UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 7, 2019 at 3:00 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 15.

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1. **19-21301-E-13 DPC-1** | **ANTHONY/KAYLA YAZZIE** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-16-19 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 16, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. 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 the debtors, Anthony David Yazzie and Kayla India Yazzie ("Debtor"), failed to appear at the Meeting of Creditors on April 11, 2019. The Meeting was continued to May 9, 2019.

Trustee also notes Debtor's first plan payment of $3,025.00 is due April 25, 2019, prior to the hearing on this Objection.

DISCUSSION

Trustee's objections are well-taken.

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

The Plan 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.

2.	**19-21310-E-13** **DPC-2**	**WANDA COLLIER-ABBOTT** **Richard Jare**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-16-19 [29]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 16, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to provide proof of social security number at the April 11, 2019 Meeting of Creditors. The Meeting was continued to May 9, 2019.

B. Debtor's plan includes the "Ensminger Provision" in an altered form. In Section 7.01 and 7.11 of the plan Debtor has not provided an adequate explanation for why adequate protection payments should not commence until after proofs of claim are filed for the claims of Real Time Resolutions and Select Portfolio Servicing.

C. Debtor provided her 2017 tax returns to the Trustee, which indicates gross income as $105,381.00 and the net income of $9,592.00 (or $799.33 per month). Debtor has also provided six months of Profit and Loss Statements (September 2018 - February 2019) to the Trustee. These statements indicate that Debtor received "$0.00" gross receipts or sales and had negative income each month. Debtor has filed an Amended Schedule I & J which includes an attachment of "Projected Business Income and Expenses" of $2,000.88 per month which coincides with her income on Schedule I. Amended Schedule B does not indicate that she has any escrows pending. Without the business income of $2,088.00 per month, Debtor's Plan is not feasible and it unclear to the Trustee if she can actually make the Plan payments.

D. Debtor claims exemptions on Amended Schedule C that Debtor is not entitled to.

DISCUSSION

Trustee's objections are well-taken.

Debtor failed to provide proof of identity (Declaration ¶ 3, Dckt. 31) and thus constructively did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor's Plan in Additional Provisions 70.1 and 7.11 together state:

> Adequate protection payments described below payable to [Real Time Resolutions and Select Portfolio Servicing] (either as principal or servicer for its [the creditor]) shall be disbursed by the trustee in accordance with the rank applicable as if it were a class 2 distribution in the plan (consequently disbursements begin after a proof of claim is filed).

Plan, Dckt. 3. Sections 7.02 and 7.12 indicate both those creditor's should be treated as Class 1. No explanation is provided for why these creditors must file a proof of claim before receiving adequate protection payments to which they are entitled.

Debtor's six months of profit and loss statements from September 2018 through February 2019 indicate gross receipts of "$0.00." Declaration ¶ 7, Dckt. 31.The Monthly Plan payment of $2,100.00 (Plan, Dckt. 3) relies on Debtor's disposable income being $2,100.00 as stated on Schedules I and J. Dckt. 23. Based on the six months of profit and loss statements, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

Trustee has a pending Objection To Exemption set to be heard on May 21, 2019. Dckt. 33. If

the Trustee's Objection is sustained, the Plan may not pass the liquidation test. 11 U.S.C. § 1325(a)(4).

Review of Schedules and
Statement of Financial Affairs

On Amended Schedule I Debtor states having monthly income of: (1) $939 gross wages, (2) $2,000 net business income, (3) $2,004 in temporary employment income, (4) $660 in additional temporary employment income, (5) $460 as a transaction coordinator, and (6) $1,000 contribution from a roommate. Dckt. 28 at 10-11. On Schedule I there is only $80 a month for taxes and withholding. Though self-employed, no provision is made on Schedule J for any self-employment taxes or income taxes. *Id.* at 13-15.

On Schedule J Debtor lists two children, a stepchild and foster child, and mother as dependents. *Id.* at 13.

Conclusion

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.

3. **15-22115-E-13 LBG-1** **ALAN/GLORIA SCHLOSSBERG** **Lucas Garcia** **MOTION TO MODIFY PLAN** **3-26-19 [44]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Alan Mark Schlossberg and Gloria Z Schlossberg ("Debtor") seek confirmation of the Modified Plan because of unforseen expenses, including a change in payroll versus draws in the business, as well as increases to expenses for food, utilities, transportation, and personal care. Declaration ¶ 4, Dckt. 46. The Modified Plan provides for payments of $2,400.00 for the first 46 months, and $1,000.00 thereafter for the remainder of the plan term. Dckt. 49. 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 22, 2019. Dckt. 50. The Trustee opposes confirmation on the following grounds:

1. The plan will not complete in 60 months. with the lower payment of $1,000.00 for the remaining 14 months, there will remain an additional

$2,012.12 to be paid at month 60.

2. The Modified Plan no longer provides for the claim of Exeter Finance Corp. However, Trustee has already disbursed $10,289.04 to this claim. The Modified Plan does not authorize these payments.

3. The Motion does not adequately explain why a Modified Plan is necessary. Debtor merely states "the financial circumstances of the Debtors have changed." Debtor's Declaration adds that there were unexpected changes in payroll and increased expenses, but does not explain what the changes were or why they occurred.

4. Debtor filed Amended rather than Supplemental Schedules.

5. The Amended Schedule I actually reflects an increase in income for Debtor. Where Debtor is now purportedly paying payroll deductions, it is unclear why Debtor is still receiving a monthly draw.

6. Debtor's increased expenses may be reasonable, but have not been adequately explained. Amended Schedule J includes an increase in charitable contribution from $0.000 to $200.00 without any explanation.

DISCUSSION

Trustee's opposition is well-taken.

The Motion To Confirm states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed March 17, 2015. Motion ¶ 1, Dckt. 44.

2. The Meeting of creditors was concluded, and the Chapter 13 Plan was Confirmed on May 30, 2015. *Id.*, ¶ 2.

3. "Since the confirmation of the Plan, the financial circumstances of the Debtors have changed (See the Declaration in Support of Motion for Order Confirming the Debtors' First Modified Chapter 13 Plan Dated March 26, 2019, filed concurrently with this Motion). As a result, the Debtors' Plan must be modified." *Id.*, ¶ 3.

4. The Modified Plan is attached as Exhibit 1. *Id.*, ¶ 4.

5. Supplemental Schedules I and J have been filed. *Id.*, ¶ 5.

6. The Motion was proposed in good faith, Debtor has no Domestic Support Obligations, and Debtor has filed all applicable tax returns. *Id.*,

¶¶ 6-8.

7. The Motion is made pursuant to 11 U.S.C. § 1329. *Id.*, ¶ 9.

While a reason is provided for the Modification, that reason is in the form of a conclusion and provides the court with no actual detail about what events have occurred in the case necessitating a Modification from the Confirmed Plan.

