

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 2, 2020 at 2:00 p.m.

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

1.	19-22109 -C-13 PGM -1	EVELYNN CARR Peter Macaluso	CONTINUED MOTION TO MODIFY PLAN 12-19-19 [33]
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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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 19, 2019. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxxxxx

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The debtor, Evelyn J. Carr ("Debtor") seeks confirmation of the Modified Plan to cure a delinquency in payments Debtor argues was caused when her lessees did not timely pay rent. Declaration, Dckt. 37. The Modified Plan provides for \$5,974 paid through December 2019, and payments of \$1,600 for 52 months. Modified Plan, Dckt. 35. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 20, 2019. Dckt. 39. Trustee opposes confirmation on the following grounds:

1. The plan alludes to an Ensminger provision, proposing a \$1,175 monthly adequate protection payment where the monthly payment is currently \$1,321.37. But, the actual provision is not included.
2. Debtor indicates a loan modification was forwarded to her, but has not provided those documents to the Trustee.
3. Debtor has not filed supplemental schedules to show her current finances—where the Debtor's rental income has been unreliable, it is unclear if the plan is feasible.

DEBTOR'S REPLY

Debtor filed a Reply on January 28, 2020. Dckt. 46. The Reply includes detailed language normally dubbed the "Ensminger provision," providing for a monthly adequate protection payment on PHH Mortgage's secured claim pending a potential loan modification, which the Debtor requests be added to the plan through the language of the order confirming the plan.

PRIOR HEARINGS

At the February 4 and March 31, 2020, hearings the court granted a continuance so Debtor could file supplemental schedules to show an ability to pay.

DISCUSSION

Despite multiple continuances afforded to Debtor for the purpose of filing supplemental schedules, nothing has been filed.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

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 the debtor, Evelyn J. Carr ("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 **XXXXXXXXXX**

Thru #3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2020. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a) (9); LOCAL BANKR. R. 3015-1(d) (1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Ignacio Gonzalez Lopez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$25,450 to be paid through March 2020, and for payments of \$4,200 for the remainder of the plan term. Amended Plan, Dckt. 119. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 18, 2020. Dckt. 136. Trustee opposes confirmation on the following grounds:

1. The Debtor may be able to pay y \$13,318.00 per month or more into a plan based on documents showing Debtor's business made over \$450,000 in 2017 and 2018. Debtor has filed Schedule I and Amended Schedule I, but never filed the detailed statements required under 8a on Schedule I.) Debtor does not explain why the business income was not listed on Schedule J, and why the Court should rely on this budget when it differs from the prior budgets
2. The plan provides no estimate of attorney's fees, which Trustee believes should be possible.
3. The plan calls for the ongoing mortgage payment to be paid by the Trustee to US Bank as a Class 1 claim but does not limit the dates as the last prior plan did, (DN 84, Page 7, §7.4.) If the present plan is confirmed, the Trustee will need to issue payments on the mortgage for months prior to the filing of the present plan when Debtor was supposed to be paying the mortgage directly, (May 2019 through November 2019.)

DISCUSSION

The Trustee's primary argument in opposition to confirmation is that the Debtor potentially has significantly more income than stated on Schedule I, which calls into question whether the plan was filed in good faith. Debtor has not filed any response to this point.

Debtor has not met Debtor's burden to show the plan has been proposed in good faith, which is reason to deny confirmation. 11 U.S.C. § 1325(a) (6) .

The court also notes the Debtor has a duty to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties." 11 U.S.C. § 521(a) (3). It does not appear Debtor has met that requirement.

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 the debtor, Ignacio Gonzalez Lopez ("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.

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 current and former counsel of record, parties requesting special notice, and the Chapter 13 trustee on April 21, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Review of Fees is granted.

The United States Trustee, Tracy Hope Davis ("UST") moves the Court for an order disgorging former counsel Thomas Gillis' ("Gillis") attorney fees in this case pursuant to 11 U.S.C. § 329 in excess of the reasonable value of service, which the UST argues are all of the \$6,000 in fees paid.

The UST argues that Gillis has caused prejudicial delay with inadequate representation in the following areas: 1) preparation of schedules and documents requested by the Chapter 13 Trustee; 2) attendance at creditors' meetings; and 3) prosecution of the case, including plan confirmation and defending against relief from stay motion with respect to certain real property.

The specific conduct which the UST argues prejudiced Debtor is summarized as follows:

1. Gillis prepared inaccurate schedules for the

Debtor, which omitted a newly created business and omitted business income.

