsche Bank chose not to state a value for the Property securing its claim when it filed Proof of Claim No. 3. Likewise, on Proof of Claim No. 11 filed by Ocwen for HSBC Bank (USA), N.A. , no statement of value for the property securing the claim was provided. On Schedule A/B Debtor stated the value of this property securing the two claims to be $536,779.00. Dckt. 1 at 12.

With a value of $536,779.00 and the HSBC Bank (USA), N.A. claim being ($333,872.89) [using the current total principal balance under the modification), there is a significant amount that could be recovered by Deutsche Bank, approximately $150,000 (after allowing for 10% to go for foreclosure costs, taxes, insurance, and resale costs). To get the $150,000, Deutsche Bank would have to advance the $333,872.89 to pay off the first, and then recover that before obtaining a partial payment on its claim.

Pending Motion to Dismiss

On April 29, 2019, the Chapter 13 Trustee filed motion to dismiss this case. Dckt. 53. In it the Trustee alleges that the Debtor is $12,309.26 in plan payments. This represents four months of payments. Given the Debtor's budget for reasonable and necessary expenses, it appears that it would be next to impossible for the Debtor to have an "extra" $12,306.26 to cure the default.

Conclusion

The present Motion to Approve a Loan Modification is being made in the context of this Chapter 13 case and Debtor performing a bankruptcy plan. That being in doubt, given the Debtor's substantial default, the propriety of the bankruptcy court exercising federal court jurisdiction to order such a modification is in doubt.

At the hearing ----.

~~This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.~~

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

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

~~The Motion to Approve Loan Modification filed by Gregory Borgerson and Cherie Borgerson ("Debtors") 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 Gregory Borgerson and Cherie Borgerson to amend the terms of the loan with Ocwen Loan Servicing, LLC ("Creditor"), which is secured by the real property commonly known as 2105 Pimlico Court, Lincoln, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 47).~~

****

11. 15-20764-C-13 JOHN/OLIVIA D'ANTONIO CONTINUED MOTION TO MODIFY PLAN
PSB-1 Pauldeep Bains 2-5-19 [180]

****

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2019. 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). That requirement was met.

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 hearing on the Motion to Confirm the Modified Plan is granted.

John D'Antonio and Olivia D'Antonio ("Debtors") seek confirmation of the Modified Plan due to Debtor John D'Antonio's loss of employment . Dckt. 182 (Declaration). The Modified Plan proposes a step up payment plan to allow Debtor time to become gainfully employed. Dckt. 184 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on March 11, 2019. Dckt. 193. The Trustee questions whether there is a clerical error with respect to Debtor's proposed monthly payments. Additionally, the Debtors have not filed Supplemental Schedules I and J to reflect the changed income and expenses, as referenced in their Motion to Confirm Modified Plan. Accordingly, the Trustee is not certain the proposed plan is feasible.

DEBTORS' RESPONSE:

Debtors responded on March 19, 2019. Dckt. 196. Debtors concede that the proposed monthly payments contain a typographical error and the correct amount paid through month 48 should be

$136,823.99. Debtors have also concurrently filed supplemental Schedules I and J to reflect the changed circumstances. Additionally, Debtor John D'Antonio has since started driving for Uber and Lyft to generate additional income and Debtors have reduced their monthly expenses.

DISCUSSION:

Debtors have attempted to address the Trustee concerns in their response. Counsel for Debtors reports that Debtors are not yet current.

The Trustee concurred with the request to continue this hearing, especially in light of the case dating back to 2015. The Trustee concurred with the request.

DEBTORS' SUPPLEMENTAL RESPONSE:

Debtors' filed a Supplemental Declaration (Dckt. 201) stating that Debtors have cured the delinquency.

TRUSTEE SUPPLEMENTAL REPLY:

The Trustee states that Debtors are now current but had not yet filed the Amended Schedules I and J in the main bankruptcy proceeding. Dckt. 203. The court notes that subsequent to the Trustee's Supplemental Reply, Debtors filed Amended Schedulers I and J. *See* Dckt. 206.