Debtor is required to state with particularity the grounds for relief within in Motion. However, even looking to the Debtor's Declaration, not much detail is added. The Declaration states the following:

> These events include that there has been a change in my payroll versus draws for income from the business. Per my tax advisor, I have begun receiving payroll with deductions. Also a number of personal expenses have crept up over time including increases in food, utilities, transportation, personal care needs. Overall my income is a little less but stable, however I have had to take over some of the work that was normally assigned to employees and not certain I can do that for long at my age.

Declaration ¶ 4, Dckt. 46. From the above, it is not clear what the effect on Debtor's income from payroll/draws was, or whether the problem was remedied by receiving deductions. Further, while changes to expenses are not uncommon or surprising, that does not mean Debtor can merely state "expenses have crept up" in the place of giving an actual explanation for the increases.

Debtor filed Amended Schedules I and J on March 26, 2019. Dckt. 43. This was obviously an error, as amended schedules relate back to the time of filing–it is unlikely Debtor meant to, three years into the plan, restate what the income and expenses have thus far been.

In reviewing the expenses in Schedule J, among the increases to expenses are as follows:

Telephone, cell phone, Internet, satellite, and cable services .. From $145 To $320

Food and housekeeping supplies. ....From $600 To $800

Transportation. Include gas, maintenance, bus or train fare . ...From $200 To $500

Charitable contributions and religious donations.....From $0 To $200

Dckt. 43. These changes, and others, are not explained. Where transportation expenses (to cherry pick one expense) have been increased by $300 a month, there should be a clear, easily stated explanation.

With respect to the charitable contribution that Debtor now wants to include in the budget, on Original Schedule I Debtor stated under penalty that there were no charitable contributions being made. Dckt. 10 at 27. On the Statement of Financial Affairs Debtor states under penalty of perjury that there

were no charitable contributions made during the one year period preceding the commencement of this case. Statement of Financial Affairs Question 7; *Id.* at 31. The Declaration of Debtor in support of the present Motion is devoid of any testimony as to how and why Debtor now desires to start making charitable contributions in the middle of the Chapter 13 case but can only make out a 3% dividend for creditors holding general unsecured claims.

In reviewing the Amended Schedule I, the monthly gross wages, salary, and commissions were increased from $2,000.00 to $4,600.00. Despite this substantial increase, the gross income listed on Schedule I was reduced from $9,359.94 to $8,568.00. The reduction in income, left unexplained, appears to be substantially from reduced rental/business income.

Without explanations provided for the changes in income and expenses, the court is left to deduce that Debtor is choosing to pay what he wants into the plan. The changes in income and expenses do not support the reduction in plan payments from $2,400.00 to $1,000.00.

At the hearing, xxxxxxxxxxxxxx.

Further, Trustee argues Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 64 months given the reduced payments. Declaration ¶ 3, Dckt. 51. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Modified Plan also no longer includes the claim of Exeter Finance Corp. Where Trustee has already disbursed $10,289.04, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Alan Mark Schlossberg and Gloria Z Schlossberg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

4. **19-22317-E-13 MET-1** **CAMERON MCCLELLAN** **Mary Ellen Terranella** **MOTION TO EXTEND AUTOMATIC STAY** **4-21-19 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 21, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Cameron S. McClellan ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-20755) was dismissed on January 16, 2019, after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 17-20755, Dckt. 71, January 16, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor has unanticipated car repair expenses (including from vandalism(Declaration ¶ 3, Dckt. 10)). Debtor states the vehicle issues have been dealt with, and Debtor's income from Social Security has increased. *Id.*

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11

U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Cameron S. McClellan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

5. **18-22532-E-13** **ROGER/BRANDY HAYES** **MOTION TO MODIFY PLAN**
MRL-1 **Mikalah Liviakis** **3-6-19 [31]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 6, 2019. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 denied.

Roger Ward Hayes and Brandy Trayshun Hayes ("Debtor") seek confirmation of the Modified Plan because debtor Brandy Trayshun Hayes became unemployed. Declaration ¶ 7, Dckt. 34. The Modified Plan provides for payments of $715.00 for 10 months, $340.00 for 10 months, and $640.00 for 40 months. Dckt. 33. 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 22, 2019. Dckt. 39. Trustee opposes confirmation on the basis that Debtor has not adequately explained changes to income. While Debtor states debtor Brandy Trayshun Hayes became unemployed and is on unemployment, no

indication is given as to when she will resume employment, or why she cannot do so.

DISCUSSION

Trustee's argument is well-taken. While debtor has indicated having reduced income from loss of employment (Declaration ¶ 7, Dckt. 34), Debtor has roughly four years left in the plan. There is no indication that the payments should remain reduced for the entire plan term.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Roger Ward Hayes and Brandy Trayshun Hayes ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6.	**19-20736-E-13** **DPC-1**	**GEORGE FRANCIS** **Pro Se**	**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 (*pro se*) on April 16, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the Meeting of Creditor on April 11, 2019. The Meeting was continued to June 13, 2019.

B. Debtor is delinquent $1,099.83 in plan payments.

C. The Plan fails to proposes a dividend to unsecured claims, or an arrearage payment to Class 1 creditor Total Asset Development.

D. Debtor's nonexempt equity is $85,000.00. Where the plan does not

provide a dividend to unsecured claims, the plan fails to meet the liquidation test.

E. Debtor lists $5,500.00 in net income from rental property or a business, profession, or farm. However, Debtor failed to identify having any business in the last 4 years on his Statement of Financial Affairs.

F. Debtor failed to provide Trustee with business documents.

G. Debtor has not provided a tax return or transcript for the most recent prepetition filing year.

H. Debtor indicated he has rental or investment income, but does not identify having any cash or money deposits, and has not provided detail as to business related property.

DISCUSSION

Trustee's objections are well-taken.

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

The Chapter 13 Trustee asserts that Debtor is $1,099.83 delinquent in plan payments. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Also affecting the feasibility of the plan is Debtor's failure to provide an unsecured claim dividend in the plan or an arrearage payment to Class 1 Class 1 creditor Total Asset Development; and failure to clarify the source of states rental/business income. 11 U.S.C. § 1325(a)(6).

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

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11

U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor has nonexempt equity of $85,000.00. Declaration, Dckt. 19. Where the plan does not provide a dividend to unsecured claims, the plan fails to meet the liquidation test.

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.

7. 15-22239-E-13 ROBERT/SANDRA RYAN MOTION TO SUBSTITUTE ATTORNEY
Elliott Gale 4-16-19 [68]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on April 16, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Withdraw as Attorney 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 Substitution of Attorney is ~~granted~~.

Robert John Ryan and Sandra L Ryan ("Debtor"), filed a this Motion seeking to substitute themselves in as counsel in the place of Sagaria Law, P.C.

No evidence is filed with the Substitution, and no grounds are stated in the Motion. The Substitution merely states that Debtor "hereby substitute themselves in the place and stead of Sagaria Law, P.C." Dckt. 68.

The Substitution is signed by Debtor and Elliot W. Gale, esq. While Debtor has freely consented to the termination of employment of Sagaria Law, P.C (CAL. R. PROF'L. CONDUCT 1.16(b)(6)), counsel has not provided an explanation for why the case would not be harmed in passing the baton from knowledgeable legal counsel to Debtor's to proceed in *Pro Se.*

Furthermore, no explanation has been provided as to what amounts have been paid to Sagaria Law, P.C. based on services that are no longer being rendered.