2. Gillis did not appear at two 341 Meetings.
3. A plan could have been confirmed as early as May 2019, but no plan has been confirmed. Gillis made mistakes preventing confirmation like failing to list certain income; failing to state the correct prepetition arrearage of a certain secured claim; and seeking a \$6,000 fee without the case being a business case.
4. Motions to dismiss the case had to be filed multiple times due to failure to provide certain documents, attend the 341 Meeting, amend schedules, and file and set a plan for confirmation hearing.
5. U.S. Bank filed a motion for relief from the automatic stay, to which Gillis only responded that a new plan would be filed to "will satisfy the delinquency and cure the arrears." Because Gillis failed to present argument on whether the property was necessary for an effective reorganization for purposes of 11 U.S.C. § 362(d)(2), the court granted relief. The court specifically noted the following:

The onus was on the Debtor and Debtor's counsel to explain how the Property is necessary for an effective reorganization. However, Debtor's Response only notes an amended plan was filed. Therefore, based upon the evidence submitted to, the court also determines the property is not necessary for any effective rehabilitation in this Chapter 13 case. Relief must therefore be granted pursuant to 11 U.S.C. § 362(d)(2).

GILLIS' RESPONSE

Gillis filed a Response on May 19, 2020. Dckt. 139. Gillis argues the UST's motion is unusual and selective prosecution. Gillis notes other attorney's have bragged about filing "six or seven amended plans before confirmation is reached," and that in this instance

there is no allegation of malicious intent.

Gillis goes on to provide his narrative of the facts underlying the case, which include summaries of Debtor's goals in filing this case and responses to various motions in the case.

Gillis responds to the UST's argument there was inadequate representation by stating there is no allegation of harm to the Chapter 13 Trustee or any creditors (in the Response it appears Gillis mistakenly believes the Motion was filed by the Chapter 13 Trustee, David Cusick ("Chapter 13 Trustee")). Gillis argues the court should focus on the Debtor being current under the present plan and the amount that will be paid into the plan upon completion, which will provide significant compensation to the Chapter 13 Trustee.

Gillis argues that the Chapter 13 Trustee's fees should be examined in this case as excessive.

Gillis argues his fees should be examined by the "rubic" set out in another case, no. 18-10306-B-13, Dckt. 102. The "rubic" is not explained in the Response.

Gillis argues if the "rubic" is not used, the lodestar method should be used. No analysis of the correct fee under the lodestar method is provided.

Gillis notes in conclusion that health issues have hampered his ability to respond to the Motion, and that if given the opportunity for subsequent application using the lodestar method his fees would be \$15,000.00.

UST'S REPLY

The UST filed a Reply on May 26, 2020. Dckt. 143. The UST argues Gillis did not rebut and provides no defense for the allegations in the Motion. The UST also reiterates that all fees should be disgorged due to inadequate representation the prejudiced the Debtor.

GILLIS' REPLY

Gillis filed a Reply on May 28, 2020. Dckt. 145. Gillis reiterates his argument that UST's motion is unusual and selective prosecution, and ignores the "rubic" set for the court already.

Gillis appears to argue his performance should not be examined, stating:

I know the Court was an artillery office in combat. If a forward observer called in the wrong coordinates and or a Howitzer gunner entered the wrong coordinates

resulting in friendly casualties, would he be charged with a Court Martial? No. Men in battle often make mistakes. In the movies "Breaker Morant", "We were Soldiers" and "Patton" we see troops making mistakes in battle.

My uncle was an artillery officer in World War II and the Korean War. He told me that if there was an injured German on the side of the road, they would shoot him. Otherwise the injured German may throw a grenade at them when they passed.

Men at war were not charged when doing their job; neither should attorneys doing their job.

As long as they are "on the job", no one should later, from a safe distance, be unduly critical of the job others are doing. Mr. Cusick and the Assistant U.S. Trustee argue that I could have done a more perfect job.

Gillis argues that despite missing two 341 Meetings, that he did file an explanation for the absence and no damage resulted to any party.

Gillis concludes the Motion is without merit and should be summarily denied.

APPLICABLE LAW

The court has the authority, and responsibility, to consider attorney's fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. §§ 329, 330, 331; see also *Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997). Fees in excess of the reasonable value of such services may be ordered repaid. See *In re Lawas*, No. 13-33513-E-13, 2014 Bankr. LEXIS 623 (Bankr. E.D. Cal. Feb. 12, 2014). The application of 11 U.S.C. § 329 and the Federal Rules of Bankruptcy Procedure may seem harsh, but they are necessary not only to protect vulnerable consumers and business owners, but also to protect the integrity of the federal judicial process. See *Neben & Starrett v. Charwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 881 (9th Cir. 1995). Debtor's counsel must lay bare all dealings regarding compensation and must be direct and comprehensive. See *Kavanagh v. Leija (In Re Leija)*, 270 B.R. 497, 501 (Bankr. E.D. Cal. 2001) (citation omitted); *In re Bob's Supermarket's, Inc.*, 146 B.R. 20, 25 (Bankr. D. Mont. 1992), *aff'd in part and rev'd in part*, 165 B.R. 339 (B.A.P. 9th Cir. 1993). The burden is on the person to be employed to come forward and to make full, candid, complete disclosure. *In re B.E.S. Concrete Products, Inc.*, 93 B.R. 228 (E.D. Cal. 1988). The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any

bona fide rights to be adjudicated.

