UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

May 21, 2019 at 2:00 p.m.

1.	**16-26005-C-13** **SJT-5**	**GREGORY BOYD** **Susan Turner**	**MOTION TO MODIFY PLAN** **3-28-19 [100]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is xxxxx.

Gregory Boyd ("Debtor") seeks confirmation of the Modified Plan because Debtor's wife is no longer working her second job, Debtor's wife's hours have been reduced, and Debtor is no longer receiving social security for his eldest child. Dckt. 103 (Declaration). The Modified Plan the provides for monthly payments of $1,639.00 over 60 months and no less than a 46% dividend to the general unsecured creditors. Dckt. 102 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 7, 2019. Dckt. 108. The

Trustee's opposes the Plan based on the following:

A. Debtor states that the reason for modifying the is based on reduced income from his wife and no longer receiving social security income for his eldest child. However, Debtor has not filed supplemental Schedules I and J to reflect the change income.

B. The Trustee notes that Debtor obtained court approval to incur a $64,000.00 student loan (Dckts. 91; 98). The Trustee notes that Debtor stated that this would enable Debtor to increase his ability to earn income. Debtor has not addresses whether this will occur during the life of the plan.

C. The Debtor's proposed Plan and Debtor's Declaration are inconsistent about the percentage that is proposed as the dividend to the general unsecured creditors.

DEBTOR'S REPLY:

Debtor replied to the Trustee's Opposition and states that Debtor is not certain whether his income will increase over the list of the Plan, the school loan is for a program that will not complete until 2020. Debtor states that if upon completion of the program Debtor becomes employed, Debtor will notify counsel and review the plan. Debtor concedes there is a scriveners error in the declaration and percentage for the general unsecured dividend reflected in the Plan is correct. Debtor does not address why amended Schedules I and J have not been filed to reflect the purported change in income.

DISCUSSION:

Debtor's Reply appears to address some of the Trustee's concerns regarding the correct dividend percentage provided for the general unsecured creditors and whether Debtor anticipates earning additional income over the life of the Plan. However, Debtor has not filed Amended Schedules I and J to reflect the changes in income stated in the Debtor's Declaration in support of this Motion to Confirm the Modify the Plan.

At the hearing ----

~~The Modified Plan 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 Gregory Boyd ("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.~~

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2. **19-21506-C-13 DPC-1** **JOHN PARMENTER** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-1-19 [29]**

Thru #3

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent $1,700.00 in play payments with another payment of $1,700.00 due on May 25, 2019. So far Debtor has paid $0.00 into the plan.

B. Debtor did not appear at the First Meeting of Creditor held on April 25, 2019. The Meeting has been continued to June 6, 2019.

C. Debtor has not provide the Trustee with 60 days of employer advices as required un 11 U.S.C. § 521(a)(1)(B)(iv).

D. Debtor has not provided the Trustee with all required tax returns or tax transcripts, or a written statement that no return was required pursuant to 11 U.S.C. § 521(e)(2)(A)(i).

Trustee's objections are well-taken. Debtor is $1,700.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by 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 has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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).

DEBTOR'S RESPONSE:

Debtor responded on May 15, 2019 stating that due to the mortgage holder prevailing in seeking stay relief, Debtor anticipates converting this case to on under Chapter 7.

DISCUSSION:

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Further, Debtor's Response is construed as a non-opposition to the Trustee's Opposition. The Objection is sustained, and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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3. **19-21506-C-13 JCW-1** **JOHN PARMENTER** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC** **5-2-19 [37]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 2, 2019. By the court's calculation, 19 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.

Nationstar Mortgage, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that a foreclosure sale was held on March 12, 2019 and Debtor is no longer owner of the property commonly known as 8027 Rosswood Drive, Citrus Heights, California and Federal Nation Mortgage Association is the owner of the subject property. Creditor is the servicer of the loan and is listed in Class 1 of Debtor's proposed Plan. As Debtor is no longer owner of the subject property, Creditor should be removed from the Plan.

Upon review of the docket on May 17, 2019, no response has been filed by the Debtor. However, the court notes that Debtor filed a response to the Trustee's Objection to Confirmation where Debtor states that due Federal Nation Mortgage Association prevailing in its Motion for Stay Relief, Debtor now anticipates converting this case to one under Chapter 7. Dckts. 41, Order on Stay Relief; 42, Debtor's Declaration in Support of Response.

Accordingly, it appears that Debtor does not oppose the Creditor's Opposition as Debtor is not moving forward with the above-referenced Chapter 13 proceeding. 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 Nationstar Mortgage, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained .

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4. **19-21707-C-13 DPC-1** **TERRY DASNO** **David Foyil** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-1-19 [29]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan relies on a Motion to Value. The court notes that the Motion to Value was granted by the court on May 7, 2019. Dckt. 35.

B. The Plan is not feasible, as the Trustee determined the Plan would require 188 months to complete. Debtor proposes monthly payments of $100.00 for months 1-10 and $107.96 for months 11 - 60. Creditor Patelco Credit Union filed a secured claim of $14,870.97. Claim 3-1.

C. The Trustee asserts that the Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals $2,309.00 and the Debtor proposes a dividend of 11%, or approximately $1,533.32.

Trustee's objections are well-taken. Debtor's plan fails the Chapter 7 Liquidation Analysis under

11 U.S.C. § 1325(a)(4). Trustee states that Debtor has reported non-exempt equity in the amount of $2,309.00, and Debtor is proposing a 11% percent dividend to unsecured claims, additional equity exists. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a 11% percent dividend when there may be upward of $2,309.00 in non-exempt equity.

Additionally, Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 188 months due to insufficient monthly payments to pay the filed secured claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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5. **19-21809-C-13 DPC-1** **DAVID/RACHEL CLARK** **Seth Hanson** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-30-19 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2019. 14 days' notice is required. That requirement was met.

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

~~**The Objection to Confirmation of Plan is sustained.**~~

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

A. Debtors did not appear at the First Meeting of Creditor held on April 25, 2019. The Meeting has been continued to May 30, 2019.

DEBTOR'S RESPONSE:

Debtors' counsel responded, without a declaration, that Debtors will appear at the May 30, 2019. Dckt. 16.

DISCUSSION:

At the hearing ----.

~~Trustee's objections are well-taken. Debtors did not appear at the Meeting of Creditors held~~

~~pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).~~

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

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

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

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

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

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6. **14-29214-C-13 MET-8** **CLEVELAND BELLARD**
Mary Ellen Terranella

CONTINUED MOTION FOR ENTRY OF DISCHARGE
12-15-18 [236]

Thru #7

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2018. 28 days' notice is required. That requirement was met.

The Motion for Entry of Discharge 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 hearing on the Motion for Entry of Discharge is xxxx.

The Motion for Entry of Discharge has been filed by Cleveland Bellard ("Debtor"). With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. Debtor alleges that he has completed all required Plan payments. David Cusick's ("the Chapter 13 Trustee") final report was has not been filed. The order approving final report and discharging the Chapter 13 Trustee has not been entered. The entry of an order approving the final report is evidence that the estate has not yet been administered.

Debtor's Declaration (Dckt. 238) certifies that Debtor:

A. has completed the plan payments;

B. does not have any delinquent domestic support obligations;

C. has completed a financial management course and filed the certificate with the court;

D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13

case during the two-year period prior to filing of this case;

E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and

F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

TRUSTEE'S RESPONSE:

The Trustee is not certain that all Plan payments have been made. The Trustee notes that $200,572.00 has been paid to date and all allowed claims have been paid in full except whatever attorney fees may be owing pursuant to amended Claim No. 6. The Trustee has a balance of $155.51 on hand, had not filed the Notice to Debtor of Completed Plan Payments, the Trustee's Final Report and Account, or the Order Approving the Final Report and Discharging the Trustee. The Trustee also notes that no objection to Claim No. 6 is pending.