At the hearing, xxxxxxxxxxxxxx.

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 Substitution of Attorney filed by Robert John Ryan and Sandra L Ryan ("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 Substitution of Attorney is ~~granted, and Debtor is permitted to proceed in *Pro Se* in this case.~~

8. **19-22349-E-13 PGM-1** **JOSHUA/CONNIE NORMAN** **Peter Macaluso** **MOTION TO DISMISS DUPLICATE CASE AND/OR MOTION TO STRIKE 4-19-19 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 19, 2019. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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 Dismiss is granted, and case No. 19-22349 filed on April 16, 2019, is vacated.

The debtors, Joshua Lynn Norman and Connie Lynn Norman ("Debtor"), filed this Motion seeking dismissal of this case on the grounds that it was filed in error at the same time of Debtor's other case, no. 19-22340. Debtor further requests this case be stricken so as not to affect Debtor's credit report negatively.

While no legal basis for dismissal is provided by Debtor, where the case has not been converted the court is required to dismiss the case on the request of the Debtor. 11 U.S.C. § 1307(b).

Furthermore, beyond the impact the extra inadvertent filings would have on Debtor's creditor report, there are implications in the Bankruptcy Code as well. If Debtor's non-dismissed case, no. 19-22340, were subsequently dismissed, no stay would go into effect. 11 U.S.C. § 362(c)(4).

In light of the present case, No. 19-22349, having been filed inadvertently, the court finds it is necessary to vacate the inadvertent filing which would otherwise trigger provisions of 11 U.S.C. § 362(c) where they were not intended to apply. 11 U.S.C. § 105.

The mechanical error in the multiple bankruptcy cases being opened is clearly shown. Debtor and Counsel have moved promptly to correct this clerical error.

Based on the foregoing, cause exists to vacate the filing of this bankruptcy case, and to order the Clerk of the Court to have the court's files reflect that this filing is a nullity.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, it is determined that the documents in this case were electronically delivered to the court in error, and that the filing of Bankruptcy Case No. 19-22349 on April 16, 2019, is vacated. The filing being vacated due to the mechanical error, the court determines the filing to be a nullity and not a bankruptcy case filed by either of the two Debtors.

9. 19-22348-E-13 JOSHUA/CONNIE NORMAN
PGM-1 Peter Macaluso

MOTION TO DISMISS DUPLICATE CASE AND/OR MOTION TO STRIKE
4-19-19 [8]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 19, 2019. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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 Dismiss is granted, and case No. 19-22349 filed on April 16, 2019, is vacated.

The debtors, Joshua Lynn Norman and Connie Lynn Norman ("Debtor"), filed this Motion seeking dismissal of this case on the grounds that it was filed in error at the same time of Debtor's other case, no. 19-22340. Debtor further requests this case be stricken so as not to affect Debtor's credit report negatively.

While no legal basis for dismissal is provided by Debtor, where the case has not been converted the court is required to dismiss the case on the request of the Debtor. 11 U.S.C. § 1307(b).

Furthermore, beyond the impact the extra inadvertent filings would have on Debtor's creditor report, there are implications in the Bankruptcy Code as well. If Debtor's non-dismissed case, no. 19-22340, were subsequently dismissed, no stay would go into effect. 11 U.S.C. § 362(c)(4).

In light of the present case, No. 19-22348, having been filed inadvertently, the court finds it is necessary to vacate the inadvertent filing which would otherwise trigger provisions of 11 U.S.C. § 362(c) where they were not intended to apply. 11 U.S.C. § 105.

The mechanical error in the multiple bankruptcy cases being opened is clearly shown. Debtor and Counsel have moved promptly to correct this clerical error.

Based on the foregoing, cause exists to vacate the filing of this bankruptcy case, and to order the Clerk of the Court to have the court's files reflect that this filing is a nullity.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the debtors, Joshua Lynn Norman and Connie Lynn Norman ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, it is determined that the documents in this case were electronically delivered to the court in error, and that the filing of Bankruptcy Case No. 19-22348 on April 16, 2019, is vacated. The filing being vacated due to the mechanical error, the court determines the filing to be a nullity and not a bankruptcy case filed by either fo the two Debtors.

10. **19-22484-E-13 MRL-1** | **JONATHAN/SHERRY ANN TAEU** **Mikalah Liviakis** | **MOTION TO VALUE COLLATERAL OF THE GOLDEN 1 CREDIT UNION 4-22-19 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 23, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $23,000.00, the amount stated to be the secured claim in Proof of Claim No. 2 filed by Creditor.

The Motion filed by Jonathan Acosta Taeu and Sherry Ann Moises Taeu ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2017 Nissan Pathfinder ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $23,000.00 as of the petition filing date.

The lien on the Vehicle's title secures a purchase-money loan incurred in July 16, 2017, which is fewer than 910 days prior to filing of the petition. Proof of Claim, No. 2. Therefore, the purchase money portion of the secured claim cannot be valued. 11 U.S.C. § 1325.

Debtor requests that the loan held by Creditor be determined to be secured in the amount of $23,000.00–which Debtor states is the current claim amount of $32,934.00 minus the negative equity (non-purchase money) of $11,638.00, but not less than the value of the Vehicle which is $23,000.00.

In Debtor's Declaration, Debtor states the current purchase money loan balance should be $23,740.71 Dckt. 10. Debtor testifies that the purchase-money portion of the original principal loan was $32,295.90 of the total $43,933.90, or 73.51 percent. Thus, Debtor states the current loan value is 73.51 percent of Creditor's claim of $32,934.00, or $23,740.71.

Debtor's statement of the legal analysis and the ultimate legal conclusion that the claim should be $23,740.71 is different from what is alleged in the Motion. In the Motion Debtor asserts that the purchase money secured claim should be reduced down to $23,000.00 the value of the vehicle, not the unaltered purchase money obligation.

Creditor's Proof of Claim

Creditor filed its Proof of Claim, No. 2 ("Claim") on April 29, 2019. The Claim states the following:

Value of property: $_____

Amount of the claim that is secured: $ 23,000.00

Amount of the claim that is unsecured: $ 10,114.81

Amount necessary to cure any default as of the date of the petition: $ 1,141.50

A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim shows that the total amount financed by Debtor was $43,933.90. There was a net trade-in of ($11,638). Essentially, the total amount financed is two separate loans, one for negative equity arising from the trade-in and another for the new financing for the Vehicle.

DISCUSSION

Debtor asserts the negative equity arising from the trade-in is 26.49% of the amount financed, and the remaining 73.51% is new financing secured as a purchase money security interest in the new Vehicle. Applying those percentages to the amount claimed by Creditor,$23,740.71 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired fewer than 910 days prior to the filing that prevents Debtor from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), Debtor is only seeking to value the portion of the

financing that was for negative equity arising from the trade-in, not the actual purchase of the Vehicle.