DISCUSSION

Gillis provides a number of arguments, including that he is being singled out; that mistakes of "war" happen; that no one was harmed; and that he was prosecuting the case by responding to motions and eventually appearing at the 341 Meeting.

But, Gillis at no point provides a discussion of the services performed and what the value of the services was.

It is mentioned in passing that under the lodestar method Gillis would be entitled to \$15,000 in fees. But, Gillis does not explain how this conclusion was reached.

Gillis argues " A LAWYER'S REPRESENTATION OF A CLIENT SHOULD NOT BE TAKEN APART, PIECE BY PIECE, AND EXAMINED FOR PARTIAL FEES EXAMINATION UNLESS THERE IS MANS REA INVOLVED." Dckt. 145(emphasis in original). No legal support is provided for this argument that lawyer's performance should not be examined unless there is some (presumably malicious) intent.

11 U.S.C. § 329(b) states:

(b)If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to-

(1)the estate, if the property transferred-

(A)would have been property of the estate; or

(B)was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2)the entity that made such payment.

There is no mens rea requirement in the above language. Rather, there is a plan statement that "if such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive."

Given that no analysis has been provided explaining what fees are reasonable, and in consideration of the evidence presented by the

UST, the motion is granted.

But, the court will issue an order allowing Gillis to file a motion for allowance of fees, in which Gillis provides a detailed analysis of what services were performed, and an analysis of what the reasonable fee for those services is.

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

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

The Motion for Review of Fees filed by United States Trustee, Tracy Hope Davis ("UST") 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 Thomas O. Gillis shall turnover or pay from other monies if he is not holding the monies paid to him by the Debtor the sum of \$6,000.00 on or before June 16, 2020. The Chapter 13 Trustee shall segregate the \$6,000.00 (which can be done by an accounting entry rather than a separate account), to which any right to payment from of Thomas O. Gillis shall fix. The Trustee shall not disburse the \$6,000.00 except on further order of this court or as provided below.

IT IS FURTHER ORDERED that if no motion for allowance of attorney's fees is filed by Thomas O. Gillis for his services as the attorney for the Chapter 13 debtor is filed on or before noon on June 16, 2020, the Chapter 13 Trustee may lodge with this court a supplemental order (using the Docket Control Number for the present Motion) authorizing the Chapter 13 Trustee to disburse or otherwise administer the monies as permitted under the Bankruptcy Code.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 9, 2020. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Violet Ione Hayes ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$1,910.91 for 60 months, and 0 percent dividend on unsecured claims totaling \$6,044.50. Amended Plan, Dckt. 47. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 13, 2020. Dckt. 57. Trustee notes Creditor RanLife is listed as Class 1 with arrears of \$13,327.85 with an arrearage dividend of \$222.13 and a postpetition monthly payment of \$1,137.26, but is also listed as Class 2(A) with an amount of \$155,186.18 with interest rate of 4.625% and a monthly dividend of \$222.13. Trustee

argues Class 2 claims are required to be paid in full through the plan, which the proposed terms do not do.

DISCUSSION

Trustee's opposition is essentially that the Debtor has misclassified Creditor RanLife's claim as both Class 1 and Class 2, where it should only be included in Class 1.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is **XXXXXXXXXXXXXXXXXX**

Thru #6

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 6, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. The debtors, Lorne Howard Williams and Jamie Lynn Williams ("Debtor") are \$3,260.00 delinquent in plan payments.
- B. Debtors' plan shows that all priority claims are estimated at \$26,586.00. The Internal Revenue Service filed a claim in the amount of

\$41,971.03 of which \$40,848.93 priority.

