UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 4, 2019 at 3:00 p.m.

1.	**19-23276-E-13 SMR**	**VANESSA BURTON** **Pro Se**	**OBJECTION TO CERTIFICATION BY A DEBTOR** **5-30-19 [13]**

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).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on May 30, 2019. By the court's calculation, 5 days' notice was provided.

As provided in 11 U.S.C. § 362(l)(3), when a certification is provided by the debtor who is a tenant with respect to a lease and unlawful detainer, the court shall conduct a hearing within 10 days of the property owner challenging the tenant's certification.

The Objection To Certification is sustained.

Mehrizi Properties, LLC ("Movant") filed this Objection To Certification by Debtor asserting that the debtor, Vanessa Jennine Burton ("Debtor"), on her Form 101A, Initial Statement About an Eviction Judgement Against You ("Initial Statement") made false statements. Dckt. 13. The Objection is made pursuant to 11 U.S.C. § 362(l)(3).

The Objection states Debtor was a tenant at Movant's real property commonly known as 1423 Seymour Circle, Lincoln, California (the "Property"). The Objection states further Movant received a default judgement against Debtor on April 23, 2019, which judgement is filed as Exhibit "B" along

with the Objection. Exhibit B, Dckt. 16.

Movant filed the Declaration of Nasser Aboui in support of the Objection. Declaration, Dckt. 15. Abuoi provides testimony that the regular monthly rent that would come due in the 30 day period after filing this case was $2,600.00. *Id.*, ¶¶ 1,16.

Movant herein seeks an order confirming the absence of stay in accordance with 11 U.S.C. § 362(B)(22) based on Debtor's failure to make a certification required by 11 U.S.C. § 362(l)(1)(B). [FN. 1]

FN. 1. The court was presented with the same issue between these parties in Debtor's recent prior case, in which the court sustained Movant's objection in that prior Chapter 13 case, No. 19-23276, that was filed April 29, 2019 and dismissed on May 29, 2019.

APPLICABLE LAW

11 U.S.C. § 362 (b)(22) provides an exception to the automatic stay as follows:

> subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

Then, 11 U.S.C. § 362(l)(1) sets the following limitation on the aforementioned exception:

> Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—
>
> (A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and
>
> (B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

11 U.S.C. § 362(l)(3) allows a lessor to file an objection to a debtor's certifications under 11 U.S.C. § 362(l)(1)(A), which the court then determining whether the certifications are true.

DISCUSSION

A review of the docket shows a statement was entered on May 22, 2019 indicating that no

rent money was deposited with the clerk of the court for purposes of 11 U.S.C. § 362(l)(1)(A). The rent monies due during the 30-day period after the filing of the bankruptcy petition was $2,600.00. Declaration ¶¶ 1,16, Dckt. 15.

Therefore, there certification under 11 U.S.C. § 362(l)(1)(B) made by Debtor was not true, and the Objection is sustained. 11 U.S.C. § 362(l)(3). Subsection (b)(22) of 11 U.S.C. § 362 shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable Movant to complete the process to recover full possession of the Property.

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 Certification filed by Mehrizi Properties, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and the court confirms that 11 U.S.C. § 362(b)(22) shall apply immediately to Movant's real property commonly known as 1423 Seymour Circle, Lincoln, California (the "Property") and relief from the stay provided under subsection (a)(3) shall not be required to enable Movant to complete the process to recover full possession.
>
> The clerk of the court shall immediately serve upon the Movant and the debtor, Vanessa Jennine Burton ("Debtor"), a certified copy of this Order.

2.	**19-22506-E-13 GEL-1**	**SHAWN/SERINA JOHLE Gabriel Liberman**	**MOTION TO VALUE COLLATERAL OF CARMAX BUSINESS SERVICES, LLC 5-20-19 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 20, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Carmax Business Services, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,625.00.

The Motion filed by the debtors, Shawn Leland Johle and Serina Michelle Johle ("Debtor"), to value the secured claim of Carmax Business Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 19. Debtor is the owner of a 2013 Dodge Avenger SXT ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,715.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor's Proof of Claim

Creditor filed Proof of Claim, No. 1, on April 25, 2019. The Proof states the following as to Creditor's claim:

Value of property:$7,625.00

Amount of the claim that is secured: $11,489.04

Amount of the claim that is unsecured: $0.00

Amount necessary to cure as of the petition date: $565.58

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Debtor's Declaration states the following as to the condition of the Vehicle:

> The retail value of the 2013 Dodge Avenger SXT is likely around $7,715.00 based on our knowledge of the mileage and condition of the vehicle and based on examining current market conditions. The exterior is in good condition. The interior is in fair condition and has minor cosmetic damage including a broken visor, stained upholstery, needs two tires, and the check engine light keeps going on and off.

Declaration ¶ 5, Dckt. 19.

In its Proof of Claim, No. 1, Creditor asserts the value of the Vehicle is $7,625.00. There is no indication this valuation is made with any actual knowledge of the Vehicle's condition–rather, it is the retail value of the Vehicle based only on the make and model, and likely the mileage.

It is unlikely that the issues with the Vehicle identified in the Debtor's testimony would actually increase the value of the Vehicle. Therefore, the Vehicle's value at the time of filing is $7,625.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on October 10, 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 $11,419.00. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $7,625.00, 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 Shawn Leland Johle and Serina Michelle Johle ("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 Carmax Business Services, LLC ("Creditor") secured by an asset described as 2013 Dodge Avenger SXT ("Vehicle") is determined to be a secured claim in the amount of $7,625.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $7,625.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

3.	**19-22907-E-13** **BLG-1**	**STACY TUCKER** **Chad Johnson**	**MOTION TO EXTEND AUTOMATIC STAY** **5-20-19 [9]**

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 20, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Stacy Lynn Grace Tucker ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-22797) was dismissed on November 19, 2018, after Debtor fell delinquent in Chapter 13 Plan payments. *See* Order, Bankr. E.D. Cal. No. 18-22797, Dckt. 23, November 19, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor incurred unexpected expenses, including those associated with the death of Debtor's mother and father, necessary care for Debtor's mentally ill son, and the repair of a broken waterpipe on Debtor's property.

Upon motion of a party in interest and after notice and hearing, the court may order the

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor in her prior case encountered unexpected expenses of a great magnitude that are not likely to occur again.