In the Ninth Circuit, negative equity is not considered as part of the price for a new vehicle and is not included in the purchase money security interest. *AmeriCredit Fin. Servs. v. Penrod (In re Penrod)*, 611 F.3d 1158,1161–62 (9th Cir. 2009), *reh'g denied*, 636 F.3d 1175 (2011), *cert. denied* 565 U.S. 822 (2011). Debtor may value that portion of the secured claim relating to the negative equity financed in addition to the purchase price.

The definition of a "purchase money security interest" is determined by state law. *Id.* California Commercial Code § 9103 "does not provide a precise, encapsulated definition of a purchase money security interest, but rather a string of connected definitions." *Id.* at 1161; CAL. COM. CODE § 9103.

In *Penrod*, the Ninth Circuit Court of Appeals quoted the plain language of the California Commercial Code, stating,

> "'Purchase money collateral' means goods or software that secures a purchase money obligation." CAL. COM. CODE § 9103(a)(1). "'Purchase money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." CAL. COM. CODE § 9103(a)(2).

611 F.3d at 1161.

The California Commercial Code defines the term "goods" to be,

> (44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

CAL. COM. CODE § 9102(44). Physical "things" are included in the definition, but contracts, claims, instruments, letters of credit, and other non-physical "things" are not included.

As discussed by the court in *Penrod*, creditors are given some extraordinary rights for purchase money finance and a purchase money lien. While extraordinary rights are given, the California Legislature carefully circumscribed the obligations that would be protected.

Secured Claim Determined

Here, it appears that Creditor has computed what it asserts as its purchase money secured claim in Proof of Claim No. 2. Its calculation is $23,000.00, slightly less than the purchase money obligation as computed by Debtor.

As stated in Proof of Claim No. 2, the court determines that the secured claim of Creditor in this case is $23,000.00, with the balance of the claim being a general unsecured claim.

Therefore, based on the foregoing, Creditor's secured claim is determined to be in the amount of $23,000.00 . *See* 11 U.S.C. § 506(a). The remaining amount of the allowed claim is determined to be a general unsecured claim arising from the non-purchase money obligation. The value of the vehicle is $23,000.00, which is consistent with the value of the vehicle as asserted by Debtor. 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 Jonathan Acosta Taeu and Sherry Ann Moises Taeu ("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 Golden 1 Credit Union ("Creditor") secured by an asset described as 2017 Nissan Pathfinder ("Vehicle") is determined to be a secured claim in the amount of $23,000.00. Creditor states that amount as the secured portion of its claim in Proof of Claim No. 2, which is consistent with the Debtor's calculation of the purchase money obligation. That is the amount of the secured claim pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a), and the balance of the allowed claim, is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $23,000.00 and is encumbered by liens securing claims that exceed the value of the asset.

11. **17-27360-E-13** **MARTHA GARCIA**
PGM-1 **Peter Macaluso**

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE AND/OR MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
3-23-19 [43]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 20, 2019. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection To Notice of Mortgage Payment Change 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 Objection To Notice of Mortgage Payment Change is sustained and the increase in the escrow payment is disallowed in its entirety.

Based upon the evidence presented, the court authorizes Creditor to increase the monthly escrow payment to $363.21 a month, for the increase of $1.17 in the projected annual property taxes and insurance as stated in documents presented by both Debtor and Creditor.

The debtor, Martha Suarez Garcia ("Debtor"), filed this Objection to the Notice of Mortgage Payment Change ("Notice") filed by creditor Deutsche Bank National Trust Company, As Trustee for GSAMP Trust 2005-WMCl ("Creditor") on November 26, 2018.

Debtor states the monthly mortgage payment increased by $151.92, resulting in an increase of $218.22 to the plan payment. Debtor argues that there is no support for the increased payment, which purports to increase the escrow balance to $1,823.06 as a cushion, is not necessary where the escrow balance is $0.00.

Debtor argues further Creditor is liable for attorney's fees pursuant to California Civil Code § 1717, and requests fees of $1,025.00.

CREDITOR'S OPPOSITION

Creditor filed a Response on April 23, 2019. Dckt. 48. Creditor asserts the escrow shortage amount was included in the Proof of Claim with the Escrow Account Disclosure Statement.

Creditor asserts further the Notice indicated that the monthly escrow payment was increasing from $362.04 to $515.12 and that the monthly mortgage payment would therefore increase to $1,884.37. Creditor argues the decision to increase the escrow payment was made after Creditor was forced to make a $1,884.25 county tax payment on November 13, 2017.

The adjusted minimum escrow cushion of $726.04 is 1/6 of the disbursements made in the 12 month period. Creditor argues it considered the November 2017 county tax and the following projected 12 month escrow payments and found a deficiency of $1,096.66–which is $1,884.25 negative when considering the minimum escrow cushion amount.

Creditor also argues sufficient documentation was provided; that the Notice was filed in good faith; and that attorney's fees should not be awarded because the Notice is accurate.

DEBTOR'S REPLY

Debtor filed a Reply on April 30, 2019. Dckt. 49. Debtor asserts Creditor is not disbursing in consistent months, and reiterates there is no need for an equity cushion given there is a escrow balance of $0.00.

Debtor argues the escrow provides for $4,358.40 in escrow payments, ($363.20 x 12), and the required escrow cushion/minimum balance is $4,358.50.

DISCUSSION

A copy of the Notice of Mortgage Payment Change has been filed as Exhibit A in support of the Objection. Dckt. 46 at 2. This bankruptcy case was filed on November 6, 2017. Creditor's claim at that time was $311,255.45, with a pre-petition arrearage of $69,143.93.

The Notice indicates that, applying only payments of $363.20 to the escrow, there would be a negative balance beginning March 2019 of ($1,096.66), with that negative balance slowly whittled down until December 2019 where there is a projected balance of $295.89. In the month of March 2019, the

negative balance is $1,823.06 when accounting for the minimum cushion of $726.40.

The "required balance projection" in December 2019 is $2,118.95, which is $1,823.06 higher than the projected balance. The increase in the monthly payment of $151.12 over 12 months would increase the escrow ending balance by $1,823.04.

In the details for computing the required escrow monthly payment, Creditor identifies there being three expenses to be paid in 2019:

1. 03/2019 - 2018 2nd Property Tax Installment.....$1,876.25

2. 03/2019 - Property Hazard Insurance.....$ 606.00

3. 11/2019 - 2019 1st Property Tax Installment.....$1,876.25

This totals $4,358.50. Divided over twelve payments a year, this equals $363.20.

The existing escrow payment of $362.04 is slightly less, resulting in there being an annual shortfall of ($14.02), which when spread over twelve months is ($1.17) per month.

Creditor's Opposition consists of: (1) a seven page Opposition presenting the arguments and legal authorities by counsel; (2) certificate of service; (3) Exhibit 1 which is a four page declaration by Javier Rivera in this bankruptcy case; (4) Exhibit A attached to Exhibit 1 which is identified as the "POC Escrow Analysis;" and (5) Exhibit 2 which is the declaration of Sean Ferry, Creditor's counsel in this bankruptcy case.