- C. Debtor admitted at the Meeting of Creditors that tax returns have yet to be filed for 2018, and 2019.
- D. Debtors have failed to provide 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists.
- E. In Debtor's prior Chapter 7 case filed on October 14, 2019, no 19-26406, Debtor reported working with Labor for Full Rack Entertainment and making monthly gross income of \$1,248.60 and \$1,570.00 income derived from interest. Debtors' current plan, and Schedule I, shows Mr. Williams occupation as General Contractor for LWC, Inc. receiving \$7,142.00 monthly in interest and dividends. The Trustee believes this should be listed as business income.
- F. Debtor's spouse is reported to be unemployed since March 2020, but is making the same income. Trustee has requested and Debtor has not provided proof of the unemployment income.
- G. The Debtor's plan includes an "Ensminger Provision" that is atypical because: listing the Creditor in Class 1 which may mislead the creditor; failing to state identifying information in the first section such as the address, total debt, and arrearage; failing to provide that the creditor's treatment will become Class 3 upon denial of a loan modification although an order modifying the stay must still be obtained; failing to state the rights of the Creditor are not altered; and possibly other changes.

DISCUSSION

The proposed plan is not confirmable.

The plan has not been shown by the Debtor to be feasible where Debtor is delinquent in plan payments, where the priority claims were understated by \$20,000+, and where Debtor has not shown evidence supporting his spouse's income. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan also cannot be confirmed because the Debtor has not

complied with various provisions of 11 U.S.C. § 521 by not providing several required business documents and not providing documents requested by the Trustee to verify income.

Additionally, the plan includes provisions that modify the rights of a creditor with a claim secured only by Debtor's primary residence, which is not permissible under 11 U.S.C. §1322(b)(2.)

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 6, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

NC Bank, National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The proposed plan does not provide for Creditor's prepetition arrearages which total \$33,343.07 and instead relies on a speculative loan modification. To pay for that arrearage over a 60 month term, the debtor would need to increase the payment by \$555.72, which would result in the plan not being feasible.

- B. Debtor's plan provides for payment in the amount of \$2,316.00, which is less than the ongoing postpetition payment of \$2,345.82.

DISCUSSION

The court agrees that the plan has not been shown to be feasible, both for the reasons stated in the Motion and based on the Chapter 13 Trustee's grounds for opposing confirmation (Dckt. 17) which include Debtor being delinquent in plan payments, and priority claims having been understated by \$20,000+. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by NC Bank, National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Vernon Pryor and Judith Pryor ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for \$335 paid through April 25, 2020, for payments of \$340 for the remaining plan term and for a 0% dividend to unsecured claims totaling \$94,272.88. Plan, Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 13, 2020. Dckt. 43. Trustee opposes confirmation on the basis that Vernon Pryor and Judith Pryor live separately but have not filed separate Schedule J forms.

DISCUSSION

The Debtor is required by 11 U.S.C. § 521(a) (3) to “ cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties.” The Trustee has stated he cannot determine whether the plan is feasible without receiving documentation showing Vernon Pryor and Judtih Pryor’s individual expenses as they are living separately.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

The 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 Chapter 13 Plan filed by the debtor, Vernon Pryor and Judtih Pryor (“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 Plan is **xxxxxx**

8. [20-20250](#)-C-13
[APN-1](#)

RICHARD/JOHNNA HOWARD
Jeffrey Ogilvie

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
3-11-20 [[14](#)]

Thru #10

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 11, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx

WELLS FARGO BANK, N.A., dba WELLS FARGO AUTO ("Creditor") holding a secured claim opposes confirmation of the Plan based on a dispute over the valuation of Creditor's secured claim.

The Debtor filed a Response noting that a Motion To Value has been set for hearing May 5, 2020. Dckt. 23.

PRIOR HEARING s

At the April 7, 2020 hearing the court noted the plan's feasibility hangs on the outcome of Debtor's Motion to Value (Dckt. 23) and continued the hearing. Civil Minutes, Dckt. 32. At the May 12, 2020, hearing the court continued the hearings on the Motion To Value and this Objection to allow the parties to discuss potential settlement. Dckt. 49.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx.

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

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

The Objection to the Chapter 13 Plan filed by WELLS FARGO BANK, N.A., dba WELLS FARGO AUTO ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is **xxxxxxx**

9. [20-20250](#)-C-13 RICHARD/JOHNNA HOWARD CONTINUED OBJECTION TO
[DPC-1](#) Jeffrey Ogilvie CONFIRMATION OF PLAN BY DAVID
P. CUSICK
3-16-20 [[18](#)]

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)(2) Objection-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 16, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx

The Chapter 13 Trustee, David Cusick ("Trustee"), filed this Objection on the basis that the plan proposes valuing the secured claim of Wells Fargo, and no motion has been filed for that purpose.

The Debtor filed a Response noting that a Motion To Value has been set for hearing Mat 5, 2020. Dckt. 23.