RULING:

At the hearing ----

~~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 Michael Portzer and Tammie Portzer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 11, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

****

12. 19-21468-C-13 JOSE ACEVEDO
Dale Orthner

OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL, LLC
4-17-19 [21]

Thru #13

****

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2019. 14 days' notice is required. That requirement was met.

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.~~

Ditech Financial, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Plan does not provide for the full arrearage as stated in Creditor's Declaration to be $134,758.49. The court notes that as of May 3, 2019 no claim has been filed by Creditor.

B. Debtor's proposed Plan payments are insufficient to pay Creditors arrearage within the proscribed 60 month plan.

At the hearing ------

~~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 Ditech Financial, LLC ("Creditor") holding a secured claim] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

****

13. **19-21468-C-13 DPC-1** **JOSE ACEVEDO Dale Orthner** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-16-19 [17]**

****

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor did not attend the First Meeting of Creditors held on April 11, 2019. The Meeting has been continued to May 9, 2019.

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

The Plan 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.

****

14. 15-28376-C-13 KA KHA — MOTION TO INCUR DEBT
MAC-5 Marc Caraska — 4-22-19 [96]

****

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2019. 14 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is denied.~~

Ka Kha ("Debtor") seeks permission to purchase real property commonly known as 6121 W. 6th Street, Rio Linda, California, with a total purchase price of $445,000.00 and monthly payments of $2,117.62 to Royal Pacific Funding Corporation over 30 years with a 4.125% interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

CHAPTER 13 TRUSTEE OPPOSITION

The Chapter 13 Trustee has presented an opposition to the present Motion. The Trustee points out that under the current budget to fund the plan, Debtor was paying $1,395.00 for her home expense. That will now, under the proposed financing, jump to $3,011.00 a month. In addition, Debtor will be putting a cash payment of $17,044.42 as the down payment. Based on the documents presented, the Trustee identifies that

the Debtor will have to pay into escrow $24,168.00 cash to close the sale. The Trustee points out that Debtor has not explained the ability to have, during the pendency of this bankruptcy case, $24,168 in cash available to paying into escrow.

The Debtor fails to provide any testimony about how she has $24,168 in cash for closing, as well as more than doubling her monthly housing payment. In the Income and Expense budgets provided (not filed under penalty of perjury as Supplemental Schedules) Debtor lists her non-debtor spouse as now generating $1,200 in income from "day labor." Exhibit B, Dckt. 99. Though the non-debtor spouse is generating $14,400 in "day labor" income a year, on top of Debtor's $91,860 in income, no provision is made on the income or expense budget provided as Exhibit B for the payment of any income and self-employment taxes for the additional $14,400 in income which is pyramided on top of Debtor's $91,860 in income.

At the hearing ------.

~~The Motion and financial information presented raises more questions than it does support for the Motion. It appears that Debtor has, while protected in Chapter 13 and a budget so tight that Debtor could eke out only a 0.00% dividend for creditors holding unsecured claims, Debtor has $25,000 cash to drop into escrow. Further, Debtor has the financial ability to take on all of the expenses of home ownership.~~

~~Even under Debtor's unsubstantiated new budget projections, it does not appear that Debtor can afford to make the payments of more than $3,000 a month for the mortgage payment. The additional income from the non-debtor spouse will fall short when federal, state, and self-employment taxes are properly provided for.~~

~~The Motion is denied.~~

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

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

~~The Motion to Incur Debt filed by Ka Kha ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is denied, and Ka Kha is not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 99.~~

****

15. 19-21382-C-13 DPC-1 RAMONA GARCIA Steele Lanphier

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-16-19 [30]

****

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

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, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor did not attend the First Meeting of Creditors held on April 11, 2019. The Meeting has been continued to May 9, 2019.