CREDITOR RESPONSE:

On January 2, 2018 (13 days prior to the hearing), Creditor Carole Rominger responded to Debtor's Motion. Creditor claims that Debtor is improperly seeking to Object to its claim of attorneys fees and/or seeking to value collateral. Creditor asserts that the relief sought by Debtor requires 35 days notice and they were only provided 28 days.

DEBTOR RESPONSE:

Debtor's counsel responds that Debtor will file an Objection to Claim No. 6 to be set for hearing on March 26, 2019. Debtor requests that this motion also be heard on the same date. Debtor also requests that the Creditor's Response be stricken claiming it was filed late.

DISCUSSION:

The January 15, 2019 hearing was continued to permit Debtor to file an Objection to Claim No. 6. Dckt. 255. The court notes that the Objection to Claim has been resolved pursuant to a court approved stipulation. Dckt. 283, Order Approving Stipulation.

~~At the hearing ----.~~

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

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

~~The Motion for Entry of Discharge filed by Cleveland Bellard ("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 **xxxx**.~~

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7.	**14-29214-C-13 MET-9**	**CLEVELAND BELLARD Mary Ellen Terranella**	**CONTINUED OBJECTION TO CLAIM OF CAROLE ROMINGER, CLAIM NUMBER 6 2-11-19 [257]**

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No appearance required on May 21, 2019 as the Objection to Claim No. 6 has been resolved pursuant to Order Approving Stipulation Resolving Debtor's Objection to Allowance of Claim 6-3. Dckt. 283.

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8. **18-27631-C-13** **EUGENE NIERI** **CONTINUED MOTION TO MODIFY PLAN**
MRL-1 **Mikalah Liviakis** **3-6-19 [20]**

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

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

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

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

The hearing on the Motion to Confirm the Modified Plan xxxx.

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

DEBTOR'S RESPONSE:

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

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

DISCUSSION:

At the prior hearing the Trustee reported that the default has been partially been cured, but the April 2019 payment was only $2,250.00, which was less than the $4,980.00 required under the plan.

The Debtor now has full time employment and can address the increased plan payment. The Trustee concurred in the request for continuance

At the May 21, 2019 hearing------.

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

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

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

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

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

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9. **19-21531-C-13 PLC-1** **MICHAEL/PHYLLIS ENOS** **Peter Cianchetta** **CONTINUED MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 4-1-19 [13]**

Thru #11

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted and the secured claim is determined to have a value of $176,829.58.

The Motion filed by Michael Enos and Phyllis Enos ("Debtors") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Debtor is the owner of property listed on Schedule B including a vehicle, household items, retirement account, bank accounts, and inventory related to a business ("Property"). Debtor seeks to value the Property at a replacement value of $49,797.44 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 filed Proof of Claim No. 6-2 on March 23, 2019, after the filing of Debtors Motion to Value. The Proof of Claim asserts that $176,829.58 is secured by the Property and that $8,223.00 is a priority unsecured claim.

TRUSTEE RESPONSE:

The Trustee filed a response that he does not oppose the motion.

IRS OPPOSITION:

The IRS states that because the Debtor's filed a Motion to Value prior the IRS filing its claim, the motion to should be summarily denied as it does not comply with the Local Rules. Additionally, the IRS disputes the Debtor's valuation of their CalPERS pension listed on Schedule B Line 21 as $26,622.44. The IRS notes that the Debtor's Schedule I reflects that their monthly pension disbursement is $8,996.85. The IRS argues that over a 60-month term the payments from the pension would total $537,960.00, suggesting that the pensions value is far greater than the entire federal tax liability reflected in the IRS' Proof of Claim.

REVIEW OF CHAPTER 13 PLAN AND QUESTIONABLE STATEMENTS MADE BY DEBTOR UNDER PENALTY OF PERJURY

The proposed Amended Chapter 13 Plan filed on April 16, 2019, has the Debtor funding the Plan with $1,533 a month for sixty months, which is enough to fund their car loan and what they compute to be the Internal Revenue Service secured claim. Dckt. 30. The Debtor is only able to eke out a 0.00% dividend to creditors holding general unsecured claims.

This occurs notwithstanding Debtor having $9,157.70 a month in income. Schedule I, Dckt. 1. No income is listed for the co-debtor Phylis Enos. For the two debtors, their monthly expenses are ($7,609.29), which then yields them $1,548.50 to fund the plan.

However, looking at Schedules I and J, Debtor makes no provision for the payment of any state or federal income taxes on $110,100 a year. *Id.*, Dckt. 1 at 36-40. No explanation appears for why these two debtors are exempted from federal and state tax laws for their $110,100 annual income.

The court also notes that Debtor states under penalty of perjury making $900 a month "charitable contributions and religious donations," which total $10,800 a year. Though driven to bankruptcy and unable to make any payments to creditors holding general unsecured claims, Debtor purports to be making more than $10,000 a year in donations and contributions.

On the Statement of Financial Affairs Debtor states under penalty of perjury that no gifts or contributions in excess of $600 per person in the two year preceding the filing of the bankruptcy case. Statement of Financial Affairs Question 13, Dckt. 1 at 47. If the $10,800 a year contribution/donation is being made post-petition, it appears that such charity has only begun with this bankruptcy case being filed.

Multiple Bankruptcy Case Filings

This is not the Debtor's first, or even second, recent bankruptcy filing. Debtor has filed and had dismissed the following bankruptcy cases:

A. 18-22707, Chapter 13 Case (same counsel as current case)

1. Filed.....May 1, 2018
2. Dismissed.....February 25, 2019

3. Schedule I Tax Deductions.....($1,233.42)

4. Monthly Income.....$7,480.00

5. Schedule J Charitable Contribution/Donations.....$25

6. Case dismissed due to Debtor's failure to prosecute the confirmation of a Chapter 13 Plan.

B. 14-20464, Chapter 7 Case (other counsel)

1. Filed.....January 17, 2014
2. Discharge Entered.....July 25, 2014

3. Schedule I Income.....$9,427.00
4. Income Tax Withheld.....($2,384)

5. Schedule J Charitable Contributions/Donations.....$0.00

C. 13-36138, Chapter 13 Case (other counsel)

1. Filed.....September 5, 2012
2. Dismissed.....April 23, 2013

3. Schedule I Income.....$8,634.00
4. Income Tax Withheld/Est. Pmt....($2,122.00)

5. Schedule J Charitable Contributions/Donations.....$0.00

6. Dismissed due to at least $4,960 defaulted plan payments.

D. 11-25701, Chapter 13 Case (other counsel)

1. Filed.....March 7, 2011
2. Dismissed.....May 14, 2012

3. Schedule I Income.....$9,223
4. Income Tax Withheld.....($2,041)

5. Schedule J Charitable Contributions/Donations.....$0.00

6. Dismissed due to at least $3,000 in defaulted plan payments.

E. 10-25924, Chapter 13 Case (other counsel)

1. Filed.....March 10, 2010
2. Dismissed.....November 19, 2010

3. Schedule I Income.....$7,385.00
4. Income Taxes.....$0.00

5. Schedule J Charitable Contributions/Donations.....$50

It appears that Debtor has lived in Chapter 13 for now more than a decade, Debtor's Chapter 13 cases stretching back to June of 2009, without actually being able to prosecute and perform a Chapter 13 plan.

Debtor also has a consistent history of paying $0.00 or very little in charitable contributions or religious donations, but now purports to be paying more than $10,000 a year. Debtor accounts for federal and state income taxes sometimes, and other times, as in the current case, purports to be exempt from paying any taxes.

This raises a very serious situation for Debtor. Making statements under penalty of perjury that are inaccurate has significant consequences. It is not, as Britney Spears would sing, "Oops, I did [misrepresentation under penalty of perjury] it again," now I'll just file yet another bankruptcy case.