PRIOR HEARINGS

At the April 7, 2020 hearing the court noted the plan's feasibility hangs on the outcome of Debtor's Motion to Value (Dckt. 23) and continued the hearing. Civil Minutes, Dckt. 33. At the May 12, 2020, hearing the court continued the hearings on the Motion To Value and this Objection to allow the parties to discuss potential settlement. Dckt. 50.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxxxx.

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

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

The 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 Plan is **xxxxxxx**

10. [20-20250](#)-C-13
[JSO](#)-1

RICHARD/JOHNNA HOWARD
Jeffrey Ogilvie

CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO
BANK
4-2-20 [[23](#)]

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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 2, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Bank, N.A., dba Wells Fargo Auto ("Creditor") is XXXXX

The Motion filed by Richard Lynn Howard and Johnna Faye Howard ("Debtor") to value the secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Auto ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 25. Debtor is the owner of a 2008 Chevy Suburban ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,548.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

On April 24, 2020, Creditor filed an Opposition. Dckt. 38. Creditor argues that even though shelter-in-place has prevented an appraisal of the Vehicle, the NADA guide shows the Vehicle's retail value is \$11,450.00.

MAY 12, 2020 HEARING

At the May 12, 2020, hearing the court continued the hearing to allow the parties to discuss settlement. Dckt. 51. Before that hearing, the court noted the following in its prehearing disposition:

The secured claim is asserted to be \$9,897.28 for this now thirteen (13) model year old vehicle. The evidence presented by Debtor of value is Debtor's own testimony. However, Debtor's testimony is only that Kelly Blue Book states that the value is \$6,548.00, taking into account that the vehicle has a broken transfer case which Debtor has been unable to repair. Declaration, Dckt. 25. The Declaration makes reference to "Exhibits in Support," but does not clearly authenticate any exhibits.

With respect to the condition of the vehicle, Debtor does clearly testify that there is unrepaired damage to the vehicle consisting of a "broken transfer case."

Unauthenticated Exhibit B is what appears to be a screen shot of the Kelly Blue Book website showing the private party value range for a 2008 Chevrolet Suburban to be \$5,416-\$7,634. Even if properly authenticate, the private party sale value is not the correct valuation to use for this Motion. 11 U.S.C. § 506(a)(2) requires it to be the replacement value, which is defined in that paragraph to be the price a retail merchant would charge, taking into account the condition of the vehicle.

Creditor counters with an opposition, asserting that the value of the vehicle is \$11,450 for such a vehicle with 183,000 miles on it. Creditor takes exception to Debtors making reference to a Kelly Blue Book valuation since Debtors do not establish themselves as an "expert" in using Kelly Blue Book valuations. The person providing a Kelly Blue Book valuation or NADA valuation is not the "expert," but merely the witness authenticating the "Market quotations . . . or other compilations that are generally relied upon by the public or by persons in particular occupations." Fed. R. Evid. 803(17).

Creditor provides the court with unauthenticated Exhibit C that appears to be a NADA valuation screen shot. It shows a "clean" retail value of \$11,450. Creditor seeks to use this clean, showroom- and floor-ready value for the vehicle and does not take into account a the broken transfer case testified to by

Debtor to make even a theoretical adjustment from the showroom ready value on the unauthenticated NADA Report.

Scope of the Financial Fight

At this point, the fight is between the \$9,548 secured claim and the \$6,548 in value. If there is a damaged transfer case (and the court will not presume that the Debtor would commit perjury and falsely testify), then the \$11,450 is significantly overstated. There may be other issues, damage, dings, and scratches on a vehicle with 183,000 miles on it, but none are testified to by Debtor.

Thus, the chasm between these parties is the grand sum of \$3,000 on an obligation that tops out at \$9,500.

Neither party having presented the court with properly authenticated valuations of the vehicle and it appearing that there is damage to the vehicle that Creditor has failed to take into account, leaving the court without credible evidence to make a decision.

The evidentiary issue in dispute and evidence lacking, this matter will be set for an evidentiary hearing. Presuming 15 hours of time for each attorney in preparing the direct testimony statements, assembling the evidence, preparing the evidence binders, preparing the evidentiary hearing statements, filing evidentiary objections, responding to evidentiary objections, and then coming to court for a half-day evidentiary hearing, it appears that the cost of the litigation for each side would be \$5,625 (presuming a modest billing rate of \$375 an hour in light of the modest amount in dispute). The attorney's fees alone exceed the total claim at issue.

Dckt. 51.