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

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

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

4. **17-25917-E-13** **MATTHEW TORST** **MOTION TO MODIFY PLAN**
TRN-4 **Tiffany Norman** **4-18-19 [62]**

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 on April 18, 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 ~~granted.~~

Matthew Richard Torst ("Debtor") seeks confirmation of the Modified Plan to address a higher-than anticipated arrearage claim from creditor Bank of America/Shellpoint Mortgage Servicing Declaration ¶ 4, Dckt. 64. The Modified Plan provides for payments of $830 for 17 months and $965 for 43 months; a monthly payment of $191 to Class 1 creditor Shellpoint; and a 27 percent dividend to unsecured claims totaling $12,283.00. Modified Plan, Dckt. 65. 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 May 17, 2019. Dckt. 69. Trustee opposes confirmation on the basis that Debtor filed the Modified Plan using an outdated plan form (EDC 3-080 effective 5/1/12 and not 11/9/18). Trustee further notes Debtor is delinquent $135.00 under the proposed Modified Plan terms.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $135.00 delinquent in plan payments.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Furthermore, Debtor's Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of November 9, 2018. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Possible Correction

If by the time of the hearing Debtor is not in default, because the Trustee does not have an objection to the substantive terms, it could be possible for the Debtor to file an amended modified plan using the proper Chapter 13 Plan which can be filed and be the amended modified plan confirmed pursuant to this Motion.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

~~The Amend Modified Plan, as provided above, filed by the Debtor after the hearing on this Motion, does comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Matthew Richard Torst ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that Motion to Confirm the Modified Plan is granted, and the Amended Modified Chapter 13 Plan stating the same terms as provided in the original proposed Modified Plan (Dckt. 65) is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Amended Modified Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form and that it accurately states the same terms as in the original proposed Modified by Plan, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

5. **11-48125-E-13 FF-1** | **MARIE/RANDY ALOJADO** **Gary Fraley** | **MOTION TO AVOID LIEN OF BANK OF AMERICA** **5-16-19 [216]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 16, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Bank of America aka FIA Card Services ("Creditor") against property of Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") commonly known as 25775 Grafton Street, Esparto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $26,373.17. Exhibit 2, Dckt. 218. An abstract of judgment was recorded with Yolo County on June 24, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $350,000.00 as of the petition date. Dckt. 34. The unavoidable consensual liens that total $473,000.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 215. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 212.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Bank of America aka FIA Card Services, California Superior Court for Yolo County Case No. CV10-2839, recorded on June 24, 2011, Document No. 2011-0017261-00, with the Yolo County Recorder, against the real property commonly known as 25775 Grafton Street, Esparto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6. **11-48125-E-13 FF-2** | **MARIE/RANDY ALOJADO** **Gary Fraley** | **MOTION TO AVOID LIEN OF BANK OF AMERICA** **5-16-19 [220]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 16, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Bank of America aka FIA Card Services ("Creditor") against property of Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") commonly known as 25775 Grafton Street, Esparto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $10,442.76. Exhibit 2, Dckt. 222. An abstract of judgment was recorded with Yolo County on October 20, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $350,000.00 as of the petition date. Dckt. 34. The unavoidable consensual liens that total $473,000.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 215. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 212.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Marie Antoinette Alojado and Randy Arce Alojado ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Bank of America aka FIA Card Services, California Superior Court for Yolo County Case No. G11-0835, recorded on October 20, 2011, Document No. 2011-0028612-00, with the Yolo County Recorder, against the real property commonly known as 25775 Grafton Street, Esparto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. **18-20345-E-13 GEL-1** **MATTHEW THOMPSON** **Gabriel Liberman** **MOTION TO MODIFY PLAN** **4-23-19 [44]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Matthew Blair Thompson ("Debtor") seeks confirmation of the Modified Plan to cure delinquency in plan payments that resulted from loss of income. Declaration ¶ 3.d, Dckt. 48. The Modified Plan provides for $21,639.74 to be paid from months 1 through 14; payments of $2,276.00 for months 15 through 60; and a 0 percent dividend to unsecured claims. Dckt. 45. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 17, 2019. Dckt. 56. Trustee opposes confirmation on the grounds that Debtor is delinquent $2,276.00 under the proposed Modified Plan.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $2,276.00 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

8. **17-25947-E-13 DEF-2** | **GARY SCHOPF AND GINGER ARDREY** | **MOTION TO SELL AND/OR MOTION TO INCUR DEBT**
David Foyil | **5-7-19 [46]**

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 May 6, 2019. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Chapter 13 debtors, Gary Schopf and Ginger Ardrey ("Debtor"), filed this Motion seeking (1) approval to agree to an insurance settlement for their total-loss vehicle, a 2005 Ford Expedition (the "Salvage Vehicle") in the amount of $5,191.00, and (2) authorization to use the insurance proceeds to purchase a 2010 Hyundai Sanata Fe Limited Sport Utility with 100,700 miles ("Prospective Vehicle") for $5,000.00.

Debtor states the settlement offer provides an amount greater than the estimated value of the Vehicle at the time of filing the petition. Declaration ¶ 4, Dckt. 48. Debtor further testifies the Prospective Vehicle is in good condition. Id., ¶ 7.

On Schedule A/B, Debtor listed the Salvage Vehicle with a value of $1,757.00. Dckt. 1. Debtor further claimed an exemption in the Vehicle in the same amount pursuant to California Code of Civil Procedure section 703.140(b)(2).

On Schedule D, there is no claim stated to be secured by the Salvage Vehicle.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 13, 2019. Dckt. 51. Trustee does not oppose the settlement offer for the Salvage Vehicle, but notes that most of the settlement funds are currently non-exempt assets of the Estate based on Debtor's Schedule C.

DISCUSSION

Multiple Motions Combined Into One Motion

The court notes that this Motion attempts to join multiple claims for relief in one motion. The first, Debtor seeks approval to sell the Salvage Vehicle. Then, Debtor seeks to use Estate funds to purchase the Prospective Vehicle.

Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b). Debtor has not requested that the court allow such joining of multiple claims into one motion.

Motion To Sell & Use Property of the Estate

Debtor is permitted to sell and use property of the Estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303.