RULING

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

In Proof of Claim No. 6 the Internal Revenue Service states that the secured portion of its claim is $179,092.58. That is prima facie evidence of such claim, which the Debtors must now rebut with evidence of at least equal probative force. *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).

Here, the main asset in dispute is the income stream from Debtor's CalPers pension which will be an income stream of $537,960.00 over just the five years of the plan (for which the pension will continue thereafter). Computing the net value after the payment of current year state and federal taxes has been made more challenging by Debtors stating under penalty of perjury that there is no withholding for state or federal taxes and Debtor make no estimated tax payments. Schedules I and J, Dckt. 1 at 36-40.

Possibly Debtors' statement under penalty of perjury that the CalPers pension payment of $8,996..85 a month is the net money after taxes, leaving the Debtors with that much unencumbered cash each month.

Taking the $176,829.58 in the asserted secured claim and amortizing it (without interest) over sixty months, a payment of $3,000.00 a month would be required. That would leave Debtors with $6,000 a month for their current expenses. (Though the Internal Revenue Service may be entitled to assert a right to interest, the hallmark of good bankruptcy attorneys and creditors is finding the sweet spot of getting claims reasonably paid rather than continuing with decades of collection fighting).

Debtor's evidence to counter the *prima facie* evidence of Proof of Claim No. 6 consists of the following testimony under penalty of perjury:

> 4. As shown in Schedule B of this case, we have interests in a variety of assets. As there are no creditors who hold secured claims against any of these assets, we assert that the reasonable, fair-market value of the net equity in all of the assets listed in Schedule B is $49,797.44.

Declaration ¶ 4, Dckt. 15. This testimony is just a restatement, somewhat inaccurate, of what is stated in the Schedules. Other than the CalPers pension, Debtors' most valuable asset is a 2015 Subaru Forester with a stated value of $14,745.00. Schedule A/B, Dckt. 1 at 13. Though Debtors' testimony is that there are no liens on any of the Schedule B personal property, on Schedule D Chase Auto is listed as having a secured claim of $22,585, which exceed the value of the vehicle.

Debtor's instruction that a stream of payments totaling $537,960.00 for just the six years of the Plan (the pension continuing thereafter for the lifetime of one debtor and possibly longer for the surviving debtor spouse) has a value of $26,622.44, without any analysis or evidence of value other that the amount so stated on Schedule A/B, is not of sufficient probative value to rebut the presumption. Given the inaccurate testimony as to there being no liens on the personal property, it appears questionable if the Debtors read the Declaration before signing it, but did so under the "if we sign this, whatever it says, we win" approach to providing testimony under penalty of perjury.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 6-2, the court determines the value of the secured claim to be $176,829.58, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion is granted and the court determines the secured claim of the Internal Revenue Service to be $176,829.58, with the balance of such claim to be an unsecured claim.

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 Michael Enos and Phyllis Enos ("Debtors") ("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 the Internal Revenue Service ("IRS" or "Creditor") secured by an assets described in Debtors' Schedule B ("Property") is determined to be a secured claim in the amount of $176,829.58, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

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10. 19-21531-C-13 PLC-2 MICHAEL/PHYLLIS ENOS Peter Cianchetta MOTION TO VALUE COLLATERAL OF CASTLE CREDIT CO. HOLDINGS, LLC 4-16-19 [21]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. 28 days' notice is required. That requirement was me.

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

The Motion to Value Collateral and Secured Claim of Castle Credit Co. Holdings, LLC ("Creditor") is xxxxx, and Creditor's secured claim is determined to have a value of $xxxx.xx.

The Motion filed by Michael Enos and Phyllis Enos ("Debtors") to value the secured claim of Castle Credit Co. Holdings, LLC ("Creditor") is accompanied by Debtor's declaration. Debtors are the owner of a Rainbow Vacuum System ("Property"). Debtors seeks to value the Property at a replacement value of $500.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Property secures a purchase-money loan incurred on October 27, 2015, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $3,984.26.

CHAPTER 13 TRUSTEE RESPONSE:

The Chapter 13 Trustee filed a response on May 7, 2019. Dckt. 36. The Trustee notes that Creditor filed a Proof of Claim on March 22, 2019, Claim No. 3-4, reflecting a claim of $3,984.26 of which $1,500.00 as secured.

DISCUSSION:

The court notes that the claim filed by Creditor, asserting that the value of the Property is $1,500.00, includes the original contract that indicates the original purchase price for the Property on October 27, 2017 was $4,195.00. Dckt. 24, page 9, Exhibit B, Attachment to Creditor's Claim. The Debtors provided a sworn declaration asserting that the value of the Property is $500.00 and do not provide any other basis other than their opinion. The court also notes that in Debtors previous Chapter 13 case, Debtors Amended Plan filed on October 5, 2018, reflected a $2,000.00 secured claim with respect to this same liability. Case No. 18-22707, Dckt. 35 page 4, Amended Plan.

At the hearing ------.

Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $xxxx.xx, 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 Michael Enos and Phyllis Enos ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Castle Credit Co. Holdings, LLC ("Creditor") secured by an asset described as Rainbow Vacuum System ("Property") is determined to be a secured claim in the amount of $xxxx.xx, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $xxxx.xx and is encumbered by a lien securing a claim that exceeds the value of the asset.

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11. 19-21531-C-13 PLC-3 MICHAEL/PHYLLIS ENOS Peter Cianchetta MOTION TO CONFIRM PLAN 4-16-19 [26]

****

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is denied.

Michael Enos and Phyllis Enos ("Debtors") seek confirmation of the Amended Plan to permit Debtors to properly account for the secured creditors. Dckt. 28 (Declaration). The Amended Plan proposes monthly payments of $1,533.00 for 60 months and provides for 0% dividend to general unsecured creditors. Dckt. 30 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

IRS'S OPPOSITION

IRS ("Creditor") holding a secured claim filed an Opposition on April 26, 2019. Dckt. 33. Creditor asserts that the Plan does not provide for the IRS's secured claim. Creditor notes that Debtor has a pending motion to value the IRS secured claim against the Debtors' pension. Creditor argues in its opposition to the Motion to Value that Debtors have no provided credible evidence to value Creditor's claim. Creditor asserts that Debtors will not prevail in their Motion to Value. Accordingly, Debtors have not properly provided for the Creditor's secured claim. Moreover, Debtor's Schedule I and J show that Debtors do not have sufficient income to propose a feasible plan.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 7, 2019. Dckt. 39. The Trustee Opposes Debtor's Motion to Confirm based on the following:

A. Debtor's Plan relies on a two pending motions to value, both set for hearing on the same date as confirmation. Dckts. 13, Motion to Value IRS' Claim; 21, Motion to Value Castle Creditor Co. Holdings, LLC's Claim.

B. The monthly dividend of $8.33 proposed in the Plan to Class 2(B) Creditor Castle Creditor Co. Holdings, LLC may not be paid monthly pursuant to FRBP 2010(b) because the payments is less than $15.00.

DISCUSSION:

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of the IRS and Castle Creditor Co. Holdings, LLC. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court valuing the secured claim of the Internal Revenue Service at $179,092.58, the Chapter 13 Plan is not feasible, being funded with only $1,533.00 a month and providing for payments of only $918.94 a month on that secured claim for the sixty months of the Plan (60 x $918.94 = $55,136.40, without consideration of any interest on the secured claim).

The court notes that in computing the $1,533.00 a month as shown on Schedule J includes Debtors making a monthly payment on a auto loan of $313.29. Dckt. 1 at 39. However, the proposed Amended Plan requires that the claim secured by Debtors' vehicle be paid through the plan as a Class 2(A) secured claim (not reduced to the actual value of the collateral) with monthly payments of $376.42. Amd. Plan ¶ 3.09, Dckt. 30 at 5. The proposed Amended Plan states that there are no direct secured claim payments to be made by Debtor. *Id.*, ¶ 3.10.