In considering this Opposition, the court first notes that Creditor has chosen to not comply with Local Bankruptcy Rules 9004-1 and 9014-1(c) which require that the opposition, each declaration, the exhibits, and the certificate of service be filed as separate pleadings - not lumped together into one super thirty-three page electronic document dropped on the court.

In reviewing Mr. Rivera's declaration he provides the court with his personal knowledge testimony (F.R.E. 602) that includes:

1. The Proof of Claim filed by Ocwen (Proof of Claim No. 7, though Mr. Rivera does not identify it by proof of claim number) is for a total claim of $311,255.45, which includes $69,143.93 in pre-petition arrears.

2. On page four of the Proof of Claim the amount of the monthly payment is stated to be $1,731.29, which consists of $1,369.25 in principal and interest, and $362.04 for escrow.

3. Mr. Rivera then reads from page four of the Proof of Claim to tell the court that the Proof of Claim says that there will be a projected escrow shortage of $1,744.17.

4. Mr. Rivera then continues to read from the Escrow Analysis attached to the Proof of Claim. Telling the court that he reads it to say that the asserted shortage in the escrow is computed by taking into account the total anticipated payments to and from escrow for the following 12 month period, plus a "buffer" of $724.08.

5. Mr. Rivera then states, it appearing by reading it from the Proof of Claim that there was an initial escrow balance of $1,744.17 required in December 2017 to ensure that there would be at least the $724.08 cushion.

6. Mr. Rivera then states that Ocwen filed a Notice of Mortgage Payment Change, and then reads from that Notice, telling the court that the monthly escrow payment amount was to be increased from $362.04 to $515.12.

7. Continuing to read from the Proof of Claim and the Escrow Analysis attached thereto, that Ocwen had to pay (presumably it was paid by the creditor for which Ocwen is the loan servicer).

8. Mr. Rivera then testifies that the difference in the monthly escrow payment in the Proof of Claim and the increased amount in the Notice of Mortgage Payment Change arises from the $1,884.25 county tax payment that was made in November 2017, shortly after the filing of the bankruptcy case in November 2017.

There is little, if any, actual personal knowledge testimony provided by Mr. Rivera. Rather, his declaration appears to be merely an extended argument by Creditor's counsel.

Proof of Claim No. 7 was signed by Sean Ferry, the attorney for Creditor, as the "Authorized Agent for Secured Creditor." Mr. Ferry signed Proof of Claim No. 7 under penalty of perjury, stating that it is true and correct. Possibly it is Mr. Ferry who has the substantive personal knowledge to provide testimony about the claim and the increase in escrow payment, rather than Mr. Rivera merely reading the documents to the court.

The Objection portion of the Objection/Certificate of Service/Declarations as Exhibits/Exhibits as Exhibits to Declarations that are Exhibits document repeats much of Mr. Rivera's reading of the Proof of Claim, Escrow Analysis, and Notice of Mortgage Payment Change. Many of the paragraphs look identical to the recitations of the documents by Mr. Rivera in his declaration.

Double Payment of Arrearage Sought by Creditor

The "need" to increase the escrow is uniformly stated in the documents due an arrearage caused by the November 2017 property tax payment, which Creditor had to advance due to Debtor having defaulted in the pre-petition mortgage (principal, interest, escrow). In Proof of Claim No. 7 Creditor has properly demanded that Debtor cure all of those pre-petition arrearages, which totals

$69,143.93. This $69,143.93 pre-petition arrearage include the tax payment to be made in November 2017.

Now, Creditor and Ocwen demand that Debtor pay this pre-petition arrearage through the plan, and then Debtor double pay the arrearage by increasing the escrow payment by $151.92 a month, which after 12 months will put in Creditor's (escrow) pocket $1,823.04.

Creditor provides no legal basis for it being paid the $1,823.04 twice

Debtor's Objection is sustained and the proposed increase in the monthly escrow payment to $515.12 is disallowed in its entirety.

Based upon the evidence presented, the court authorizes Creditor to increase the monthly escrow payment to $363.21 a month, for the increase of $1.17 in the projected annual property taxes and insurance as stated in documents presented by both Debtor and Creditor.

Prevailing Party

In the Objection Debtor asserts the right to recover attorney's fees and costs for having to prosecute this Objection. Debtor states the right to recover attorney's fees as follows:

> Debtor is entitled to attorney's fees by stature, under Ca. Civil Code§ 1717, a reciprocal contractual attorneys' fees statute, Debtor is entitled to reimbursement of attorney's fees as the prevailing party in this matter. Therefore, Debtor requests an award of attorney's fees of $1,025.00, based on the Hourly Billing attached hereto as Exhibit #2.

Objection, p. 4:13-16; Dckt. 43.

Debtor does not direct the court to any "contractual" attorney's fees provision. California Civil Code § 1717 does not create a substantive right to attorney's fees, but does provide that if a contract purports to entitle only one of the parties may recover attorney's fees (such as a promissory note written by a financial institution), then the provision is reciprocal.

Though the requested fees of $1,025 does not facially appear to be outrageous or unreasonable, before the court begins an analysis, there must first be a basis shown for the fees. While Debtor may argue, "the court knows that a creditor like this has attorney's fees provisions in its note and deed of trust" or "if the court would just read the note and deed of trust the court could state the basis for Debtor," such advocacy for one party or the other is not the role of the court.

While Debtor's counsel sought to reduce the potential attorney's fees and costs by collapsing down the normal post "judgement" (which includes orders) motion, here Debtor will have to proceed with the normal post judgment motion process as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

If the Creditor stipulates that a contractual attorney's fees provision exists, the court will consider the fee request at the present hearing, thereby allow Debtor to avoid incurring further attorney's fees and costs.

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 Notice of Mortgage Payment Change of Deutsche Bank National Trust Company, As Trustee for GSAMP Trust 2005-WMCl ("Creditor"), filed in this case by debtor, Martha Suarez Garcia ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection To Notice of Mortgage Payment Change is sustained and the proposed increase in the monthly escrow payment to $515.12 is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** that based upon the evidence presented, the court authorizes Creditor to increase the monthly escrow payment to $363.21 a month, for the increase of $1.17 in the projected annual property taxes and insurance as stated in documents presented by both Debtor and Creditor.
>
> **IT IS FURTHER ORDERED** that Debtor, as the prevailing party, shall seek the recovery of attorney's fees and expenses, if any, by post-judgment motion as provided in Federal Rule of Civil Procedure 64 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

12. **19-20026-E-13** **THOMAS IVERS** **MOTION TO CONFIRM PLAN**
LBG-1 **Lucas Garcia** **3-26-19 [40]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Thomas James Ivers ("Debtor") seeks confirmation of the Amended Plan, which would be the first confirmed plan in this case. The Amended Plan provides for payments of $100.00 for 60 months, and a lump sum of $608,000.00 in month 11. Dckt. 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 23, 2019. Dckt. 53. Trustee argues the Amended Plan is even more speculative than the prior proposed plan which was denied. Trustee opposes the following provision of the Chapter 13 Plan:

> Payments to class 3 shall be as follows: If by September 30, 2019 no purchase agreement has been signed and sale can be completed in a reasonable time thereafter, the court, the trustee, and the debtor through counsel shall propose 3 names for a specially appointed representative of the estate.