Debtor seeks to sell the Salvage Vehicle to his insurance provider (in addition to settling his claim for insurance proceeds) in return for $5,191.00, which is greater than the estimated value of the Salvage Vehicle. Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

However, in coming to the request to use the sale proceeds to purchase the Prospective Vehicle,

Currently, Debtor claimed an exemption in the Salvage Vehicle of only $1,757.00. Schedule C, Dckt. 1. Debtor can get the $1,757.00 of exemption of the proceeds, but cannot divert the non-exempt proceeds into Debtor's own "automotive pocket." The balance of the insurance proceeds, $3,243.00 shall be disbursed to the Chapter 13 Trustee to be paid to creditors under the Chapter 13 Plan.

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 Sell Property filed by the Chapter 13 debtors, Gary Schopf and Ginger Ardrey ("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 to allow Debtor to sell the vehicle as part of the insurance claim for $5,000.00, have $1,757.00 disbursed to Debtor pursuant to Debtor's claimed exemption, and the balance of $3,243.00 of the insurance proceeds disbursed to the Chapter 13 Trustee to be disbursed to creditors for the value of the non-exempt portion of the proceeds.

9. 18-23358-E-13 DEF-2 — MATTHEW/TARA HANNAH — David Foyil — MOTION TO CONFIRM PLAN — 4-9-19 [55]

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 9, 2019. By the court's calculation, 56 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.

Matthew Hannah and Tara Hannah ("Debtor") seek confirmation of the Amended Plan. The Amended Plan provides for payments of $435 in months 1 through 10 and $1,475 in months 11 through 60. Dckt. 58. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 13, 2019. Dckt. 72. Trustee opposes confirmation on the following grounds:

1. The Franchise Tax Board ("FTB") filed Proof of Claim, No. 6 asserting a secured claim in the amount of $5,660.25 and unsecured in the amount of $10,608.81. The Amended plan proposes to pay the FTB 10 percent interest on its claim, and in the additional provisions specifies $120.26 will be paid in months 1 through 10, $510.00 in months 11 through 15, and $54.20 from month 16 through the remainder of the plan term. Trustee argues at 10 percent interest, it would take 83 months to pay the FTB's $5,660.25 claim on the current plan terms.

2. Debtor is $50.00 delinquent in plan payments.

DISCUSSION

Trustee has raised concerns as to the feasibility of the plan. Based on the current plan terms, it would take 83 months to pay the FTB's $5,660.25 claim. Declaration, Dckt. 73. Furthermore, Debtor is delinquent $50.00 in plan payments. This indicates the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

The 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 Matthew Hannah and Tara Hannah ("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.

10. **19-21660-E-13** **DAVID EMBERLIN** **CONTINUED MOTION TO CONFIRM PLAN**
FF-3 **Gary Fraley** **4-15-19 [33]**

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 15, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

David Charles Emberlin ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for payments of $3,255.00 for 7 months and $3,312.00 for 53 months [FN.1.] . Dckts. 25, 26. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

FN.1. The Plan (Dckt. 25) and the additional provisions of the Plan (Dckt. 26) were filed as separate documents.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 24, 2019. Dckt. 41. Trustee argues the present Motion set a confirmation hearing prior to the Meeting of Creditors, and the dates set in the Notice of Meeting of Creditors for objections.

MAY 21, 2019 HEARING

At the May 21, 2019 hearing the court continued the hearing to coincide with the deadline for objection stated in the Notice of Meeting of Creditors. Civil Minutes, Dckt. 45.

DISCUSSION

No objection or opposition has been filed by any party in interest.

At the hearing, xxxxxxxxxxxxxx.

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

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

The Motion to Confirm the Chapter 13 Plan filed by David Charles Emberlin ("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 March 27, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. 19-20880-E-13 FF-9 | **LAURA/DONALD ENGLAND** **Gary Fraley** | **MOTION TO CONFIRM PLAN** **4-25-19 [104]**

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 25, 2019. By the court's calculation, 40 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.

Laura Elizabeth England and Donald Lee England ("Debtor") seek confirmation of the Amended Plan. The Amended Plan provides for payments of $5,000.00 for 60 months. Dckt. 103. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 13, 2019. Dckt. 134. Trustee opposes confirmation on the following grounds:

1. Debtor is delinquent $230.00 in plan payments.

2. The plan is not feasible because it relies on several motions to avoid lien. Debtor has 7 liens on Debtor's property commonly known as 7235 Larchmont Drive, North Highlands, California.

3. The box under section 1.02 is not checked, indicating nonstandard provisions will not be given any effect. Further, it is unclear whether the nonstandard provisions, filed separately, were served on creditors.

DEBTOR'S REPLY

Debtor filed a Response on May 23, 2019. Dckt. 175. Debtor states Debtor is not delinquent as payments were reduced from $5,000.00 to $4,882.20; the 7 creditors with liens were included in the plan; and Debtor can file a Second Amended Plan where the box is checked in section 1.02, but requests instead this be address in the order confirming the plan.

DISCUSSION

Debtor proposes changing the plan payment and fixing the additional provisions issue in the order confirming the plan.

However, the plan still relies on the court valuing several secured claims listed as Class 2(C) as having a value of $0.00. If those motions are not granted, the plan is not feasible.

A review of the docket shows there were motions to avoid lien for each of the Class 2(C) claims, but which motions were all subsequently dismissed on May 23, 2019. Dckts. 178-184.

Currently, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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

The 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 Laura Elizabeth England and Donald Lee England ("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.

12. **18-27289-E-13** **SALVADOR CARABEO** **MOTION TO CONFIRM PLAN**
TOG-1 **Thomas Gillis** **4-17-19 [39]**

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 17, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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.

Salvador Pina Carabeo ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $110.00 for 36 months and a 3 percent dividend to unsecured claims. Dckt. 43. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 14, 2019. Dckt. 47. Trustee argues the Debtor may not be providing his best efforts because Debtor has made five payments in advance. The plan calls for monthly payments of $110.00 and Debtor paid $1,100.00 into the plan thus far. Declaration, Dckt. 48.

DEBTOR'S REPLY

Debtor filed a Response on May 28, 2019. Dckt. 50. Debtor's counsel clarifies that Debtor is elderly and believed the plan payment was still $220.00 (therefore paying twice what is due). Debtor argues further that the additional income was from Debtor's daughter, and therefore does not indicate Debtor is not providing best efforts.