It appears that the amount stated by Debtor as the projected disposable income is at least $313.29 less than it actually is in light of Debtor double "paying" the obligation secured by the vehicle.

Though no proof of claim has been filed by "Chase Auto" in this case, JPMorgan Chase Bank, N.A. filed Proof of Claim No. 14 in Debtors' prior Chapter 13 case, 18-22707, for the debt secured by 2016 Subaru Forester. In that proof of claim, as of June 27, 2018, the secured claim was stated to be $22,585.00 and the unsecured claim to be $1,524.50.

The Retail Contract for the purchase of the vehicle is dated August 3, 2015. 18-22707; Proof of Claim No. 14 Attachment. The current bankruptcy case was filed on March 13, 2019 - which was 1,318 days after entering into the purchase money contract upon which the "Chase Auto" secured claim is based. 1,318 days being more than the 910 day limitation set forth in the hanging paragraph following 11 U.S.C. § 1325(a)(9), this claim is subject to valuation as provided in 11 U.S.C. § 506(a). Though Debtors state under penalty of perjury that the vehicle has a value of only $14,745.00 on Schedules A/B (Dckt. 1 at 14), in the Amended Plan Debtor provides for an inflated claim of $22,585 to be paid "Chase Auto," diverting "extra" monies to that creditor away from other creditors in the case.

At the hearing -----.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Michael Enos and Phyllis Enos ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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12. **17-28343-C-13** **SHAWN BARTLETT** **MOTION TO INCUR DEBT**
PGM-1 **Peter Macaluso** **4-28-19 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 28, 2019. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied.

Shawn Bartlett ("Debtor") seeks permission to purchase 5753 Cobblestone Drive, Rocklin, California, with a down payment of $12,000.00 to be gifted by Debtor's mother and $453,623.00 to be financed with monthly payments of $3,059.00 to Synergy One Lending, Inc. over 30 years with a 4.25% interest rate. Debtor's mother Yvonne Bartlett provided a signed declaration stating her ability to provide a $12,000.00 gift to the Debtor for the down payment. Dckt. 23.

CHAPTER 13 TRUSTEE OPPOSITION:

The Chapter 13 Trustee filed an Opposition on May 6, 2019. Dckt. 26. The Trustee states that Debtors have been paying rent of $2,000.00 and Debtor now seeks to pay $3,059.00 per month, an increase of $1,059.00 in mortgage payments. Debtor has a confirmed plan paying $775.00 per month with a 0% dividend to general unsecured creditors. Debtor's filed Schedules I and J reflect gross monthly income of $12,147.70 and a net disposable income of $775.00. It does not appear that Debtor can afford the mortgage payments.

DEBTOR'S REPLY:

Debtor states that Amended Schedules I and J were filed since the Trustee's Opposition. Upon review of the Amended Schedules the court notes that Debtor's non-filing spouse now reports gross earned income of $1,300.00. Of note, Debtor's declaration does not indicate how long Debtor's non-filing spouse has been earning additional income.

DISCUSSION:

In December 2017 when this case was filed, Debtor obtained confirmation of the Chapter 13 Plan based upon the financial information provided in the Schedules under penalty of perjury. The confirmed Plan requires a monthly plan payment of $775.00. Plan ¶ 2.01, Dckt. 5 at 1. This plan payment was to fund the payment of $3,050.00 in Debtor's attorney's fees, the Chapter 13 Trustee fees, and car payments totaling $565 a month for two vehicles. Plan, *Id.*

On Schedule I Debtor listed having gross monthly income of $12,174.70 and his non-debtor spouse had no income. After withholding for taxes and insurance, Debtor reporting having $8,198.74 in monthly take home income. Dckt 1. At 31.

On Schedule J Debtor lists having four dependants - three children and one stepchild - but no spouse. After $7,423.74 in stated reasonable and necessary monthly expenses, including a child support obligation. *Id.* at 32-33.

Now, in 2019, Debtor comes to the court with a motion to borrow $453,632.00 to purchase a home. Motion filed April 28, 2019, Dckt. 20. The $12,000.00 down payment is to be provided by Debtor's mother and the monthly mortgage payment will not be more than $3,059.00. Motion ¶¶ 4,5, *Id.* As set forth on Schedule J, Debtor's monthly rent payment was only $2,000.00.

Debtor has provided a declaration in support of the Motion which provides some very sympathetic testimony concerning Debtor's pre-petition health struggles, hopefully continuing successful treatment, and the need to file bankruptcy due to the financial loss caused by the pre-petition health issues. Dckt. 22. Debtor does testify that as of the filing of the case he was, and continues to be married.

Other than testifying that his mother will provide the down payment, Debtor provides no explanation as to how he and his family can afford a 50% increase in their monthly housing expense (assuming that the payment includes property taxes and insurance). The Motion is also supported by Debtor's mother's declaration confirming her providing the down payment in her support of her son's family.

When the Chapter 13 Trustee objected and raised the issue of Debtor's financial inability to pay for the loan and fund the plan based upon the information provided under penalty of perjury and there being no supplemental schedules filed showing post-petition changed in income or expenses, Debtor on May 10, 2019 filed Supplemental Schedules I and J stating changes in income and expense only from April 25, 2019 going forward. As discussed below, this April 25, 2019 date is shown by Debtor to be clearly erroneous and that Debtor's income increased before that time.

On May 13, 2019, Debtor filed a response to the Trustee's Opposition (Dckt. 30) and a Supplemental Declaration (Dckt. 29). In the Reply, Debtor's counsel's arguments addressing the Trustee's Opposition is stated in its entirety to be:

1. Debtor filed amended Schedules I & J on May 10, 2019 (Docket #28) that

addresses the Trustee's concerns on this matter.

Dckt. 30. First, this is an inaccurate statement as Supplemental Schedules, not amended schedules (which date all the way back to the filing of the case) were filed. Second, the Reply offers no explanation about the events by which Debtor now has the extra income to fund the loan payments and ownership (including maintenance and repairs) of home ownership.

Debtor's Supplemental Declaration states that he is "amending" his statements of income and expenses to show his "current situation." Dec. ¶ 2, Dckt. 29. He first testifies that:

1. They are no longer receiving Social Security,

2. Debtor is back working full time, and

3. Debtor's spouse is working part-time.

Dec. ¶ 3, *Id.*

In reviewing the financial information provided under penalty of perjury on Schedule I, there is no Social Security income disclosed. Dckt. 1 at 30-31.

In the Supplemental Declaration Debtor states that childcare expenses have increased 52% from $920 to $1,400 based on Debtor and his non-debtor spouse (who is working part-time) both working. Dec. ¶ 4, Dckt. 29. Looking at Schedule J and allowing for the passage of two years since this case was filed, the children in Debtor's household are now 17, 16, 10, and 5 years of age. It would appear that the "childcare" costs for the children will have decreased in light of the age of the children.

Debtor's Supplemental Declaration continues, stating that food expense for the family of six has increased from $1,800 a month to $2,000 a month. *Id.* At $2,000 a month that averages $22 per family meal.

For Supplemental Schedule I Debtor states that the changes in income date from April 25, 2019. For his income, Debtor states having $13,050.14 (Dckt. 28 at 4) in gross monthly income, which is $1,000 more a month than listed on original Schedule I. Though a $1,000 a month increase in income ($12,000 a year), Debtor shows tax, Medicare, and Social Security withholding being decreased by $100 a month ($1,200 a year).