> That specially appointed representative shall evaluate the properties [sic] saleability in light of the debtors willingness to waive any amount of the homestead necessary to complete a 100% payment to secured claims through the trustee. That representative shall have until November 30, 2019 to market the property. If no purchase agreement is achieved by November 30, 2019 all class two claims shall revert to class 3 surrender and the creditors may take action against the property directly.

Dckt. 42. Trustee argues the plan would require him to appoint a representative for the Estate, and that Debtor would be better off converting the case to one under Chapter 7.

PROVIDENT FUNDING'S OBJECTION

Creditor, Provident Funding Associates, L.P. ("Provident") holding a secured claim filed an Objection on March 29, 2019, which this court has recast as an opposition to the Motion. Dckt. 49. Provident opposes confirmation of the Amended Plan on the basis that it relies on a sale of Debtor's residence to pay Provident's claim.

Also in Provident's Objection, almost as if an afterthought, Provident requests that it be allowed attorneys' fees. The Objection does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Provident having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

CITIBANK'S OBJECTION

Creditor, Citibank, N.A ("Citibank") holding a secured claim filed an Objection, which the court has recast as an opposition, on April 23, 2019. Dckt. 56. Citibank opposes confirmation of the Plan on the basis that:

A. The plan does not provide for equal period payments as required by 11 U.S.C. § 1322(b)(2).

B. The plan does not provide for the full value of Citibank's claim.

C. The plan does not promptly cure arrearages as required by 11 U.S.C. § 1322(b)(5).

D. The plan is not feasible.

E. The plan fails to provide for ongoing monthly payments.

F. Citibank is incorrectly listed as a Class 2(a) in the plan.

REVIEW OF PLAN

On schedule D Debtor states under penalty of perjury that Debtor's residence (the Pershing Avenue Property) secures the following obligations: (1) ($166,916) owed to Citibank, (2) ($30,000) owed to Jamie Ivers, and (3) ($212,349) to Provident Funding. Dckt. 1 at 20-21. Debtor states the property is worth $608,000. *Id.* These amounts are consistent with the proofs of claims filed by Citibank and Provident Funding.

On Schedule I Debtor states that he is unemployed, with his income limited to receiving $1,442 in Social Security benefits. *Id.* at 25-26.

On Schedule J Debtor computes having only $133 a month in net income available from his $1,442 gross monthly income that could be used to fund a Plan. Under penalty of perjury Debtor states that he has only $1,308.50 a month in expenses. *Id.* at 28. However, Debtor's statement under penalty of perjury of his reasonable and necessary expenses appears not to be "reasonable."

On Schedule J Debtor provides $260 a month for real property taxes and $60 a month for homeowners/property insurance for this residence stated to be worth $608,000. He goes further to state that this residence with a value of $608,000 requires no home maintenance or repairs during the five years of the Plan. *Id.* at 28.

For housekeeping supplies and food Debtor provides only $300 a month for sixty months. If one allocates $75 a month for housekeeping supplies and expenses, that leave $225 a month for food. In a 30 day month, that provides $2.50 for food for each meal during the sixty months. *Id.*

Debtor continues, stating under penalty of perjury that he will have no expenses for any clothing, laundry, or dry cleaning during the sixty months of the Plan. *Id.*

The expenses continue, stating that Debtor will spend no money on any recreation or entertainment during the sixty months of the Plan. *Id.*

The Amended Plan purports to state that there is to be a $608,000 lump sum payment in month eleven of the Plan. This bears no relation to the claims as scheduled or listed on the Plan.

It then provides that in the eleventh month after the sale, which is to be done by the eleventh month of the case, Class 2 creditors are to be paid. No explanation is given for why the Debtor will hold the sales proceeds for a year before creditors are paid.

The plan provides for Class 3 claims, for which there are none, if no purchase agreement has been signed (not that a sale has been completed), then the trustee and debtor will propose three names for a representative of the estate. Then somehow a representative of the estate will be appointed and the representative will have a month to market the property, but no provision is made for the representative to sell the property.

Then, if no sale is completed by the end of the month, then the Debtor and estate shall forfeit the property, allowing what Debtor asserts are grossly oversecured creditors, to foreclose on the Property. Plan Additional Provisions, Dckt. 42 at 8.

Why a Debtor, who would be competent to perform a plan, would agree to such a short marketing schedule and then forfeit the property is unimaginable. Rather than showing a Debtor who can perform a plan, it demonstrates that Debtor is either grossly unable to perform a plan or Debtor has a scheme afoot to further delay payment.

DISCUSSION

The Trustee and creditors' arguments are well-taken. In denying confirmation of the prior proposed plan, the court stated the following:

> Currently, there is nothing holding Debtor to this proposed plan. Debtor is providing no adequate protection to secured claims while a proposed sale is presumably in the works. If Debtor, in six months, decides to amended or modify his plan to provide for other treatment, Debtor would be free to do so (after having reaped the benefit of making no payments of any kind to creditors for several months).
>
> Currently, the plan is overly speculative and does not appear feasible. 11 U.S.C. §1325(a)(6). Creditors are not provided adequate protection on their claims, and the plan proposes to provide for secured claim in unequal payments despite the requirements of the Bankruptcy Code. 11 U.S.C. § 1325(a)(5)(B)(iii).

Civil Minutes, Dckt. 31.

The present Amended Plan is not an improvement. What Debtor likely intended was to provide a penalty in the Amended Plan to show "yes, I am serious about selling my residence." In September 2019, a representative will be appointed to determine whether the Debtor's residence is fit for sale, and the representative is given 2 months to market the property before it is surrendered to creditors under the plan. Dckt. 42.

Such provisions do not confer confidence in Debtor's actions. If Debtor is serious about selling the property, it is unclear why a representative would need to determine if the property is saleable (particularly where Debtor anticipates net proceeds of $608,000.00 to fund the plan). It is further unclear why Debtor is given from January 2019 through September 2019 to market the property, but an actual professional would be limited to three months (in which time he or she must first be appointed, and then must determine whether the property is fit for sale).

The most likely result of the proposed Amended Plan appears to be that the property is surrendered to creditors. If that is the case, and as Trustee points out, this case is better suited for Chapter 7.

The proposed Plan does not comply with the provisions of 11 U.S.C. § 1325 and 1322, and plan is not confirmed.

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 Thomas James Ivers ("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.

13. **19-20026-E-13 NLG-2** **THOMAS IVERS** **Lucas Garcia** **OBJECTION TO CONFIRMATION OF PLAN BY PROVIDENT FUNDING ASSOCIATES, LP** **3-29-19 [49]**

The Objection of Provident Funding Associates, LP (Dckt. 49) has been recast by the court as an opposition to the motion to confirm (Dckt. 40; DCN: LBG-1) and addressed in the ruling on that Motion set to be heard the same day.