B. Debtor does not appear to be able to make the payments based on the filed Schedules I and J. Debtor's Schedules reflect that Debtor is unemployed and receiving unemployment compensation of $428.00 and receiving family contribution(s). The Trustee is not certain on whether Debtor is obtaining new employment and is uncertain on the feasibility of the family contributions. There are not declarations filed in support of the contributions.

C. Debtor's Plan appears to be proposing a $1,000.00 adequate protection payment while attempting to obtain a loan modification. The Trustee has insufficient information to ascertain the reasonableness of this payment because no information is provided about

the contract loan payment.

C. Debtor's Plan appears to be proposing an Ensminger Provision, however, Debtor does not use the court recognized provisions.

Trustee's objections are well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has provided insufficient Income to support proposed plan payments because Debtor has not provided sufficient evidence to substantiate family contributions. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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.

****

FINAL RULINGS

16.	**18-24079-C-13 MJD-3**	**VALAREE ST. MARY Matthew DeCaminada**	**OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 2-1 3-18-19 [87]**

****

Final Ruling: No appearance at the May 7, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2019. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Objection to Proof of Claim Number 2-1 of LVNV Funding, LLC is sustained, and the claim is disallowed in its entirety.

Valaree St. Mary, the Debtor, ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $102.98. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was April 29, 1999. The date of last payment on the Statement of Account Information attached to the Proof of Claim states April 29, 1999.

DISCUSSION

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

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

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

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

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

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**
>
> (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
>
> **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 2-1 lists the charge off date as October 25, 1998. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after April 29, 1999. Thus, the four-year statute of limitations expired on April 29, 2003.

This bankruptcy case was filed on June 28, 2018 well after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

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

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

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

The Objection to Claim of LVNV Funding, LLC ("Creditor") filed in this case by Valaree St. Mary, the Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 2-1 of LVNV Funding, LLC is sustained, and the claim is disallowed in its entirety.

****

17. **19-20940-C-13** **SEAN/AMY ROENSPIE** **MOTION TO CONFIRM PLAN**
GEL-2 **Gabriel Liberman** **3-27-19 [22]**

****

Final Ruling: No appearance at the May 7, 2019 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Sean Roenspie and Amy Roenspie ("Debtors") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition statement of non-opposition on April 23, 2019. Dckt. 33. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Sean Roenspie and Amy Roenspie ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on March 27, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

****

18. **18-27666-C-13** **AREN JACKSON** **MOTION TO CONFIRM PLAN**
SLE-7 **Steele Lanphier** **3-25-19 [83]**

****

Final Ruling: No appearance at the May 7, 2019 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, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation Aren Jackson ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition statement of non-opposition on April 23, 2019. Dckt. 90. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Aren Jackson ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on March 25, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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19. **19-21277-C-13 PLC-1** **JASON/TIFFANIE RUPCHOCK** **MOTION TO VALUE COLLATERAL OF AIS PORTFOLIO SERVICES, LP**
Peter Cianchetta **4-10-19 [25]**

Thru #20

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Final Ruling: No appearance at the May 7, 2019 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 10, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of AIS Portfolio Services LP ("Creditor") is $11,785.00, and Creditor's secured claim is determined to have a value of $11,785.00.

The Motion filed by Jason Rupchock and Tiffanie Rupchock ("Debtors") to value the secured claim of AIS Portfolio Services, LP ("Creditor") is accompanied by Debtors' declaration. Debtors own a 2011 Lincoln MKS ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of $11,785.00 as of the petition filing date. As the owner, Debtors' 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).

TRUSTEE'S RESPONSE:

The Chapter 13 Trustee filed a response on April 23, 2019. Dckt. 43. The Trustee states that he does not oppose the Motion.