DISCUSSION

Debtor argues that the Debtor's daughter's contributions allowed him to have greater disposable income than stated on his Schedules, but that such should not be considered Debtor's disposable income which should be put into the plan. *See* Declaration, Dckt. 41.

Debtor's Amended Schedule I and J indicate that, inclusive of Debtor's daughter's $750.00 monthly contribution, Debtor's disposable income is only $110.00 monthly. Dckt. 45.

On Debtor's petition, no dependents are claimed. However, Debtor's daughter has indicated that she and her husband are living with Debtor. Declaration, Dckt. 41.

Some of the expenses Debtor lists on Amended Schedule J include:

Mortgage	$1,093.00
Elec./heat/gas	$165.00
Water/sewage/garbage	$100.00
Telephone/internet/cable/etc.	$145.00
Food/housekeeping supplies	$357.00

Amended Schedule J, Dckt. 45.

In reviewing those expenses, and considering that Debtor, Debtor's daughter, and Debtor's daughter's husband are all living together, these really appear to be shared expenses. If the court estimated Debtor should be paying a 1/3 share of the above expenses, Debtor's share of the above would be roughly $620.00.

Despite Debtor including expenses of his daughter and her husband in the Chapter 13, Debtor also argues that he should not be required to put more of his daughter's income towards paying claims in this case.

Debtor's Amended plan provides for payments of $110.00 for 36 months. Of the $56,264.00 in unsecured claims, only $1,687.92 is being paid (a 3 percent dividend).

The Amended Plan does not appear to be proposed in good faith. Debtor here is playing with the numbers in Schedules I and J to pay "just enough" to creditors to get a through a Chapter 13 Plan (but which is not the *actual* necessary expenses as stated under penalty of perjury).

At the hearing, xxxxxxxxxxxxxx.

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 Salvador Pina Carabeo ("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.

13. **19-21995-E-13 DPC-1** **NEKESHIA JOHNSON** **Jeffrey Meisner** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-7-19 [15]**

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 7, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan proposes payments of $211.42 per month for 36 months, with 0% allotted to unsecured creditors. However, the nonstandard provisions of the Plan state in part that the Debtor shall continue to make income-based payments of $125.00 per month outside the Plan, directly to her student loans.

B. The Debtor proposes to value the secured claim of Wells Fargo Dealer Services at $5600 of the $9912.74 owed on her vehicle, but has not filed a Motion to Value Collateral to date.

C. Debtor's monthly net income listed on Schedule J totals $301.28 and her proposed monthly plan payments are $211.42.

D. The margins on the plan form are different than standard; Trustee questions whether the form is word-for-word the same.

DISCUSSION

Trustee's objections are well-taken.

The Plan proposes payments of $211.42 per month for 36 months, with 0% allotted to unsecured creditors. However, Debtor proposes other payments to student loans. Therefore the plan discriminates unfairly between creditors of the same class. 11 U.S.C. § 1322(b)(1).

Trustee argues Debtor lists disposable income of $301.28, while her proposed monthly plan payments are only $211.42. However, Debtor filed Amended Schedule J on May 3, 2019, which shows a disposable income of only $211.42. Amended Schedule J, Dckt. 13. The brunt of the increased expenses was a change in the food expense from $250.00 to $360.00.

The Plan also relies on a Motion To Value (Dckt. 19) set to be heard the same day. If the Motion is not granted, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Trustee argues that because of the margins of the filed plan, it is unclear whether the filed plan uses the actual EDC form.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

14. **19-21995-E-13 JMM-1** **NEKESHIA JOHNSON** **Jeffrey Meisner** **MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES 5-21-19 [19]**

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

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

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

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

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Dealer Services ("Creditor") is denied without prejudice, Debtor's testimony being provided only under information and belief.

The Motion filed by Nekeshia Johnson ("Debtor") to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 21. Debtor is the owner of a 2011 Nissan Altima, VIN ending in 0478 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,600.00 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).

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 23, 2019. Dckt. 23. Trustee notes Debtor's declaration is attested to "on information and belief" to the "best" of Debtor's knowledge.

DISCUSSION

Inadequacy of Witness Information and Belief Testimony

The court has been presented with a declaration in which the witness provides testimony based on "information and belief." That declaration is the testimony of a witness presented in writing in lieu of the witness being put on the stand. Non-expert witness testimony must be based on the personal knowledge of the witness. FED. R. EVID. 602. As discussed in Weinstein's Federal Evidence § 602.02:

> A witness may testify only about matters on which he or she has first-hand knowledge. Because most knowledge is inferential, personal knowledge includes opinions and inferences grounded in observations or other first-hand experiences. The witness's testimony must be based on events perceived by the witness through one of the five senses.

Recently, the Ninth Circuit Court of Appeal addressed this personal knowledge issue, stating:

> Under Rule 602, "[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." FED. R. EVID. 602. Rule 602 requires any witness to have sufficient memory of the events such that she is not forced to 'fill[] the gaps in her memory with hearsay or speculation.' 27 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE Evidence § 6023 (2d ed. 2007). Witnesses are not 'permitted to speculate, guess, or voice suspicions.' *Id.* § 6026. However, '[p]ersonal knowledge includes opinions and inferences grounded in observations and experience.' *Great Am. Assurance Co. v. Liberty Surplus Ins. Co.*, 669 F. Supp. 2d 1084, 1089 (N.D. Cal. 2009) (citing *United States v. Joy*, 192 F.3d 761, 767 (7th Cir. 1999)). Lay witnesses may testify about inferences pursuant to Rule 701:
>
> > If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.
>
> FED. R. EVID. 701.

United States v. Whittemore, 776 F.3d 1074, 1082 (9th Cir. 2015).

As discussed in Moore's Federal Practice, Civil § 8.04, the use of "information and belief" is a pleading device for the use in a complaint (or motion) to allow a plaintiff (movant) to fill in the gaps of alleging a claim pending discovery.