DISCUSSION

At the hearing, the parties reported to the court that they had communicated and **xxxxxxxxxxx**

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 Richard Lynn Howard and Johnna Faye Howard ("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 **XXXXXXXXXX**

11. [19-21277](#)-C-13
[PLC](#)-8

JASON/TIFFANIE
RUPCHOCK
Peter Cianchetta

MOTION TO INCUR DEBT
5-14-20 [[102](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 14, 2020. By the court's calculation, 19 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 ~~XXXXX~~.

Jason Peter Rupchock and Tiffanie Ann Rupchock ("Debtor") seek permission to purchase a 2017 Toyota Camry SE with a total purchase price of \$15,636.20 and monthly payments of \$412.66 at 19.20% interest over 60 months. The reason for the new vehicle purchase is stated to be that Debtor's current vehicle has ceased to be operational.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition to the Motion on May 18, 2020. Dckt. 107. Trustee argues

the interest rate might not be reasonable—noting that Debtor's current vehicle loan has an interest rate of only 9.72%. Trustee notes that Debtor's declaration says their present vehicle "died" but does not explain any issues. Trustee also notes Debtor is not current in plan payments.

Debtor filed a Response on May 28, 2020. Dckt 110. Debtor's counsel represents that after given notice of the Trustee's opposition, the lender decreased the interest rate to 17.2%.

Debtor's counsel also explains the issue with the current vehicle is the transmission, which will cost \$5,000 to fix. Bt, no declaration or other evidence was filed to support this argument.

Debtor's counsel also notes an amended plan was filed to bring Debtor current.

DISCUSSION

An interest charge of 17.2% for a motor vehicle makes it questionable whether this transaction is in the best interest of the Debtor. Additionally, no evidence was provided to show what repairs are needed for Debtor's present vehicle, if any.

However, the court notes that the proposed ongoing payment of \$412.66 is actually less than the ongoing payment of \$593.11 for Debtor's current vehicle.

At the hearing, **xxxxxxxxxxxxxxxx**.

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 Jason Peter Rupchock and Tiffanie Ann Rupchock ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxx**

Thru #14

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se) on May 6, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent \$12,955 in plan payments.
- B. Debtor failed to appear and be examined at the Meeting of Creditors held on April 30, 2020.
- C. Debtor proposes to value the secured claims of Check N Go, One Main Loan, and Fannie Mae Student loan, but has not filed a motion for

that purpose.

- D. The plan does not appear to work where Debtor reports negative income, calls for dividends greater than the monthly payments, and claims exemptions without citing applicable statutes, among other things.

DISCUSSION

Trustee's objection are well-taken. The plan is on its face infeasible to the extent that it is unclear whether it was filed in good faith. Debtor proposes making payments in the plan to secured creditors that exceed the monthly payment, and Debtor reports having no income to make even the lesser proposed monthly payment.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se) on April 30, 2020. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The proposed plan provides for its claim as a Class 4 despite there being a prepetition arrearage of \$31,155.26.
- B. The proposed \$5,000 plan payment is less than Creditor's ongoing \$8,448.00 post-petition payment.

DISCUSSION

The Creditor's arguments are well-taken.

The current proposed plan has not been demonstrated to be feasible, both because it does not provide for Creditor's secured claim and because the ongoing monthly dividends proposed to various creditors is substantially less than the ongoing monthly plan payment. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The court also notes, as discussed in another creditor's Objection (Dckt. 40), that Debtor lists having income of (\$9,975.95), and there is no way to fund a plan with less than zero disposable income.

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 Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se) on May 6, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

CIVIC HOLDINGS III TRUST ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan states Creditor's prepetition arrearage is \$50,000, where that amount is actually \$346,798.09 because the loan matured on July 1, 2019. Additionally, Creditor opposes confirmation because Debtor lists having income of (\$9,975.95).

These points are well-taken. With expenses greatly exceeding income, the plan is not feasible. 11 U.S.C. § 1325(a)(6). The plan is also not feasible because Creditor's claim is listed as a Class 1 with monthly arrearage and ongoing postpetition payments, where that claim

is fully matured and needs to be provided for as a Class 2 claim during the life of the plan.

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

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

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

The Objection to the Chapter 13 Plan filed by CIVIC HOLDINGS III TRUST, ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2020. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. The debtor, Kala Washington ("Debtor") is \$3,580 delinquent in plan payments.
- B. The plan states that Debtor will be making direct payments on the unsecured claim of the US department of Education. This is unfair discrimination against the other unsecured claims which are set to receive a 0% dividend.