DISCUSSION:

The lien on the Vehicle's title secures a non-purchase-money loan to secure a debt of approximately $14,000.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-

collateralized. Creditor's secured claim is determined to be in the amount of $11,785.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Jason Rupchock and Tiffanie Rupchock ("Debtors") 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 AIS Portfolio Services, LP ("Creditor") secured by an asset described as 2011 Lincoln MKS ("Vehicle") is determined to be a secured claim in the amount of $11,785.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $11,785.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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20. **19-21277-C-13 PLC-2** **JASON/TIFFANIE RUPCHOCK** **Peter Cianchetta** **MOTION TO VALUE COLLATERAL OF HARLEY DAVIDSON FINANCIAL 4-9-19 [18]**

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Final Ruling: No appearance at the May 7, 2019 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Harley Davidson Financial ("Creditor") is $12,174.00, and Creditor's secured claim is determined to have a value of $12,174.00.

The Motion filed by Jason Rupchock and Tiffanie Rupchock ("Debtors") to value the secured claim of Harley Davidson Financial ("Creditor") is accompanied by Debtors' declaration. Debtors own a 2011 Harley Davidson FLHX ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of $12,174.00 as of the petition filing date. As the owner, Debtors' 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).

TRUSTEE'S RESPONSE:

The Chapter 13 Trustee filed a response on April 23, 2019. Dckt. 45. The Trustee states that he does not oppose the Motion and notes that Creditor has filed Claim No. 12-1 listing $13,582.66 as secured.

DISCUSSION:

The lien on the Vehicle's title secures a non-purchase-money loan to secure a debt of approximately $13,582.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $12,174.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure

3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Jason Rupchock and Tiffanie Rupchock ("Debtors") 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 Harley Davidson Financial ("Creditor") secured by an asset described as 2011 Harley Davidson FLHX ("Vehicle") is determined to be a secured claim in the amount of $12,174.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $12,174.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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21. **19-21707-C-13 DEF-1** **TERRY DASNO** **David Foyil** **MOTION TO VALUE COLLATERAL OF ONE MAIN FINANCIAL 4-1-19 [17]**

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Final Ruling: No appearance at the May 7, 2019 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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of One Main Financial ("Creditor") is $5,300.00, and Creditor's secured claim is determined to have a value of $5,300.00.

The Motion filed by Terry Dasno ("Debtor") to value the secured claim of One Main Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Dodge 1600 Pick Up ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,300.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

approximately $10,283.97.

TRUSTEE'S RESPONSE:

The Chapter 13 Trustee filed a response on April 22, 2019. Dckt. 24. The Trustee states that he does not oppose the Motion and notes that Debtor provides for the Creditor's claim in Class 2B of the proposed Plan. While the Trustee states that no claim has been filed, the court notes that subsequent to the Trustee's response One Main Financial filed a claim (No. 6-1) asserting a claim of $10,796.10 of which $9,313,00 is listed as secured.

DISCUSSION:

The lien on the Vehicle's title secures a purchase-money loan incurred on June 1, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $10,283.97. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $5,300.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Terry Dasno ("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 One Main Financial ("Creditor") secured by an asset described as 2008 Dodge 1600 Pick Up ("Vehicle") is determined to be a secured claim in the amount of $5,300.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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22. **19-20516-C-13 MS-1** **TRUMAN/LINDA KING** **Mark Shmorgon** **MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC**
4-9-19 [19]

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Final Ruling: No appearance at the May 7, 2019 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates ("Creditor") against property of Truman King and Linda King ("Debtors") commonly known as 605 Seagull Drive, Suisun City, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $1,322.77. An abstract of judgment was recorded with Solano County on February 27, 2017, that encumbers the Property.

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of $388,346.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $229,469.00 as of the commencement of this case are stated on Debtors' Schedule D. Dckt. 1. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $175,000.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Portfolio Recovery Associates, LLC California Superior Court for Solano County Case No. FCM151280, recorded on February 27, 2017, Document No. 201700017761, with the Solano County Recorder, against the real property commonly known as 605 Seagull Drive, Suisun City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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