UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 11, 2019 at 3:00 p.m.

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1. **17-22150-E-13** **JAMES SMITH**
MJD-4 **Matthew DeCaminada**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW OFFICE, P.C. FOR MATTHEW J. DECAMINADA,DEBTORS ATTORNEY(S)
5-6-19 [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 Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 6, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Stutz Law Office, P.C., the Attorney ("Applicant") for James Howard Smith, the Chapter 13

Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period February 19, 2019, through May 6, 2019. Applicant filed a Substitution of Attorney on February 26, 2019, and the court issued an Order approving the substitution on March 22, 2019. Dckts. 85, 90.

Applicant requests a reduced fee of $1,000.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material

benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include general case administration, and prosecution of motions to dismiss the case, to confirm a modified plan, and for professional fees. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Nonopposition on May 23, 2019. Dckt. 112. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE:

Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Debtor's counsel is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 74.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.9 hours in this category.

Motion To Dismiss: Applicant spent 2.1 hours in this category.

Motion To Confirm Modified Plan: Applicant spent 5.2 hours in this category.

Fee Application: Applicant spent 1.2 hours in this category.

These services are described fully in the Motion. *See* Motion, Dckt. 104.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Matthew DeCaminada	9.2	$275.00	$2,530.00
Total Fees for Period of Application			$2,530.00
Total Fees Requested			$1,000.00

FEES ALLOWED

Fees

The unique facts surrounding the case, including the need for a modified plan to address the Trustee's dismissal motion, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,000.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay the fees allowed by the court.

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

Fees $1,000.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Stutz Law Office, P.C. ("Applicant"), Attorney for James Howard Smith, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Stutz Law Office, P.C. is allowed the following fees and expenses as a professional of the Estate:
>
> Stutz Law Office, P.C., Professional employed by the Chapter 13 Debtor,
>
> Fees in the amount of $1,000.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

2. **19-21951-E-13 DPC-1** **JASMINE SMITH** **Matthew DeCaminada** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 5-14-19 [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.

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 14, 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 overruled.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor's Plan relies on the pending Motion to Value Collateral of J.P. Morgan Chase Bank, scheduled for hearing on May 21, 2019. Dckt. 35.

A review of the docket shows the court granted Debtor's Motion To Value on May 21, 2019 (Civil Minutes, Dckt. 48) and issued an Order valuing the secured claim of J.P. Morgan Chase Bank at $10,000.00. Dckt. 49.

The Trustee's sole ground for Objection having been addressed, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan 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 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 is overruled, and Jasmine Rae Smith's ("Debtor") Chapter 13 Plan filed on March 31, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to 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.

3. **19-22306-E-13** **TRACI MARTIN** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Julius Cherry** **PLAN BY DAVID P CUSICK**
5-21-19 [16]

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan because the Class 2A claim of Santander was greater than scheduled, and the proposed plan therefore would complete in 86 months.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. The proposed plan provides for creditor Santander's claim as a Class 2A in the amount of $3,665.00 with interest of 6 percent. Plan, Dckt. 2. However, on April 25, 2019 Santander Consumer USA Inc. filed Proof of Claim, No. 1 asserting a claim of $5,569.66. According to the Chapter 13 Trustee, the Plan will complete in 86 months due to the understated claim. Declaration, Dckt. 18. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

4. **19-22037-E-13 DPC-2** **PETE GARCIA** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-22-19 [30]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 22, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The debtor, Pete A. Garcia ("Debtor"), provides for the claim of Wells Fargo Bank, N.A. as a Class 4 where that creditor has indicated there is an arrearage of $60,975.29. [FN. 1]

FN. 1. That Debtor and Debtor's experienced bankruptcy counsel have knowingly and intentionally filed the Chapter 13 Plan in which the Wells Fargo Bank, N.A. is listed in Class 4 when there is a known substantial pre-petition arrearage raises grave concerns.

Debtor and his current counsel attempted to prosecute a Chapter 13 plan in Case No. 18-24377, which was filed on July 13, 2018 and dismissed on December 12, 2018 ("2018 Bankruptcy Case"). The Amended Plan in the 2018 Bankruptcy Case expressly provided for the Wells Fargo Bank, N.A. secured claim in Class 1, stating that the asserted arrearage was disputed. Case No. 18-24377, Dckt. 56 at 7.