Debtor then states under penalty of perjury that his non-debtor spouse has $1,300 a month in part-time income, for which there is $216.67 in withholding. Dckt. 28 at 5. While stating that this change is income is occurring from April 25, 2019, Debtor also states that his non-debtor spouse has been generating the additional $1,300.00 in income for a year prior to the April 2019 date. *Id.* at 4.

On Supplemental Schedule I it is disclosed that the non-debtor spouse is receiving an additional $462.00 a month in family support payments. No information is provided for how long such additional monies (totaling almost $6,000 a year) have been received for this household.

While the Debtor presents the court with a story of who bankruptcy can work to help when financial distress hits, including assisting with maintaining a family structure, and rebuilding financial structure. Debtor and Debtor's counsel have chosen to cut the corners and believe that a good (honest

appearing in this case) tale substitutes for providing accurate, credible testimony under penalty of perjury and admissible evidence. It appears that Debtor's income has increased for at least a year prior to the Supplemental Schedules being filed. There is also the almost additional $6,000 a year in family support income for an unstated period of time for this household. Also, there was Social Security income that was not disclosed on Schedule I but is reference by the Debtor as "no longer being received."

Also, while saying that childcare expenses have gone up, Debtor provides no explanation as to what these are and how "childcare expenses" have increase for the two teenage and the child entering middle school.

Unfortunately, the "creativity" in providing selective and incomplete information by Debtor and counsel leave the court without sufficient evidence to see how the Debtor can take on a 50% increase in housing expenses and still prosecute the plan and this case in good faith.

At the hearing **xxxxxxxxxxxxxxxxxxxxxxx**

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

As discussed above, the court finds that the proposed credit, based on the unique facts and circumstances of this case, is not reasonable. Debtor's selective, and at times inconsistent, testimony and statements under penalty of perjury do not show that Debtor can afford this loan and perform the plan.

It is unfortunate that Debtor and his family will have to continue to rent while performing this Chapter 13 Plan and obtaining the tremendous benefits provided under the Bankruptcy Code. But obtaining such relief has responsibilities that go with it.

The Motion is denied.

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

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

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13. **18-27849-C-13 BLG-1** **LYNELL GREEN Chad Johnson** **MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA 3-27-19 [26]**

Thru #14

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Final Ruling: No appearance at the May 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Santander Consumer USA ("Creditor") is $5,750.00, and Creditor's secured claim is determined to have a value of $5,750.00.

The Motion filed by Lynell Green ("Debtor") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Volkswagen CC ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,750.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in September 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,501.32. The Creditor filed Proof of Claim No. 3-1 listing a secured value of $5,750.00 which is consistent with Debtor's position. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $5,750.00, 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 Lynell Green ("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 Santander Consumer USA ("Creditor") secured by an asset described as 2010 Volkswagen CC ("Vehicle") is determined to be a secured claim in the amount of $5,750.00 and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,750.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

****

14. **18-27849-C-13 BLG-2** **LYNELL GREEN** **Chad Johnson** **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 3-27-19 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is xxxxx, and Creditor's secured claim is determined to have a value of xxxxx.

The Motion filed by Lynell Green ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Debtor is the owner of Personal Property listed in Exhibit B that includes property items and accounts ("Property"). Debtor seeks to value the Property at a replacement value of $4,3100.00 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 filed Proof of Claim No. 6-1 on April 5, 2019. The Proof of Claim asserts that $35,430.62 is secured by the Property, that $100.00 is a priority unsecured claim, and that $5,847.98 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

CHAPTER 13 TRUSTEE'S RESPONSE:

The Trustee responded the IRS' proof of claim, Claim No. 6-1, attached three tax liens one in

Solano County and two in Los Angeles County. The Trustee also notes that Debtor provides for the IRS in Class 2 B of the proposed Plan.

DISCUSSION:

Debtor scheduled assets with a total value of $10,310.00 on Schedule A. Dckt. 10. Additionally, Debtor lists on Schedule D Secured Creditor Santander Consumer USA as having a $6,000.00 secured claim. The court assumes that Debtor is seeking to value the IRS claim at $4,310.00 because it is the difference between the scheduled value and the secured claim with priority over the IRS claim ($10,310.00 - $6,000.00). The court notes that Debtor also seeks to the value Santander Consumer USA's claim at $5,750.00, also set for hearing on the same date. Dckt. 26.

At the hearing -----.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 6-1, the court determines the value of the secured claim to be $xxxx.xx, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Lynell Green ("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 the Internal Revenue Service ("IRS" or "Creditor") secured by assets listed in Exhibit B, Docket 31 ("Property") is determined to be a secured claim in the amount of **xxxxx**, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

****

15. 19-21449-C-13 DPC-1 JOHN WILSON Jin Kim

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-1-19 [30]

Thru #16

****

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor's Plan requires 73 months to complete.

B. Debtor cannot make the plan payments as Debtor admitted at the Meeting of Creditor's held on April 25, 2019 is not current on his obligation to his HOA fees and is a creditor that should be listed in Class 2.

Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 73 months due to the Plan payments being insufficient to provide for the secured and priority claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Debtor's Plan also fails to provide for all creditors.

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.

****

16. 19-21449-C-13 JCW-1 — JOHN WILSON / Jin Kim — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 5-2-19 [34]

****

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 2, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

The Secured Creditor, Wells Fargo Bank, N.A., ("Creditor") opposes confirmation of the Plan on the basis that:

A. Debtor's Plan does not provide for the full arrears listed in the Creditor's filed Proof of Claim No. 16. Creditor's Proof of Claim lists $33,669.93 in pre-petition arrears while the proposed Plan provides for $26,920.39.

In considering the Objection of Creditor, the court notes that the Plan provides for paying $26,920.30, not the full amount stated by Creditor in its proof of claim. See Plan ¶ 3.01. In the Opposition it appears that Creditor is arguing that it does not want to be "bound" by this requirement that the arrearage amount be that as stated in the Plan. Opposition ¶ 4, Dckt. 34. But in the Objection Creditor then makes the inconsistent statement that it wants the Plan to provide for the arrearage as stated in the Proof of Claim. *Id.*, ¶ 3.

Since the Plan requires that the arrearage amount to be paid must be that as stated in the proof of claim unless otherwise determined by the court on an objection to the claim, the Creditor's Objection on

those grounds is overruled.

Creditor does not argue that the Plan as funded is not feasible to pay the arrearage as set forth in its proof of claim. The court will not advance such an Objection for Creditor against Debtor. [FN. 1]

FN. 1. Assuming that the plan is not adequately funded to pay the additional arrearage amount of $112.50 a month for Creditor's pre-petition arrearage, fortunately for Creditor the Chapter 13 Trustee has also objected to confirmation and the court is denying confirmation on those grounds. This is also fortunate for Debtor and Debtor's counsel, because if the plan did not adequately fund to cure the arrearage, it would not be unanticipated that a modified plan to increase the payments would be required. For such an anticipated modification, the Debtor's counsel could not seek additional compensation for the additional work required in light of counsel having opted for the "no-look" fixed fee in this case.

The Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Secured Creditor, Wells Fargo Bank, N.A., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled. The court has denied confirmation based on the Objection filed by the Chapter 13 Trustee.

****

17. **19-21759-C-13 DPC-1** **BRIAN/TRACEE STACY** **David Ritzinger** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-1-19 [21]**

****

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor has improperly listed Creditor Mr. Cooper as a Class 4 creditor when the Creditor's Proof of Claim (Claim No. 9-1) lists $5,191.29 in arrears. The Creditor should be listed in Class 1.

Trustee's objections are well-taken. Creditor has filed a timely proof of claim in which it asserts $5,191.29 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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.

****

18. 19-21860-C-13 RDW-1 LEONID/LYUDMILA BANAR Mark Shmorgon MOTION TO RECONSIDER 4-29-19 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2019. 14 days' notice is required. That requirement was met.