> [4] Allegations Supporting Claims for Relief May Be Made on Information and Belief

> Rule 8 does not expressly permit statements supporting claims for relief to be made on information and belief (see § 8.06[5]). However, Rule 11 permits a pleader, after reasonable inquiry, to set forth allegations that "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery" (see Ch. 11, Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions). Courts have read the policy underlying Rule 8, together with Rule 11, to permit claimants to aver facts that they believe to be true, but that lack evidentiary support at the time of pleading. Generally, however, such averments are allowed only when the facts that would support the allegations are solely within the defendant's knowledge or control.
>
> Nothing in the *Twombly* plausibility standard (see [1], above) prevents a plaintiff from pleading on information and belief. A pleading is sufficient if the pleading as a whole, including any allegations on information and belief, states a plausible claim. On the other hand, if the pleading fails to permit a plausible inference of wrongdoing, or if the allegations are nothing more than legal conclusions, the pleading will not survive a motion to dismiss.

This is incorporated to Federal Rule of Bankruptcy Procedure 9011, which repeats the provisions of Federal Rule of Civil Procedure 11(b), stating:

> (b) Representations to the court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[,]—
>
> > (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> >
> > (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> >
> > (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> >
> > (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Though allowed as a pleading device, the certification required by 28 U.S.C. § 1746 does not allow testimony in declaration to be provided under penalty of perjury being true because the witness merely "is informed and believes (or desires because likely it would mean the witness party would prevail) it is true."

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) **under penalty of perjury** under the laws of the United States of America **that the foregoing is true and correct**. Executed on (date).

(Signature)."

(2) If executed within the United States, its territories, possessions, or commonwealths: "**I declare** (or certify, verify, or state) **under penalty of perjury** that the **foregoing is true and correct**. Executed on (date).

(Signature)."

28 U.S.C. § 1746 (emphasis added).

Valuation of Creditor's Secured Claim

Much of the information necessary for the Motion could be found in the Schedules filed in this case. The secure a debt owed to Creditor with a balance of approximately $9,912.74 and Debtor asserts the Vehicle is valued at $5,600.00. Schedules A and D, Dckt. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

However, the court does not have evidence of when the debt was incurred (whether more than 910 days prior to filing of the petition), and therefore cannot determine whether the Vehicle can be valued. *See* 11 U.S.C. § 1325(a).

The Motion is denied without prejudice.

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 Nekeshia Nekicon Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

15.	**18-27699-E-13 DBJ-4**	**WALTER ZWALD AND CYNTHIA RAITT-ZWALD** **Douglas Jacobs**	**MOTION TO VALUE COLLATERAL OF DSD FINANCIAL, INC.** **5-7-19 [75]**

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, creditors, parties requesting special notice, and the Office of the United States Trustee on May 7, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of DSD Financial, Inc. ("Creditor") is denied without prejudice.

The Motion to Value filed by Walter Andrew Zwald Jr. and Cynthia Ann Raitt-Zwald ("Debtor") to value the secured claim of DSD Financial, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 77. Debtor is the owner of the subject real property commonly known as Highway 45 in Colusa County, California ("Property"). Debtor seeks to value the Property at a fair market value of $329,000.00 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).

Actual Relief Requested

The discussion below addresses the relief as requested by Debtor - valuation of secured claim (there is no such order "valuing collateral," though such terminology continues to be misused by many attorneys).

In digging through Debtor's Motion, the court believes Debtor is actually trying to plug the hole created by prior, incomplete relief, sought and obtained by Debtor. The substance of the actual relief requested by Debtor are:

1. Debtor obtained an order authorizing the sale of agricultural property in Colusa County for $329,000. The order was for a sale pursuant to 11 U.S.C. § 363(b) and was not an order authorizing the sale free and clear of liens as permitted pursuant to 11 U.S.C. § 363(f). Order, Dckt. 66.

2. All sales proceeds will be consumed by the senior tax liens on the property being sold.

3. The title company handing the sale requests that the Debtor "clarify title before they complete the sale of the property to ensure that all lien-holders are paid from the sale or resolved by court order."

The court is unsure as what "clarity title" by the court means. The title company is the expert that can "clarify" tile as to whom the record shows ownership and who holds liens against the property.

4. By the present Motion, Debtor does not seek to "clarify title" but have the court determine that the claim of Creditor secured by the property being sold is $0.

But it is known that the claim is not $0.00, but it appears that here is no value from the proceeds of the sale to distribute on the secured claim.

There are several possible solutions to the dilemma. Debtor could have requested the sale free and clear of the lien pursuant to 11 U.S.C. § 363(f), asserting that there was no value in this property for creditor's secured claim, but that there was adequate value in other collateral to pay creditor's secured claim.

Alternatively, Debtor could contract Creditor to have it voluntarily reconvey its lien through escrow, Creditor recognizing that by releasing its lien on the property being sold other secured claims are being paid that may increase the value of the other collateral securing its claim or Debtor's ability to pay Creditor's secured claim.

As Debtor's counsel knows from other cases he has successfully prosecuted in this court, the mere valuation of a secured claim under 11 U.S.C. § 506(a) to $0.00 when there is no value in any collateral to secure the claim, does not remove the lien from the property. It is only after the Chapter 13plan is completed that the lien becomes void by operation of applicable California law and 11 U.S.C. § 506(d). *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

Thus, even if the court could determine that Creditor's secured claim was determined to be $0.00, because all of the senior liens on all of Creditor's collateral consumed all of the value therein, the lien would not be removed from the property. Any purchase would take tile with the property still encumbered by the lien and the possible enforcement of that lien if the Debtor did not complete the Chapter 13 plan. In this Chapter 13 case Debtor has not even confirmed a Chapter 13 plan to commence performance thereof.

The court cannot morph this motion to Value into an motion to amend the prior order of the court.

Fortunately for Debtor and Creditor, they have the ability by the stroke of Creditor's pen to provide the tile company with Creditor's reconveyance so that the title company can provide the necessary title insurance so the sale can close.

REVIEW OF MOTION

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

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

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

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

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on May 17, 2019. Dckt. 85. Trustee does not oppose the Motion but notes that the Creditor's claim is still secured by other property, and therefore requests clarification as to Debtor's request that Creditor's claim be determined to be unsecured.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on May 21, 2019. Dckt. 88. The Creditor does not oppose the Motion, except to the extent Debtor requests that Creditor's claim be determined to be unsecured because Creditor's claim is still secured by other property.

Creditor states its claim is secured by Debtor's residence located in Butte County.