Debtor further states in the Amended Plan in the 2018 Bankruptcy Case that Debtor intends to object to any arrearage in excess of $27,000 - but admits that there is a substantial arrearage. *Id.*

Debtor never filed an objection to the Wells Fargo Bank, N.A. secured claim to get the arrearage reduced to $27,000 in the 2018 Bankruptcy Case. That case was dismissed without Debtor confirming a plan.

In the current case, and subject to the certifications by Debtor and Debtor's counsel arising under Federal Rule of Bankruptcy Procedure 9011, the Chapter 13 Plan states that there are no defaults for the Wells Fargo Bank, N.A. secured claim and that Debtor will make the post-petition payments directly as a Class 4 payment, which is permitted only for a secured claim for which there is no pre-petition arrearage. Debtor and Debtor's counsel expressly certified:

> 3.10. **Class 4 includes** all **secured claims** paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are **not in default**, and are **not modified by this plan**. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Debtor's Plan ¶ 3.10, Dckt. 3(emphasis added).

Though no proof of claim has yet been field by Wells Fargo Bank, N.A. in this Case, the Bank has filed it Objection to Confirmation stating (subject to the same Rule 9011 certifications) that there is a $60,975.29 pre-petition arrearage. Dckt. 21.

If there is such a known pre-petition arrearage on the Wells Fargo Bank, N.A. secured claim, and that Debtor and Debtor's counsel knowingly made a false representation in the proposed Plan that no such arrearage existed and attempted to obtain an order confirming a plan not allowed under the Bankruptcy Code, such may document be indicative of a broader lack of good faith and affirmative misrepresentations to the court.

B. Debtor states he is self employed, but has not filed a statement of business income or listed a business on his Statement of Financial Affairs. Therefore, it is not clear what Debtor's net income is. [FN. 2]

FN. 2. On Schedule I Debtor states under penalty of perjury that he is self-employed and has $6,000.00 in monthly net income from his business. Dckt .1 at 30-31. On Schedule J Debtor states that his self-employment taxes are only $100.00 a month. *Id.* at 32-33. This appears to be an unrealistic amount that one pays in self-employment taxes, which includes his Social Security contribution.

Also, on Schedule J Debtor does not disclose any federal or state income taxes he pays.

As with the Plan, the Schedules I and J were prepared with the assistance of experienced bankruptcy counsel, well familiar with the Debtor having represented him in his 2018 Bankruptcy Case in which he failed to confirm a Chapter 13 plan.

C. Debtor's Schedule J indicates disposable income of $2,530.43, which is less than the proposed plan payment of $2,875.00.

D. Debtor has several inconsistences in his filing documents, including (1) that he does not live in a community property state though he resides in California; (2) that Debtor is married where he admitted at the Meeting of Creditors he has been finally divorced; (3) the Petition does not state Debtor's middle name, Aldret; and (4) that Debtor's prior bankruptcy case was filed on January 20, 2018 where court records indicate a July 13, 2018 filing.

Trustee also notes an Objection To Claim of Exemptions was filed on May 14, 2019. Dckt. 26.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken.

In essence, all of Trustee's grounds for objection indicate that the proposed Plan is simply not feasible. Debtor does not provide specific information about his business and income, provides for plan payments that exceed his stated disposable income on Schedule I and J, and has several inconsistencies in the filing documents.

As to the arrearages of Wells Fargo Bank, N.A. (discussed more fully in their Objection to confirmation set to be heard the same day (Dckt. 21)), no evidence was presented showing any arrearages were owing.

In addition to the failure to provide the business income and expense information, the expense information on Schedule J is *curious*. Debtor states that his family unit is five persons, himself and four children, ages 14 - 21 years old. Dckt. 1 at 32-33. In addition to the monthly mortgage payment of ($1,594.57) (which appears to income the property taxes and insurance), the expenses include:

A. Food and housekeeping supplies for the five teenagers and adults in his household of ($300.00) a month.

1. Allowing ($75) a month for housekeeping supplies, there is only ($1.50) per person for each meal during a 30 day month.