The Motion to Reconsider 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 Reconsider is xxxx.

Partners For Payment Relief DE III, LLC, ("Movant") request that the court vacate the Order Valuing Movant's Secured Claim entered on April 27, 2019 and reconsider the underlying Motion. Dckt. 30. The grounds stated with particularity in the Motion, as required by Federal Rule of Bankruptcy Procedure 9013, consist of the following (stated in two paragraphs, which the court restructures below for clarity):

- PARTNERS FOR PAYMENT RELIEF DE III, LLC, its successors and/or assignees, ("Lender" or "Movant"), moves the Court for an order
- granting Lender's Motion for Reconsideration of the Court's ruling valuing the real property located at 8219 Villaview Drive, Citrus Heights, CA 95621 ("Property") at $255,000.00 (Docket No. 30), and
- to enter a new order consistent with the evidence and law and/or setting a new hearing on the matter.
- In the alternative, Lender moves the Court for relief from the Court's Order valuing the

real property located at 8219 Villaview Drive, Citrus Heights, CA 95621 ("Property") at $255,000.00 (Docket No. 30) pursuant to FRCP 60(b) as incorporated by Federal Rules of Bankruptcy 9024.

- This motion is based on the pleadings on the record in this matter, the Memorandum of Points and Authorities filed herewith, and the Declaration of ROBERT PAULUS.

Motion, in its entirety; Dckt. 31.

The grounds stated in the Motion consist of the alternative rulings desired and a direction for the court to read the "record," points and authorities, and declaration, and from there assemble whatever the court believes to be the best grounds to be advocated for Movant.

Movant provides a five page "Points and Authorities" that is shorter on legal points and authorities, but makes extensive factual allegations, what one would expect to see be stated as the required Rule 9013 grounds in a motion.

In the Points and Authorities, buried in the legal authorities, history of underlying obligation, believed value of the property securing Movant's claim that was valued pursuant 11 U.S.C. § 506(a), information that one debtor is employed as a cobbler and the non-debtor spouse as a housekeeper, it appears that some grounds that could have been stated in the Motion are:

A. The Motion to Value Movant's secured claim was served on FCI Lender Services, Inc., the loan servicer for Movant's secured claim. Points and Authorities ¶ 3, Dckt. 33. Further, Movant confirms that the loan service is not Movant.

The Points and Authorities directs the court, in what may be further grounds for the motion, to review the Certificate of Service for the Motion to Value. That Certificate of Service, Dckt. 11, states that the Motion to Value and supporting pleadings were served on:

FCI Lender Services, Inc.
Attn: Officer, a Managing or General Agent, or
Agent for Service of Process
P.O. Box 27370
Anaheim Hills, CA 92809

FCI Lender Services, Inc.
Attn: Officer, a Managing or General Agent, or
Agent for Service of Process
Michael W. Griffith
8190 East Kaiser Blvd.
Anaheim Hills, CA 92808

Cert. Serv., Dckt. 11. On its face, this may be read as serving FCI Lender Services, Inc. as an agent for service of process. Movant does not states as grounds, even if buried in the Motion to Vacate, that FCI Lender Service, Inc. is not its agent for service of process.

On Proof of Claim No. 2 Movant provides an address in Berwyn, Pennsylvania for itself. On Proof of Claim No. 2 the/an authorized agent for Movant is identified as:

D. Anthony Sottile
Authorized Agent for Creditor
Sottile and Barile, LLC
394 Wards Corner Road, Suite 180
Loveland, Ohio 45140

Proof of Claim No. 2, p. 3.

Attached to Proof of Claim No. 2 is Monthly Statement for the loan upon which the claim is based. That Monthly Statement is on FCI Lender Services, Inc. letterhead, with no other person identified as the creditor to whom the obligation is owed. Proof of Claim No. 2, p. 42-43.

A review of the California Secretary of State's website providing for business searches states that there is no limited liability company with the name Partners for Payment Relief DE III, LLC registered to do business in California. [FN. 1]

FN. 1.
https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=False&SearchType=LPLLC&SearchCriteria=partners+for+payment+relief&SearchSubType=Keyword

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B. Movant received actual notice of the Motion to Value on April 1, 2019, the information being provided by its loan servicer. Motion ¶ 4, Dckt. 33. The hearing on the Motion to Value was set for April 27, 2019.

C. Movant mis-calendared opposition date for the Motion to Value, confusing it with the May 9, 2019 date for oppositions to Debtor's Motion to Confirm a Chapter 13 Plan in this case. *Id.*, ¶ 5.

D. Movant has obtained a valuation of $282,500.00 for the property securing the claim which it presents as evidence that its claim is partially secured in light of the asserted obligation of $258,803.15 secured by the senior lien on the property. *Id.*, ¶ 6.

E. The mis-calendaring of the opposition date was a "mistake" for which relief could be granted under Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024.

Movant provides no legal authorities that such mis-calendaring is a sufficient "mistake" for the requested relief.

F. On the merits, Movant asserts that it has shown a meritorious opposition to the Motion to Value in light of the evidence of value it has obtained.

G. The Motion to Value was not properly served, and vacating the Order will not be of prejudice to the parties given that no plan has been confirmed in this case.

Movant provides no legal authorities for the proposition when an agent has been served and there is actual notice and receipt of the documents, such is not sufficient for purposes of actual service and Due Process.

FN. 2. On this point the court wants to be clear, the candor and truthfulness of Movant in fully disclosing what occurred is significant in considering its assertion of error and diligence in asserting and defending its rights and interests in this case, when the court considers an asserted mistake.

Movant provides a supporting Declaration of Robert Paulus, who states that Movant had actual notice of the Debtor's Motion on April 1, 2019 but mistakenly determined that the response date was May 9, 2019. Dckt. 35. Robert Paulus further states that Movant sought to obtain a Broker's Price Opinion ("BPO") immediately upon notice and attached the BPO that reflects the date of April 10, 2019. Exhibit 3, Dckt. 34.

Movant request that court vacate the Order entered on April 27, 2019, and consider Debtor's Motion to Value in light of Movant's Opposition to Debtor's stated value of the subject property.

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted). [FN. 3]

FN. 3. Another possible case to cite is *Ahanchian v. Zenon Pictures, Inc.*, 624 F.3d 1253, 1258-1261 (9th Cir. 2010), stating:

> To determine whether a party's failure to meet a deadline constitutes "excusable neglect," courts must apply a four-factor equitable test, examining: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993)*; Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (adopting this test for consideration of Rule 60(b) motions). Through other decisions, including *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220 (9th Cir. 2000), and *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004) (*en banc*), we have further clarified how courts should apply this test.
>
> In *Bateman*, we concluded that when considering a Rule 60(b) motion a district court abuses its discretion by failing to engage in the four-factor Pioneer/Briones equitable balancing test. Bateman, 231 F.3d at 1223-24. . . We concluded that the district court had failed to engage in the equitable analysis mandated by *Pioneer* and *Briones*, and, by ignoring three of the four *Pioneer/Briones* factors, had abused its discretion in denying Bateman's Rule 60(b) motion. *Id.*; . . .
> . . .
> In *Pincay*, we held that courts engaged in balancing the *Pioneer/Briones* factors may not apply *per se* rules. *Pincay*, 389 F.3d at 855 ("We now hold that per se rules are not consistent with Pioneer"). . . We concluded that, while the calendaring mistake was not a "compelling excuse," because of the "nature of the contextual analysis and the balancing of the factors adopted in *Pioneer*," courts applying the *Pioneer/Briones* test cannot create or apply any "rigid legal rule against late filings attributable to any particular type of negligence." *Id.* at 860.

Here, Movant asserts that it was not properly served on March 26, 2019 with Debtor's Motion to Value. The court agrees that Movant was not listed on the Proof of Service and Debtor served the loan servicer rather than the creditor. Movant admits having actual notice of Debtor's Motion to Value its Claim on April 1, 2019.