- C. The monthly dividend proposed to Class 2 creditor, AGCO Finance in the amount of \$20,268.00 each month. Those amounts are higher than the \$3,580.00 plan payments.
- D. The Debtor admitted at the Meeting of Creditors held April 23, 2020 he owes monies towards restitution, part of which was taken from his refund from the Franchise Tax Board. The Franchise Tax Board was not listed on his schedules nor in his plan.
- E. The Debtor's non-exempt equity totals \$15,539.00 and the Debtor proposes to pay the unsecured creditors a zero percent (0%) dividend.

DISCUSSION

Trustee's objections are well-taken.

The current proposed plan has not been demonstrated to be feasible. The plan proposes a monthly dividend of \$20,268 as to a single secured claim, which is greater than the proposed monthly payment. Dckt. 19. Debtor is also delinquent in plan payments and has not listed all claims. Dckt. 21. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Additionally, Debtor has nonexempt assets of \$15,539.00. Because a 0% dividend is provided to unsecured claims, the proposed plan fails the liquidation test of 11 U.S.C. § 1325(a)(4).

The Debtor has also not explained whether the different treatment between the US department of Education's unsecured claim and other unsecured claims is permissible under 11 U.S.C. § 1322(b)(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.

FINAL RULINGS

16. [20-20820](#)-C-13 BRENT BRANDOLINO OBJECTION TO CONFIRMATION OF
[DPC-1](#) Lucas Garcia PLAN BY DAVID P. CUSICK
4-29-20 [[24](#)]

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2020. By the court's calculation, 34 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed this Objection on April 29, 2020, opposing confirmation of the Chapter 13 plan.

On May 28, 2020, the debtor Brent Alan Brandolino filed a Reply (Dckt. 28) indicating a new plan will be filed and set for confirmation hearing.

Based on the Trustee's Objection and the Debtor's non-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 Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Thru #18

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 4, 2020. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$5,550.00.

The Motion filed by Matthew David King and Michele Elizabeth Prather King ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 19. Debtor is the owner of a 2006 Ford F-150 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$5,550.00 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 Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response noting the Creditor has filed a Proof of Claim, no. 5. Dckt. 27.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,551.00. Declaration, Dckt. 15. 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 \$5,550.00, 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 Matthew David King and Michele Elizabeth Prather King ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Travis Credit Union ("Creditor") secured by an asset described as 2006 Ford F-150 ("Vehicle") is determined to be a secured claim in the amount of \$5,550.00, 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 \$5,550.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 4, 2020. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of Harley-Davidson Financial Services ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$12,000.00.

The Motion filed by Matthew David King and Michele Elizabeth Prather King ("Debtor") to value the secured claim of Harley-Davidson Financial Services ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. . Debtor is the owner of a 2016 Harley Davidson FXDB Street Bob motorcycle ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$12,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response noting the Creditor has not filed a Proof of Claim. Dckt. 25.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,801.00. Declaration, Dckt. 19. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$12,000.00, the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Matthew David King and Michele Elizabeth Prather King ("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 Harley-Davidson Financial Services ("Creditor") secured by an asset described as 2016 Harley Davidson FXDB Street Bob motorcycle ("Vehicle") is determined to be a secured claim in the amount of \$ \$12,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$ \$12,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 29, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Capitol One Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$16,350.00.

The Motion filed by Vicklyn Marie Ritchie ("Debtor") to value the secured claim of Capitol One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 43. Debtor is the owner of a 2013 Nissan Pathfinder ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$16,350.00 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).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on September 15, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$21,536.35. Proof of Claim, No. 2. 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 \$16,350.00, 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 Vicklyn Marie Ritchie ("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 Capitol One Auto Finance ("Creditor") secured by an asset described as 2013 Nissan Pathfinder ("Vehicle") is determined to be a secured claim in the amount of \$16,350.00, 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 \$16,350.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

20. [20-20734](#)-C-13
[DPC](#)-1

CHRISTINE CONRAD
Jeffrey Ogilvie

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
3-16-20 [[12](#)]

Final Ruling: No appearance at the June 2, 2020 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed an Ex Parte Motion to Dismiss the pending Objection on May 29, 2020, Dckt. 40; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Christine Ann Conrad ("Debtor"); **the Ex Parte Motion is granted, the Trustee's Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on February 10, 2020, is confirmed.**

Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Thru #24

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 10, 2020. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 2 of U.S. Department of Education is sustained, and the claim is disallowed in its entirety.

The debtor, Monica Lynn Maria ("Debtor") filed this Objection To Claim seeking disallowance of Proof of Claim, No. 2, held by U.S. Department of Education ("Creditor"). The basis for objection is that the Creditor's debt is only owed by Debtor's spouse, as a separate obligation.

The Objection states that Debtor's original case, no. 17-21347, was filed March 1, 2017, but then severed into the present case by an order that states, "all documents on file in the joint

case,
including claims, shall be deemed filed in each of the split cases.”