14. **19-20026-E-13 RPZ-2** **THOMAS IVERS** **Lucas Garcia** **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR CITIBANK, N.A.** **4-23-19 [56]**

The Objection of Provident Funding Associates, LP (Dckt. 49) has been recast by the court as an opposition to the motion to confirm (Dckt. 40; DCN: LBG-1) and addressed in the ruling on that Motion set to be heard the same day.

FINAL RULINGS

15. **19-20302-E-13 DPC-2** | **HSIN-SHAWN SHENG** **Richarsd Jare** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **3-4-19 [39]**

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, and Office of the United States Trustee on March 4, 2019. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Hsin-Shawn Cyndi Sheng's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on . Case No. 17-25114. Debtor received a discharge on November 28, 2017. Case No. 17-25114, Dckt. 61.

The instant case was filed under Chapter 13 on January 17, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on November 28, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 17-25114, Dckt. 61. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-20302), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("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 Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-20302, the case shall be closed without the entry of a discharge.

16. **19-20562-E-13 MMM-1** | **MICHAEL/MICHELLE HAMBRICK** **Mohammad Mokarram** | **MOTION TO CONFIRM PLAN** **4-1-19 [23]**

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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Michael Anthony Hambrick and Michelle Hambrick ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on April 23, 2019. Dckt. 31. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

Hambrick and Michelle Hambrick ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on April 1, 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.

17. 18-23379-E-13 GW-4
WILLIAM BATTILANA, II
Gerald White
MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTOR'S ATTORNEY
4-1-19 [146]

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, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 1, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gerald L. White, the Attorney ("Applicant") for William Rudolph Battilana, II, the Chapter 13 debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The Motion states that the case was originally filed under Chapter 7 on May 30, 2018, and was subsequently converted to a Chapter 13 on August 3, 2018. The original agreement between Client and Applicant provided $5,635.00 in attorney's fees and costs. Exhibit A, Dckt. 150. After conversion, a Chapter 13 retainer agreement was entered into which set an hourly fee rate of $300.00. Exhibit B, Dckt. 150.

Through Applicant's efforts, a Chapter 13 Plan was Confirmed on December 2, 2018. Order, Dckt. 140.

Applicant requests fees in the amount of $23,730.00 and costs in the amount of $499.80. Though no period for the interim fees is stated, the Billing Statement provided is dated March 21, 2019. Exhibit C, Dckt. 150. The court presumes the period for fees is February 12, 2018 (the first billed time entry) through March 21, 2019.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both

the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include representation in both the Chapter 7 and 13 case. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Preparation and Filing of Case Under Chapter 7: Applicant spent 13.95 hours in this category. Applicant prepared and filed the Chapter 7 case.

Case Management Under Chapter 7: Applicant spent 10.35 hours in this category. Applicant communicated with the Chapter 7 Trustee and other parties in interest.

Motion for Relief of the Automatic Stay by Jillian Battilana: Applicant spent 2.25 hours in this category. Applicant performed services relating to a motion filed by Client's ex-spouse seeking relief from stay in the Chapter 7 case to litigate her claim for attorney's fees in state court.

Conversion to Chapter 13 and Confirmation of Plan: Applicant spent 15.30 hours in this category. Applicant preformed services relating to the preparation, filing, and prosecution of a motion for conversion of the case from Chapter 7 to Chapter 13.

Motion to Approve Sale of Real Property and Motion to Approve Employment of Real Estate Broker: Applicant spent 15.30 hours in this category. Applicant preformed services relating to the sale of Client's real property, including preparation, filing, and prosecution of a motions for approval of employment for the Estate's real estate broker and for the sale of Client's residence.

Trustee's Objection to claim of Exemptions: Applicant spent 6.25 hours in this category. Applicant reviewed and communicated with the Trustee regarding Trustee's objection to Client's claim of exemptions.

Review of Claims: Applicant spent 10.40 hours in this category. Applicant reviewed various claims in the case and communicated with Client and creditors regarding the claims.

Case Management Under Chapter 13: Applicant spent 4.10 hours in this category. Applicant performed services related to general case administration, including correspondence with Client and the Chapter 13 Trustee, and review of notices in the case.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Gerald L. White	79.10	$300.00	$23,730.00

Total Fees for Period of Application	$23,730.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $499.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Chapter 7 Filing Fee	$335.00	$335.00
Court Call	$41.20	$164.80
Total Costs Requested in Application		$499.80

CHAPTER 13 PLAN

The confirmed Chapter 13 Plan in this case provides for a (not less than) 10% dividend to be paid to creditors holding general unsecured claims. Dckt. 46.

When the Chapter 7 case was filed, Applicant had been pre-paid $5,300.00 for all Chapter 7 case duties required to be performed by Applicant. Disclosure of Compensation, Dckt. 1 at 57.

In the present Motion Applicant seeks to be paid for 24.30 hours of Chapter 7 legal services at the billing rate of $300 per hour, which totals $7,290.00 of the fees requested.

Applicant requests that he court apply the $5,300.00 of monies already paid to a portion of the fees for the Chapter 7 services, and then pay the balance of the fees for the services provide to the Chapter 7 debtor as fees in the Chapter 13 portion of this case. Applicant assumes that attorney's fees are attorney's fees are attorney's fees, with the services interchangeable notwithstanding the Chapter under the Bankruptcy Code for which the services relate.

Local Bankruptcy Rule 2016-1 governs attorney's fees for counsel for the Chapter 13 debtor. That Rule provides, in pertinent part, when the attorney has opted-out of a fixed fee (as this Applicant has):

LOCAL RULE 2016-1
Attorneys' Fees in Chapter 13 Cases

(a) Compensation. **Compensation paid to attorneys for the representation of chapter 13 debtors** shall be determined according to Subpart (c) of this Local

> Bankruptcy Rule, **unless a party in interest objects or the attorney opts out of Subpart (c).** The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). **When** there is an objection or when an **attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority**.
>
> (b) Court Approval Required. After the filing of the petition, a debtor's attorney shall not accept or demand from the debtor or any other person any payment for services or cost reimbursement without first obtaining a court order authorizing the fees and/or costs and specifically permitting direct payment of those fees and/or costs by the debtor.

These fees are for representing the Chapter 13 debtor, not the debtor in a Chapter 7 case.

Though not clearly articulated in the Motion (or as some may say, stated with particularity), the court's review of the billing indicates that whether the case had been one in Chapter 7 or Chapter 13, the relief from stay battle with Debtor's ex-spouse would have occurred. In substance, Applicant was performing the same services then as he would have performed during the Chapter 13 portion of the case. In addition, many, if not most, of the fees relating to conversion of the case to one under Chapter 13 related to services for the Chapter 13 Debtor in converting and then after converted to Chapter 13.