However, Declarant for Movant, an employee of Movant and not Movant's counsel, claims that due his mistake, the response date was noted as May 9, 2019 (39 days after being notified about the improperly served motion). It is not clear to the court whether counsel for Movant relied solely on Declarant's miscalculation to come to the incorrect conclusion that a timely response was due on May 9, 2019. Debtor's Motion was brought pursuant to Local Bankruptcy Rule 9014-(f)(2), accordingly no response was required prior to the April 16, 2019 hearing date and any opposition to the Motion could have been timely raised at the hearing.

At the hearing -----.

~~Therefore, in light of the foregoing, the Motion is granted, and the order Valuing Secured Claim (Dckt. 30) is vacated.~~

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

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

~~The Motion to Vacate filed byPartners for Payment Relief DE III, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and the order Valuing Secured Claim (Dckt. 30) is vacated.~~

~~**IT IS FURTHER ORDERED** that the parties shall adhere to the following schedule for an evidentiary hearing on the Motion to Value:~~

~~A. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.~~

~~B. On or before **xxxx, 2019**, the Parties shall each file with the court and serve on the other parties the list of witnesses they will present in their respective cases in chief (not including rebuttal witnesses).~~

~~C. Movant, shall lodge with the court and serve their Testimony Statements and Exhibits on or before **xxxx, 2019**.~~

~~D. Respondent, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **xxxx, 2019**.~~

~~E. Evidentiary Objections and Hearing Briefs shall be lodged with the court~~

~~and served on or before **xxxx, 2019**.~~

~~F. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **xxxx, 2019**.~~

~~G. The Evidentiary Hearing shall be conducted at **xx:xx x.m. on xxxx, 2019**.~~

****

19. **19-21067-C-13 MBW-1** **JOHN BOYD** **Mikalah Liviakis** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SAFE CREDIT UNION**
4-2-19 [15]

****

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

Safe Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor lists a liability of a non-Debtor spouse or former spouse on his petition that relates to an asset that Debtor has no equitable interest. Creditor claims Debtor is attempting to modify the terms of the agreement entered into by the non-Debtor spouse or former spouse. Additionally, Creditor states that the non-Debtor, Kristina Boyd, also has a pending Chapter 13 case (Case No. 19-21066) where the debt is not being properly treated. Creditor further notes that both Debtors are represented by the same counsel.

DEBTOR'S RESPONSE:

Debtor's counsel asserts that the divorce proceed has not yet finalized and that Debtor is required to treat the debt as a community debt. Moreover, asserts that because there is less than 60 months due on the obligation Debtor is permitted to provide for the debt in Class 2.

Debtor cites California Community Property law for the proposition that "are presumed to be the

responsibility of both spouses." This misstate the law. California Family Code §910 states (emphasis added):

> § 910. **Community estate liable** for debt of either spouse
>
> (a) Except as otherwise expressly provided by statute, **the community estate is liable for a debt incurred by either spouse before or during marriage**, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.
>
> (b) "During marriage" for purposes of this section does not include the period after the date of separation, as defined in Section 70, and before a judgment of dissolution of marriage or legal separation of the parties.

The law does not state that one spouse is personally liable for the debts of the other spouse, but merely that the "community estate" is liable. The term "community estate" is statutorily defined as follows:

> § 63. "Community estate"
>
> "Community estate" includes both community property and quasi–community property.

Cal Fam Code § 63. Thus, while the obligation may be enforced against community property, it is not an obligation of the non-debtor (the one not personally obligated) spouse.

CREDITOR REPLY:

Creditor states that the obligation is not correctly provided for in the spouse or former spouses proceeding and reiterates that counsel is the same for both parties. Creditor, without any legal support, claims that the debt is not community property because the Debtor is estranged from the non-Debtor and does not have possession of the vehicle.

DISCUSSION:

The proposed Chapter 13 Plan provides for Creditor's secured claim in Class 2 (A), reducing the interest rate and reamortizing the secured claim. If the vehicle is community property in this bankruptcy case, then there is a secured claim. If it is not community property that is included in this case, then it is not a secured claim.

At the hearing the Debtor agreed to the Trustee making an adequate protection distribution on Creditor's secured claim in light of the court continuing the hearing.

The Plan **xxxxx** with 11 U.S.C. §§ 1322 and 1325(a). The Objection is **xxxxx** , and the Plan is **xxxxx** .

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 Safe Credit Union ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan **xxxxx**

****

20. **16-21970-C-13 PLC-4** **JOHN TALLEY AND WENDY JONES-TALLEY** **MOTION TO MODIFY PLAN**
Peter Cianchetta **4-16-19 [71]**

****

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is denied.

John Talley and Wendy Jones-Talley ("Debtors") seek confirmation of the Modified Plan because of unspecified financial changes causing missed payments. Dckt. 73 (Declaration). The Modified Plan proposes 60 months of payments with payments of $1628.69 starting in April of 2019 and 0% dividend to the general unsecured creditors. Dckt. 74 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 7, 2019. Dckt. 78. The Trustee opposes Confirmation based on the following:

1. Debtor's Motion does not cite the applicable code section 11 U.S.C. § 1329. Trustee claims that the Motion (Dckt. 71) and the Declaration (Dckt. 73) appear identical to the Motion (Dckt. 52) and Declaration (Dckt. 48) filed in January 2, 2018, save for the signature dates and references to the Amended Plan. The Trustee notes that the declaration does not address the delinquency, what the missed payments were used for, and why the Debtors will be able to make the proposed payments. Debtors have not filed

supplemental Schedules I and J in support of the motion.

2. Debtor's are delinquent $1,628.69 under the proposed Plan and $4,886.39 under the confirmed Plan.

3. The Plan does not propose an interest rate for creditor Travis Credit Union specifying a 0% interest rate. The Creditor's claim has been paid in full with a 5% interest rate.

DISCUSSION:

The Chapter 13 Trustee asserts that Debtor is $1,628.69 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). The Debtors have not put forth sufficient information to determine whether the Plan is feasible. 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 John Talley and Wendy Jones-Talley ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

****

21. 17-24770-C-13 DEANDRA JACKSON
Peter Macaluso

MOTION TO VACATE DISMISSAL OF CASE
5-6-19 [150]

DEBTOR DISMISSED: 04/27/2019

****

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

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

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

Insufficient Notice Provided. No Proof of Service was filed with the court. The court notes that a Proof of Service stating that the Trustee's Opposition and supporting pleadings were served on Debtor and Debtor's Attorney on May 6, 2019. 14 days' notice is required. That requirement was not met by the Debtor, acting pro se.

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

The Motion to Vacate is denied.

Deandra Jackson ("Debtor") filed the instant case on July 20, 2017. Dckt. 1. A modified plan was confirmed on November 29, 2018, and an order confirming the plan was entered on December 12, 2018. Dckt. 137 & 139.

On March 20, 2019, David Cusick ("the Chapter 13 Trustee") filed a Motion to Dismiss the Case due to Debtor's not making all required plan payments. Dckt. 140. On April 24, 2019, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 147. The court notes that Debtor's counsel filed an opposition, without a signed declaration, stating that counsel had received an email notification from Debtor that the delinquency would be cured before the hearing. Dckt. 144.

On May 6, 2019, Debtor filed a letter with the court that is construed as a Motion to Vacate, claiming that due to unanticipated health problems that caused Debtor to be hospitalized and was unable to make plan payments. Dckt. 150. It appears from the statements in the letter that Debtor is still having health issues and may possibly be out of work. Debtor makes allegations that Debtor's counsel did not respond to emails regarding the Debtor's health issues. The court notes that Debtor's counsel filed an opposition, without a signed declaration, stating that counsel had received an email notification from Debtor that the delinquency would be cured before the hearing. Dckt. 144.