Debtor’s Declaration (Dckt. 43) states that Creditor’s claim was incurred by Jason Maria Mack prior to Debtor being married to him.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor has presented evidence that the Creditor’s claim was incurred by Jason Maria Mack alone, before Debtor was married to him, and therefore is not a debt Debtor is liable on.

Based on the evidence before the court, Creditor’s claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of U.S. Department of Education (“Creditor”), filed in this case by debtor, Monica Lynn Maria (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 2 of Creditor is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 10, 2020. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 5 of T Mobile/T-Mobile USA Inc. is sustained, and the claim is disallowed in its entirety.

The debtor, Monica Lynn Maria ("Debtor") filed this Objection To Claim seeking disallowance of Proof of Claim, No. 5, held by T Mobile/T-Mobile USA Inc. ("Creditor"). The basis for objection is that the Creditor's debt is only owed by Debtor's spouse, as a separate obligation.

The Objection states that Debtor's original case, no. 17-21347, was filed March 1, 2017, but then severed into the present case by an order that states, "all documents on file in the joint case, including claims, shall be deemed filed in each of the split cases."

Debtor's Declaration (Dckt. 51) states that Creditor's claim was incurred by Jason Maria Mack prior to Debtor being married to him.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor has presented evidence that the Creditor's claim was incurred by Jason Maria Mack alone, before Debtor was married to him, and therefore is not a debt Debtor is liable on.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of T Mobile/T-Mobile USA Inc. ("Creditor"), filed in this case by debtor, Monica Lynn Maria ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 5 of Creditor is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 10, 2020. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 7 of Sierra Nevada Child Support is sustained, and the claim is disallowed in its entirety.

The debtor, Monica Lynn Maria ("Debtor") filed this Objection To Claim seeking disallowance of Proof of Claim, No. 7, held by Sierra Nevada Child Support ("Creditor"). The basis for objection is that the Creditor's debt is only owed by Debtor's spouse, as a separate obligation.

The Objection states that Debtor's original case, no. 17-21347, was filed March 1, 2017, but then severed into the present case by an order that states, "all documents on file in the joint case, including claims, shall be deemed filed in each of the split cases."

Debtor's Declaration (Dckt. 55) states that Creditor's claim was incurred by Jason Maria Mack prior to Debtor being married to him.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor has presented evidence that the Creditor's claim was incurred by Jason Maria Mack alone, before Debtor was married to him, and therefore is not a debt Debtor is liable on.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Sierra Nevada Child Support ("Creditor"), filed in this case by debtor, Monica Lynn Maria ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 7 of Creditor is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 10, 2020. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 8 of the Department of Justice, Division of Child Support is sustained, and the claim is disallowed in its entirety.

The debtor, Monica Lynn Maria ("Debtor") filed this Objection To Claim seeking disallowance of Proof of Claim, No. 8, held by the Department of Justice, Division of Child Support ("Creditor"). The basis for objection is that the Creditor's debt is only owed by Debtor's spouse, as a separate obligation.

The Objection states that Debtor's original case, no. 17-21347, was filed March 1, 2017, but then severed into the present case by an order that states, "all documents on file in the joint case, including claims, shall be deemed filed in each of the split cases."

Debtor's Declaration (Dckt. 59) states that Creditor's claim was incurred by Jason Maria Mack prior to Debtor being married to him.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor has presented evidence that the Creditor's claim was incurred by Jason Maria Mack alone, before Debtor was married to him, and therefore is not a debt Debtor is liable on.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of the Department of Justice, Division of Child Support ("Creditor"), filed in this case by debtor, Monica Lynn Maria ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 8 of Creditor is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Ann Medina ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 13, 2020. Dckt. 30. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Ann Medina ("Debtor") having been

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on April 17, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 2, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Tanya Michelle Norfles ("Debtor") seeks court approval for Debtor to incur post-petition credit in the form of a loan modification of the debt secured by debtor's property commonly known as 4134 Beechcraft Way Sacramento, California.

The modified principal balance of the Note will include the prior arrearages up to the effective date of the loan modification. The principal amount of the debt will be \$192,424.35, paid at 4% interest with a 2060 maturity date. The monthly payments, inclusive of escrow, will total \$1,167.77.

The Trustee filed a response indicating non-opposition on May 20, 2020. Dckt. 82.

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 Tanya Michelle Norfles ("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 Tanya Michelle Norfles to amend the terms of the loan with U.S. Bank Trust National Association as trustee of Cabana Series IV Truste which is secured by the real property commonly known as 4134 Beechcraft Way Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 78).