The court concludes that applying the $5,300 for fee and the $335 for costs to the total fees and costs requested properly provides for paying the Chapter 7 fees and costs from the pre-petition monies and the balance to be paid for the Chapter 13 services.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $23,730.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First Interim Costs in the amount of $499.80 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay the fees and costs allowed by the court,

after giving full credit for the $5,635.00 already paid to Applicant prepetition.

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

Fees	$23,730.00
Costs and Expenses	$499.80

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gerald L. White ("Applicant"), Attorney for William Rudolph Battilana, II, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald L. White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald L. White, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $23,730.00
> Expenses in the amount of $499.80,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees and the costs allowed by this Order, after giving full credit for the $5,635.00 already paid Applicant prepetition, from the available Plan Funds in a manner consistent with the order of distribution under the Confirmed Plan.

18. **19-22167-E-13 SLE-1** **VICKY SAAVEDRA** **Steele Lanphier** **MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE CORPORATION** **4-9-19 [10]**

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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 9, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Regional Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,000.00.

The Motion filed by Vicky Lou Saavedra ("Debtor") to value the secured claim of Regional Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 12. Debtor is the owner of a 2013 Hyundai Elantra SE Coupe ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,000 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).

Debtor's Declaration states the Vehicle has 100,000 miles and has reoccurring issues with its cylinders. Declaration ¶ 7, Dckt. 12. Debtor also states that based on similar listings in the area and Kelley Blue Book reports, he believes his Vehicle would be valued at $7,000.00 at the time of filing. *Id.*,

¶¶ 4-6.

Creditor's Proof of Claim

Creditor filed its Proof of Claim, No. 8, (the "Claim") on April 26, 2019. The Claim states the following:

> Value of property: $_____
> Amount of the claim that is secured: $ 13,617.17
> Amount of the claim that is unsecured: $_____
> Amount necessary to cure any default as of the date of the petition: $1,119.73

Proof of Claim, No. 8, Official Claims Registry.

DISCUSSION

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). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Creditor's Claim asserts a secured claim in the amount of $13,617.17. However, no value for the Vehicle is provided, and no valuation or other evidence is attached along with the Claim.

In contrast, Debtor provided testimony the Vehicle has 100,000 miles and has reoccurring issues with its cylinders, and that other Vehicles in the area tend to be priced around Debtor's asserted value. Debtor having provided substantial evidence and Creditor not having opposed the Motion, the court finds the value of the Vehicle at the time of filing is $7,000.00. *In re Holm,* 931 F.2d at p. 623.

The lien on the Vehicle's title secures a purchase-money loan incurred on August 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,617.17. Proof of Claim, No. 8. 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 $7,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Vicky Lou Saavedra ("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 Regional Acceptance Corporation ("Creditor") secured by an asset described as 2013 Hyundai Elantra SE Coupe ("Vehicle") is determined to be a secured claim in the amount of $7,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $7,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

19. **18-21345-E-13** **PAVEL YERMOLOV** **MOTION TO MODIFY PLAN**
MRL-2 **Mikalah Liviakis** **3-4-19 [38]**

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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 4, 2019. By the court's calculation, 64 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Pavel Nikolayevich Yermolov ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition April 23, 2019. Dckt. 48. 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 Pavel Nikolayevich Yermolov ("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 4, 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.

20. 19-21483-E-13 JUDITH GEE — MOTION TO CONFIRM PLAN
FF-1 Gary Fraley — 3-29-19 [23]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 29, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The hearing on the Motion to Confirm the Plan is continued to May 21, 2019 at 3:00 p.m.

Judith Ann Gee ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of $2,273.00 and a 0 percent dividend to unsecured claims. Dckt. 11. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 23, 2019. Trustee argues the present Motion set a confirmation hearing prior to the Meeting of Creditors, and the dates set in the Notice of Meeting of Creditors for objections. Trustee further argues Duetsche Bank and not Wells Fargo, N.A. are the mortgage holder in this case–Trustee believes the wrong creditor was served.

Trustee requests the hearing on the Motion be continued to May 21, 2019.

DISCUSSION

In light of the Trustee's request and good cause shown, the court shall continue the hearing on the Motion to May 21, 2019 at 3:00 p.m.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by Judith Ann Gee ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm the Plan is continued to May 21, 2019 at 3:00 p.m.

21.	**19-20975-E-13** **GEL-1**	**INOCENTE SALINAS** **Gabriel Liberman**	**CONTINUED MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION** **3-14-19 [16]**

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

- - - - - - - - - - -

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 14, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,136.32 .

The Motion filed by Inocente Salinas ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2010 Audi A4 Quatro ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,975.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor's Proof of Claim

Creditor filed Proof of Claim, No. 2 (the "Claim") on March 11, 2019. Creditor asserts a claim of $8,136.32, and values the collateral at $8,273.00. A Kelley Blue Book report is attached to the

Claim.

APRIL 16, 2019 HEARING

At the April 16, 2019 hearing the court continued the hearing on the Motion to allow Debtor to file supplemental evidence as to the Vehicle's value. Civil Minutes, Dckt. 20.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration in support of the Motion in April 18, 2019. Dckt. 21. Debtor reasserts the value of the Vehicle is $5,975.00 at the time of filing. Debtor provides the following factual detail about the Vehicle:

1. The Vehicle has 120,000 miles.

2. The Vehicle had its engine replaced in 2012.

3. The interior of the Vehicle has normal wear but no rips.

4. The Vehicle exterior has scratches, dings, and fading common to a 10 year old vehicle.

5. The Vehicle tires are worn and should be replaced.

6. The Vehicle has stock rims and no after-market improvements.

DISCUSSION

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). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Creditor's Claim is prima facie evidence of the value of the Vehicle and its secured claim. This was not a claim filed bare, but was supported by a Kelley Blue Book report filed therewith showing the retail value of the Vehicle to be $8,273.00.

Since the prior hearing on the Motion, Debtor has filed a Supplemental Declaration to

provide factual detail to rebut the Creditor's valuation. However, nothing was testified to that would support the asserted value of $5,975.00.

Debtor's testimony substantially is that the Vehicle is in normal condition for a vehicle of that age. The Vehicle has an average condition exterior and interior, tires that are worn, and is without after-market improvements.

The only stand-out condition of the Vehicle is that it had an engine replacement in 2012. However, a new engine in the Vehicle would add to its value, not detract.

Based on the evidence presented, including the Claim and supporting Kelley Blue Book report, and the testimony provided by the Debtor, the value of the Vehicle is $8,273.00 at the time of filing.

Conclusion

The lien on the Vehicle's title secures a purchase-money loan incurred on November 4, 2015 which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,136.32. Proof of Claim, No. 2. Therefore, Creditor's claim secured by a lien on the asset's title is fully-collateralized. Creditor's secured claim is determined to be in the amount of $8,136.32, which is less than 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 Inocente Salinas ("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 Travis Credit Union ("Creditor") secured by an asset described as 2010 Audi A4 Quatro ("Vehicle") is determined to be a secured claim in the amount of $8,136.32 , 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 $8,273.00 and is encumbered by a lien securing a claim that does not exceed the value of the asset.