B. Clothes and Cleaning Expense is ($50) a month, which is ($10) per person.

C. Medical and dental expenses of only ($5) a month, which is ($1) per person.

D. Transportation expenses which include vehicle registration, fuel, maintenance, and repair is stated to be only ($200) a month. On Schedule A/B Debtor states that he has no vehicles. This transportation expense is not explained. It is not clear if this is for bus fare, light rail, taxies, or for using vehicles owned by other persons.

While stating under penalty of perjury on Schedule I that he is self-employed and has income as a "rental manager," on his Statement of Financial Affairs that he does not have and did not have in the four years preceding the filing of the current bankruptcy case a business or was self-employed. Statement of Financial Affairs Question 27, *Id.* at 40.

On Debtor's Statement of Currently Monthly Income Debtor states under penalty of perjury that his income in the six months prior to the filing of the bankruptcy case averaged $6,300.00 from "rental and other real property." *Id.* at 42.

Debtor's conflicting statements under penalty of perjury provided in this case that he is prosecuting with the assistance of his continuing counsel from the prior case make it challenging for the court to determine which statements are accurate.

All of the aforementioned demonstrates clearly that the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

5. **19-22037-E-13 TGM-1** **PETE GARCIA** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, NATIONAL ASSOCIATION** **5-5-19 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 5, 2019. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim, opposes confirmation of the Plan on the basis that the proposed plan does not provide for Creditor's full claim of $522,460.87 and arrearages of $60,975.29.

DISCUSSION

Failure To Present Evidence

Creditor has not filed any declaration or proof of claim which might form evidence establishing amounts owing by Debtor. Every Motion or other request for relief shall be accompanied by evidence establishing its factual allegations. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

However, while Creditor has not provided evidence in support of its Objection, the Chapter 13 Trustee has filed his own Objection set for hearing the same day. Dckt. 30. A review of the docket

shows the court has sustained that Objection.

The Objection is overruled. However, the court having sustained Trustee's Objections (Dckt. 30), the Plan is not confirmed. [FN. 1]

FN. 1. As Wells Fargo Bank, N.A. and its counsel has observed, the court has "called out" Debtor's and Debtor's counsel's filing statements under penalty of perjury with conflicting or clearly inaccurate information, as well as conduct that may violate Federal Rule of Bankruptcy Procedure 9011.

Here, it appears that Wells Fargo Bank, N.A. is pursuing a strategy of exempting itself from the requirement that it provide evidence to support factual allegations it seeks to make. Rather, it appears that Wells Fargo Bank, N.A. and its counsel have enacted a special set of rules by which mere allegations are to be take as the truth - so long as an attorney hired by Wells Fargo Bank, N.A. is hired to make the allegation.

The court will consider how to address this situation, which may include requiring a knowledgeable Bank representative at its counsel to be personally in attendance at any hearing for which the bankruptcy has asserted a pleading, with no telephonic appearances permitted so that they fully understand the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled. However, the court having sustained Trustee's Objections (Dckt. 30), the Plan is not confirmed.

6. **19-22037-E-13 RAS-1** **PETE GARCIA** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A. O.S.T. 5-30-19 [38]**

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)(3) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 30, 2019. By the court's calculation, 12 days' notice was provided. The court issued an Order setting the hearing for June 11, 2019. Dckt. 45.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3) 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.

Citibank, N.A. As Trustee for American Home Mortgage Assets Trust 2006-4, Mortgage Backed Pass-Through Certificates Series 2006-4, by and through its authorized loan servicing agent, Ocwen Loan Servicing, LLC ("Creditor") holding a secured claim, opposes confirmation of the Plan on the basis that the proposed plan does not provide for Creditor's full arrearages of $31,364.13.

DISCUSSION

Creditor's Objection is well-taken.

Creditor filed Proofs of Claim, Nos. 1 and 2 in this case. Those Proofs indicate arrearages in the amounts of $22,603.01 and $31,364.13. The Plan not providing for those amounts, the plan is not feasible and cannot be confirmed. 11 U.S.C. § 1325(a)(6).

There court notes that the two claims filed in this case appear to be the same claim, with the

second filing seeking to amend the first to provide for the actual, higher arrearage amount.