CREDITOR'S CLAIM AND PROPERTY SECURED BY CREDITOR'S CLAIM

Creditor's claim is also secured by Debtor's residence, commonly known as 9480 Van Ness Way ("Van Ness Property"). Schedules A and D, Dckt. 1. Debtor states the Van Ness Property has a value of $472,000.00 at the time of filing. Amended Schedule A, Dckt. 62. On Debtor's Schedule C, Debtor claims an exemption of $100,000.00 in the Property pursuant to California Civil Code of Procedure section 704.730.

On Schedule D, Debtor only lists creditor Mr. Copper with a claim secured by the Van Ness Property (other than Creditor), which claim is stated to be $242,885.00.

Reviewing the Proofs of Claim filed in this case, Numbers 2 and 7 are filed by the Franchise Tax Board and Internal Revenue Service, respectively. Each is secured by the Van Ness Property. Together, those claims total $326,839.99.

After the cost of sale (alleged to be $19,534.00) the sale proceeds amounted to $309,465.22 which could be put towards the claims secured by the Property. Assuming only the claims of the FTB and IRS were paid, then the remainder of those claims would be $17,374.77.

Based on the aforementioned, Creditor's claim would be secured in the Van Ness Property as follows:

Value	$472,000.00
Exemption	($100,000.00)
Total Senior Liens:	($260,259.77)
Equity:	$111,740.23

DISCUSSION

While Debtor has shown the Property does not have value which secures Creditor's claim, it appears Creditor's claim is still secured by other property in excess of $100,000+.

An allowed claim of a creditor secured by a lien on property in which the estate has an interest is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property. 11 U.S.C. § 506(a)(1). Here, the "property" in which creditor has a lien and the Estate has an interest is actually multiple parcels of real property.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Here, Debtor did not present any evidence as to the value of the Van Ness Property to rebut the prima facie validity of Creditor's Proof of Claim.

Upon review of the the Proof of Claim and other pleadings filed, it appears Creditor's claim is still secured by other property at least in the amount of $100,000+.

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 Walter Andrew Zwald Jr. and Cynthia Ann Raitt-Zwald ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

16. **19-20834-E-13 DBJ-1** **ALBERT SMITH** **Douglas Jacobs** **MOTION TO CONFIRM PLAN** **4-11-19 [18]**

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 11, 2019. 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 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 denied.

Albert Smith ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for payments of $2,762.00 over a 60 month term, and a 0 percent divided to unsecured claims totaling $39,825.00. Dckt. 22. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 16, 2019. Dckt. 26. Trustee opposes confirmation on the following grounds:

1. Debtor lists the claim of Bayview Loan Servicing as the servicer for Bank of New York Mellon ("Creditor") twice as a Class 4 in the plan. However, Proof of Claim, No. 3 filed by that Creditor indicates there is a $12,768.68 arrearage. Creditor should therefore be listed as a Class 1, not Class 4.

2. Debtor lists on supplemental Schedule J (Dckt. 20) an expense for real estate taxes in the amount of $213.00. However, based on Creditor's arrearage this amount is for advanced escrow fees, and not future tax expenses.

3. The Chapter 13 Plan was not signed by the Debtor.

DEBTOR'S REPLY

Debtor filed a Reply on May 20, 2019. Dckt. 29. Debtor states he believed since Creditor's claim was already listed as Class 4 that the arrearages should also be treated as Class 4. Debtor suggests adding language to the order confirming the plan to specify the arrearages will be paid outside the plan.

Debtor states further a signed plan copy and amended supplemental schedules will be filed.

DISCUSSION

A review of the docket shows that a Janus faced Amended Supplemental Schedule J was filed on May21, 2019. Dckt. 31. The reference to being Janus faced is that this Amended Supplemental Schedule J purports to state changes that are necessary to be made to make the original Schedule J accurate as of the it was filed on February 12, 2019, but then says that the changed information is really only accurate as of May 1, 2019, seventy-eight days after the case was filed.

On original Schedule J Debtor stated that he has monthly expenses of ($5,701.00). Dckt. 1 at 28-29. On the Janus Amended Supplemental Schedule J, Debtor now shows ($5,702.44) in expenses. This "necessary" ($1.44) amendment/supplemental change is not explained. But the court notes that Debtor makes gross, substantial changes in the financial information provided under penalty of perjury, which include: dropping the mortgage payment to ($2,102.00) from ($2,507.44); creating a property tax payment of ($240.00) for one that was stated to be ($0) on the original Schedule J; identifying a ($50) maintenance expense where none existed on original Schedule J, increase food and housekeeping expenses to ($500) from ($450); and dropping to ($300) what Debtor said under penalty of perjury were actual and necessary medical expenses of ($400) a month on original Schedule J.

As stated by the Chapter 13 Trustee, Creditor has filed its secured claim stating a pre-petition arrearage of ($12,768.68). The Attachment to Proof of Claim No. 3-1 states that this pre-petition arrearage includes an ($8,137.61) deficiency for an escrow advance.

A review of the court's files indicate that this is not the Debtor's only recent bankruptcy experience. Debtor has been utilizing the benefits of the Bankruptcy Code under his prior Chapter 13 case, No. 11-345669, which was filed on June 13, 2011, a Chapter 13 Plan completed in July 2016, and then a discharge entered in October 2016. The extraordinary relief obtained by Debtor in his prior Chapter 13 case was to discharge 88% of his unsecured debt - freeing him of any responsibility of paying ($148,720) of debt and giving him a "clean slate" fresh start.

Additionally, under the confirmed Modified Plan in the prior case, Debtor also shed any liability to pay an additional ($91,262) in debt secured by a junior deed of trust secured by his residence, obtaining a "lien strip" of the deed of trust securing the claim of American Home Mortgage. 11-34669;

Modified Chapter 13 Plan ¶ 2.09(b), Dckt. 59.

Though having such a fresh start after his prior Chapter 13 case, in addition to Creditor's pre-petition arrearage, Debtor lists the following pre-petition debts for which he now seeks further extraordinary relief in a second Chapter 13 case:

Schedule E - Priority Unsecured Claims

Franchise Tax Board Priority Unsecured Claim.....($ 5,089) [2013-2017 incurred]
Franchise Tax Board Priority Unsecured Claim.....($ 5,000) [2018 incurred]
Internal Revenue Service.....($113,071) [2013-2017 incurred]
Franchise Tax Board Priority Unsecured Claim.....($ 24,000) [2018 incurred]

Schedule F -General Unsecured Claims (non-priority tax claims for the above)

Total.....($ 78,905).