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

TRUSTEE OPPOSITION:

On May 7, 2019, the Chapter 13 Trustee, filed an Opposition. Dckt. 151. The Trustee opposes Debtor's request based on the following:

1. Debtor filed a new Chapter 13 case on the same date as the letter to vacate the dismissal. Case No. 19-22901.

2. Debtor did not bring a motion to modify or file any declaration explaining the reason for the delinquency.

3. **Debtor does not appear able to make a Chapter 13 Plan work**. The Trustee notes that Debtor had filed seven prior bankruptcy proceedings (Case Nos. 15-21311, 14-30880, 13-27271, 12-34671, 09-47489, 06-24743, and 04-23720). Of those cases two were Chapter 7 cases that resulted in discharges (13-27271 and 04-23720) and the other were Chapter 13 cases that were dismissed for failure to make payments.

APPLICABLE LAW

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

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

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

Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

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

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

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Debtor's counsel filed a response without a declaration from Debtor and merely stated that Debtor would be able to make the plan payments before the hearing date.

Debtor has not addressed how, if the dismissal if vacated, the Debtor will be able to comply with required plan payments or that Debtor will be able to confirm a modified plan. Moreover, the Debtor has filed a new Chapter 13 Case. Case No. 19-22901.

At the hearing -----

Therefore, in light of the foregoing, 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 Vacate filed by Deandra Renee Jackson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

****

22. **18-24079-C-13 MJD-4** **VALAREE ST. MARY** **Matthew DeCaminada** **CONTINUED MOTION TO CONFIRM PLAN** **3-21-19 [94]**

****

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm Plan is xxxx.

Valaree Jade St. Mary ("Debtor") seeks confirmation of the Amended Plan. Dckt. 98 (Declaration). The Amended Plan proposes monthly payments of $135.00 per month for the remainder of the (60) month plan and provides for a 0% dividend to general unsecured creditors. 95 Dckt. (Amended Plan). 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 1, 2019. Dckt. 100. Debtor is delinquent $135.00 in plan payments.

RULING:

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The Trustee reported that Debtor has not cured the default; however, the court continued the hearing to permit the Debtor additional time to cure the delinquency having just started a new job.

At the hearing ----.

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by Valaree Jade St. Mary ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

****

23. **18-24686-C-13** **KEVIN MEDLEY** **CONTINUED MOTION TO CONFIRM PLAN**
PGM-2 **Peter Macaluso** **3-15-19 [64]**

****

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

~~**The Motion to Confirm the Amended Plan is granted.**~~

Kevin Medley ("Debtor") seeks confirmation of the Amended Plan because Debtor incurred unanticipated vehicle repair costs. Dckt. 67 (Declaration). The Amended Plan proposes a 42 month plan that provides for a 0% dividend to general unsecured creditors. Dckt. 68 (Amended Plan). 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 3, 2019. Dckt. 72. The Trustee states that Debtor is $345.00 delinquent in plan payments with another payment due prior to the hearing.

DEBTOR'S REPLY:

Debtor's counsel filed a Reply on April 22, 2019 stating that Debtor has cured the delinquency. Dckt. 75.

RULING:

At the April 30, 2019 hearing, the Trustee reported that the Debtor was still delinquent. Accordingly, the court continued the hearing to May 21, 2019 to allow the Debtor additional time to become current. If Debtor is able to bring the required plan payments current before that time, Debtor's counsel and the Trustee shall lodge a proposed order granting the motion.

At the hearing the hearing ----.

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on March 15, 201x, 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.~~

****

FINAL RULINGS

24.	**19-20908-C-13 DPC-1**	**ARMAR/MARICELA WALKER Bruce Dwiggins**	**MOTION FOR OBJECTION TO DEBTORS' DISCHARGE UNDER 11 U.S.C. 1328 (F) 4-3-19 [17]**

****

Final Ruling: No appearance at the May 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 3, 2019. 28 days' notice is required. That requirement was met.

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 x13 Trustee, ("Objector") objects to Armar Walker and Maricela Walker ("Debtors") 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 13 bankruptcy case on June 15, 2015. Case No. 15-24825. Debtor received a discharge on October 19, 2015. Case No. 15-24825, Dckt. 35.

The instant case was filed under Chapter 13 on February 15, 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 October 19, 2015, which is less than

four years preceding the date of the filing of the instant case. Case No. 15-24825, Dckt. 35. 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. 19-20908), 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 / the United States Trustee / Official Committee of Creditors Holding General Unsecured Claims], ("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. 19-20908, the case shall be closed without the entry of a discharge.

****

25. **15-22313-C-13 DDY-4** **VONDA RILEY** **Daphne Yeldell** **MOTION TO APPROVE LOAN MODIFICATION** **4-3-19 [86]**

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Final Ruling: No appearance at the May 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 3, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Vonda Riley ("Debtor") seeks court approval for Debtor to incur post-petition credit. Seterus, Inc. ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $618.00 per month to $582.42 per month. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 5.875% to 4% over the next 40 years.

The Motion is supported by the Declaration of Vonda Riley. Dckt. 88. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

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

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

The Motion to Approve Loan Modification filed by Vonda Riley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Vonda Riley to amend the terms of the loan with Seterus, Inc. ("Creditor"), which is secured by the real property commonly known as 327 Lighthouse Drive, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 89).

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26. **16-24274-C-13 MJD-3** **JARED VARNEY Matthew DeCaminada** **MOTION TO EMPLOY BRUCE LAMASTER AS BROKER, MOTION TO EMPLOY JAYSON FLORY AS BROKER AND/OR MOTION TO EMPLOY ALLISON JAMES ESTATES & HOMES AS BROKER(S) 4-23-19 [48]**

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Final Ruling: No appearance at the May 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2019. 28 days' notice is required. That requirement was met.

The Motion to Employ 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

The Motion to Employ is granted.

Jared Varney ("Debtor ") seeks to employ Bruce LaMaster ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to sell property of the estate commonly known as 10713 Beclon Drive, Rancho Cordova, California.

Debtor argues that Broker's appointment and retention is necessary to assist the Debtor in establishing the fair market value of the property and to facilitate the sale. Broker will market the property, submit offers to the Debtor, and upon completion of the sale receive a 6% commission of the purchase price.

Bruce LaMaster, a real estate agent of Allison James of California, Inc. dba Allison James Estates and Homes, testifies that he is licensed real estate agent in California. Bruce LaMaster testifies he and the Allison James of California, Inc. dba Allison James Estates and Homes, do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Bruce LaMaster as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Exclusive Authorization and Right to Sell Residential Listing Agreement filed as Exhibit A, Dckt. 51. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Jared Varney ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Bruce LaMaster as Broker for Debtor on the terms and conditions as set forth in the Exclusive Authorization and Right to Sell Residential Listing Agreement filed as Exhibit A, Dckt. 51.
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> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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27. **13-23158-C-13 TOG-2** **RAMIRO/ANA GONZALEZ** **Thomas Gillis** **MOTION TO AVOID LIEN OF CHRYSLER FINANCIAL SERVICES AMERICAS, LLC** **3-29-19 [52]**

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Final Ruling: No appearance at the May 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Chrysler Financial Services Americas, LLC ("Creditor") against property of Ramiro Gonzalez ("Debtor") commonly known as 415 Poplar Ave, West Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $12,137.65. An abstract of judgment was recorded with Yolo County on June 30, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $135,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $255,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $12,137.65 on Amended Schedule C. Dckt. 58.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Chrysler Financial Services Americas, LLC, California Superior Court for Yolo County Case No. G10-611, recorded on July 20, 2010, Document No. 2010-0019149-00, with the Yolo County Recorder, against the real property commonly known as 415 Poplar Ave, West Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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