Id.; Schedules E and F, Dckt. 1 at 19-22.

This indicates that while Debtor was purporting to perform his Chapter 13 Plan in the prior case, he was incurring and not paying his state and federal income taxes, now having a tax liability of ($304,970).

If Debtor had been fulfilling his obligations in good faith in the prior Chapter 13 case, no such tax obligations would exist from the period during his prior Chapter 13 case. In reviewing Schedules I and J filed in his prior case, the Debtor's statements of his income and expenses under penalty of perjury include the following:

Schedule I

Debtor's Gross Income from Wages, Salary, Commissions.....$19,707
Payroll Deductions for Taxes and Social Security.....NONE
Deduction for Insurance.....NONE

Income From Operation of Business.....NONE

Schedule J

Expenses From Operation of Business
(for which no income is shown).....($14,092.26)
Federal Income Taxes.....NONE
State Income Taxes.....NONE
Social Security Contributions.....NONE
Self-Employment Taxes.....NONE

Business Income and Expenses Attachment

Gross Income.....NONE

Expenses.....($14,092.26)

Taxes.....($ 600)
Employee Taxes.....($1,242)

Average Monthly Net Income From Business.....($14,092.26)

Id.; Dckt. 1 at 29-34.

On Schedule I Debtor states that his occupation is an attorney and his "Employer" is County of Colusa and County of Glenn. *Id.;* Dckt. 1 at 30.

However, on his Statement of Financial Affairs, Debtor gives conflicting information under penalty of perjury that he maintains his own business, the Law Offices of Albert Smith, not that he is an employee of the "Employers" Colusa and Glenn Counties. *Id.*; Dckt. 1 at 38.

In the prior case Debtor did file an Amended Schedule J, which again shows that Debtor has no income tax, Social Security withholding, or that if Debtor is actually an attorney with his own practice, he does not pay any income taxes, self-employment taxes, or Social Security taxes. *Id.*; Dckt. 39.

The financial information is provided by the Debtor, who is an attorney, in his prior case is internally inconsistent. Such inconsistency may well explain how, after obtaining such extraordinary relief in his prior Chapter 13 case Debtor has created such substantial multiple tax obligations for the period during his prior Chapter 13 case.

It is curious, and concerning, that a plan based on such inconsistent and clearly inaccurate/false/misleading information provided under penalty of perjury in the prior case was confirmed.

Debtor's response to the Trustee's objection manifests a further lack of good faith in the prosecution of this case. The provisions of the Chapter 13 Plan having a debtor cure pre-petition arrerages was developed by the judges in this District, with the Hon. Michael McManus in the lead. Making such payments through the plan insures that a debtor, who has become accustomed to diverting mortgage payment to other perceived "necessary" expenditures, actually cures the defaults, makes the post-petition mortgage payments, and saves his or her residence for the fresh start following completion of a Chapter 13 plan.

Here, in addition to the pre-petition arrearages on the debt secured by Debtor's residence, Debtor has demonstrated that his "need" to divert monies to pay what he perceives as other "necessary expenses" for his business or lifestyle includes the third-rail of such diversions -income and self-employment taxes due the federal and state governments. Debtor has clearly demonstrated that he cannot be "trusted" to make payments on his obligations.

In responding to the Objection to Confirmation, Debtor (who is an attorney) has his attorney throw at the court a Reply merely stating that Debtor should be exempted from the requirement to make the cure and currently post-petition monthly payments through the Plan as a Class 1 Claim. Debtor has

clearly shown that such exemption is not proper.

In addition to not being feasible and not properly providing for claims, the Plan and Schedules providing financial information under penalty of perjury demonstrate that Debtor is not prosecuting this case and a plan in good faith. Debtor has shown that he cannot pay his income taxes, even when protected in the warm cocoon of his prior Chapter 13 case.

On the Janus Amended Supplemental Schedule J filed by Debtor in this case on May 21, 2019 (Dckt. 31), he lists taxes of ($166.66) a month [stated as quarterly taxes of ($500)]. This is for stated monthly income of $8,468, which is $101,616 a year.

On Schedule I filed in this case Debtor states under penalty of perjury that he has net income from his business of $6,094 and Social Security income of $2,374. Dckt. 1 at 25-26. No provision is made on Schedule I for the payment of any income or self-employment taxes by Debtor.

If Debtor elects to pursue this or a future Chapter 13 case, he will need to provide clear, accurate, credible information for his testimony under penalty of perjury. It appears that the Debtor, an attorney, who is represented by an attorney in this and his prior case, has chosen to provide the court with inaccurate information, which is clearly erroneous even to a least sophisticated consumer, to slip a plan by the court and further his scheme to not pay his obligations as they come due. While this may sound harsh, it is drawn from Debtor's various statements under penalty of perjury.

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 Albert Smith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

17.	**19-21997-E-13 DPC-1**	**SALLIE ROSS-FILGO AND JODY FILGO Mark Shmorgan**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 5-7-19 [28]**

Final Ruling: No appearance at the June 4, 2019 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not 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 7, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to June 25, 2019 at 3:00 p.m.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to appear at the May 2, 2019 Meeting of Creditors. The Meeting was continued to June 6, 2019. Trustee requests the Objection be continued to June 25, 2019 at 3:00 p.m. to allow Debtor the opportunity to appear at the continued Meeting.

DISCUSSION

Based on the Trustee's request, the court shall continue the hearing on the Objection June 25, 2019 at 3:00 p.m. to allow Debtor the opportunity to appear at the continued Meeting.

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 is continued to June 25, 2019 at 3:00 p.m.

18. 18-26585-E-13 WW-2 | **JULIAN PEREZ** **Mark Wolff** | **MOTION TO CONFIRM PLAN** **4-23-19 [77]**

Final Ruling: No appearance at the June 4, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Julian Perez ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition May 16, 2019. Dckt. 92. The Amended Plan complies with 11 U.S.C.

§§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Julian Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on April 15, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19.	**14-32002-E-13 MJD-4**	**KAO SAECHAO AND MYHANH NGUYEN Matthew DeCaminada**	**OBJECTION TO CLAIM OF CARRINGTON COLLEGE, CLAIM NUMBER 11 4-8-19 [103]**

Final Ruling: No appearance at the June 4, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on April 8, 2019. By the court's calculation, 57 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 11 of Carrington College is sustained, and the claim is disallowed in its entirety.

Kao Ching Saechao and Myhanh Thi Nguyen, the Chapter 13 Debtors ("Objector"), requests that the court disallow the claim of Carrington College ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $4,047.16. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is April 22, 2015 for creditors generally and June 9, 2015 for government units. Notice of Bankruptcy Filing and Deadlines, Dckt. 11.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim

after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was April 22, 2015. Creditor's Proof of Claim was filed on December 21, 2015. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety as untimely. 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 Carrington College ("Creditor") filed in this case by Kao Ching Saechao and Myhanh Thi Nguyen, the Chapter 13 Debtors ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 11 of Creditor is sustained, and the claim is disallowed in its entirety.

20. **18-25104-E-13** **CHRISTOPHER MORRIS** **MOTION TO CONFIRM PLAN**
FF-3 **Gary Fraley** **4-24-19 [51]**

DEBTOR DISMISSED: 04/26/2019

Final Ruling: No appearance at the June 4, 2019 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 Amended Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed, and the Amended Plan is not confirmed.

21. **19-21310-E-13 DPC-2** **WANDA COLLIER-ABBOTT** **Richard Jare** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-16-19 [29]**

Final Ruling: No appearance at the June 4, 2019 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

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

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

The hearing on the Objection to Confirmation of Plan is continued to June 11, 2019 at 3:00 p.m.

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

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

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

C. Debtor provided her 2017 tax returns to the Trustee, which indicates gross income as $105,381.00 and the net income of $9,592.00 (or $799.33 per month). Debtor has also provided six months of Profit and Loss Statements (September 2018 - February 2019) to the Trustee. These statements indicate that Debtor received "$0.00" gross receipts or sales and had negative income each month. Debtor has filed an Amended

Schedule I & J which includes an attachment of "Projected Business Income and Expenses" of $2,000.88 per month which coincides with her income on Schedule I. Amended Schedule B does not indicate that she has any escrows pending. Without the business income of $2,088.00 per month, Debtor's Plan is not feasible and it unclear to the Trustee if she can actually make the Plan payments.

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

MAY 7, 2019 HEARING

At the May 7, 2019 hearing Debtor's counsel argued that for 2018 Debtor received a $1,700 tax refund, so there were no taxes that were owed. Civil Minutes, Dckt. 45. Counsel did not address that to receive a refund, generally one has paid taxes. Debtor's counsel stated that in light of this being a 100% plan, he believed the Debtor could respond to the Objection and confirm the Plan.

TRUSTEE'S SUPPLEMENTAL RESPONSE

Trustee filed a Supplemental Response on May 10, 2019. Dckt. 46. Trustee argues the proposed plan alters the traditional "ensminger provision" by removing the surrender provision which treats a claim as Class 3 in the event a creditor denies a loan modification and the debtor fails to timely serve a modified plan.

Trustee argues the changes here to not comply with 11 U.S.C. §§ 1325(a)(5) or (b)(5).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 21, 2019. Dckt. 55. Debtor states that the Trustee's grounds for objection can be addressed in the language of an order confirming the plan. Debtor adds, however, that creditor Real Time Resolutions ("Creditor") filed a belated objection which raises issues the proposed order does not remedy.

TRUSTEE'S RESPONSE TO OPPOSITION

Trustee filed a Response to Debtor's Opposition on May 28, 2019. Dckt. Dckt. 61. Trustee notes that no proposed order has been filed, and therefore it is unclear whether any proposed order can address the issues raised by the Objection.

Trustee further notes that Debtor does not address the merits of the Creditor's Objection, including the lack of any tax expenses.

OBJECTION OF CREDITOR
REAL TIME RESOLUTIONS

On May 13, 2019, Creditor filed an Objection to the Confirmation seeking to set a hearing for June 11, 2019 at 3:00 p.m. The Creditor's Objection includes the following grounds:

1. The plan does not provide for Creditor's full claim.

2. The plan is not feasible because it relies on a loan modification where Creditor does not offer loan modifications.

3. Creditor's claim matures during the life of the plan and would need to be paid off during the plan.

4. The plan is not feasible because Debtor cannot fund the plan. To pay Creditor's claim alone, Debtor would be required to pay $6,153.79 for the stated 36 month plan term, or $3,692.28 per month for 60 months. Debtor has approximated her disposable income to be $2,100.00.

5. Debtor cannot afford to do more than maintain post-petition payments on the senior secured lien, pay her attorney, and compensate the Chapter 13 Trustee. Debtor clearly cannot afford to pay Creditor, other creditors, or the arrears on the senior secured lien.

DISCUSSION

Trustee's objections are well-taken.

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

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

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

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

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

Trustee has a pending Objection To Exemption set to be heard on May 21, 2019. Dckt. 33. If the Trustee's Objection is sustained, the Plan may not pass the liquidation test. 11 U.S.C. § 1325(a)(4).

Review of Schedules and
Statement of Financial Affairs

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

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

Conclusion

In light of the Creditor's Objection set to be heard June 11, 2019, the court continues the hearing on this Objection so they may be heard together.

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 hearing on the Objection to Confirmation is continued to June 11, 2019 at 3:00 p.m.

22. **19-21837-E-13 DPC-1** **JOE MATTHEWS Mohammad Mokarram** **MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A) 4-23-19 [12]**

Final Ruling: No appearance at the June 4, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 23, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Denial of Discharge is granted.

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David Cusick, the Chapter 13 Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on June 4, 2019. Dckt. 12.

Objector argues that Joe Matthews("Debtor") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on May 25, 2019. Case No. 17-23544. Debtor received a discharge on December 12, 2017. Case No. 17-23544, Dckt. 80.

The instant case was filed under Chapter 13 on March 26, 2019.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant

case. 11 U.S.C. § 727(a)(8).

Here, Debtor received a discharge under 11 U.S.C. § 727 on December 12, 2017, which is less than eight years preceding the date of the filing of the instant case. Case No. 17-23544, Dckt. 80. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 19-21837), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Denial of Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 19-21837, the case shall be closed without the entry of a discharge.