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

In this case, Creditor has essentially stated Debtor owes $448,987.70 on its claim, with $53,967.14 in arrearages. The plan does not provide for those amounts–any plan not providing for that amount cannot be confirmed because the Proofs are prima facie evidence of the creditor's claim.

Fortunately for the Debtor, if he is forced to file an objection to the duplicative claims, there is often some underlying contractual provision which would allow the recovery of attorney's fees.

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 Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

7.	**19-21042-E-13 LBG-2**	**MICHAEL/BERNADETTE AMBERS Lucas Garcia**	**CONTINUED AMENDED MOTION TO EXTEND AUTOMATIC STAY 3-15-19 [23]**

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)(3) Motion—Hearing Required.

The motion was set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Debtor provided notice to creditors, the Chapter 13 Trustee, and the office of the U.S. Trustee. Dckt. 26.

The Motion To Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

The Court Scheduled the Motion for Final Hearing on April 16, 2019.

The Motion To Extend Automatic Stay is denied.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months and sixth bankruptcy case overall. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

The Debtors' prior bankruptcy case was dismissed voluntarily by the Debtors on July 21, 2018, due to an unexpected change in their financial situation. Case No. 16-26860, Dckt. 48.

Debtor's Declaration filed in support of the Motion provides testimony that Debtor's son suffered a spinal injury after his wedding, and that Debtor's provided financial support to their son for both the wedding and injury related expenses. Declaration ¶ 5, Dckt. 25. Debtor states further that Debtor's son is not expected to need further financial assistance, and therefore Debtor can resume efforts to preserve Debtor's home and complete a Chapter 13 plan.

MARCH 20, 2019 HEARING

At the March 20, 2019 hearing the court noted that Debtor's prior case was assigned to the Hon. Ronald Sargis. The court notes that the general policy in the District is that when a debtor has to file multiple cases, then the case should be assigned to the judge who heard the prior case to avoid the appearance of judge or trustee shopping.

The court continued the matter for further consideration, and to allow the judge to whom the case is assigned to consider transferring this case to the Hon. Ronald H. Sargis, the judge to whom the prior case in which there was a confirmed plan. Civil Minutes, Dckt. 37.

The court also issued an Interim Order extending the stay through and including April 22, 2019 at 11:59 p.m. unless extended or terminated by further order of the court. Order

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 2, 2019. Dckt. 42. Trustee asserts Debtor's Declaration (Dckt. 25) fails to provide a time frame for when assistance was provided to Debtor's son for either the wedding or personal injury.

The Trustee further asserts the Order Confirming Chapter 13 Plan in the prior case required Debtor to turn over to the Trustee receipts of any inheritance received by Debtor from her mother's passing. Trustee states it is unclear whether funds listed on Debtor's Statement of Financial Affairs as $127,000.00 from a "lawsuit" are actually inheritance which Debtor would have been required to turnover.

Trustee requests the Motion be denied on the aforementioned grounds.

APRIL 16, 2019 HEARING

At the April 16, 2019 hearing, the court continued the hearing on the Motion to June 11, 2019 to be heard alongside the Trustee's Objection to Confirmation (Dckt. 32). Civil Minutes, Dckt. 50.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 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, 209-210 (2008).

In the Declaration in support of the Motion Debtor's testify that there were two main causes of the failure of the prior bankruptcy case:

> 5. We further state that the dismissal of the prior case was NOT due to the willful inadvertence or negligence on our part. Our son had a severe spine injury right after being maried [sic] and we had both financially helped with the wedding and then found ourselves needed to help with the injury and recovery. He is not expected to need our further assistance at present and we wish to proceed in preserving our home and fulfilling our obligations in Chapter 13.

Declaration ¶ 5, Dckt. 25. Clearly, a serious medical injury intervening in the financial plans of a debtor is an extraordinary event. However, Debtors also explain that funding their son's wedding also caused the dismissal.

In the Chapter 13 Plan in the prior case, it does not appear that funding a wedding was included in Debtor's expenses. 16-26860; Schedule J, Dckt. 1 at 31-32. Additionally, in the Order confirming the Plan in the prior case, express requirements for the turn over of monies received by Debtor Elizabeth Ambers from a trust distribution to the Chapter 13 Trustee. *Id.*; Order, Dckt. 41. The Chapter 13 Plan in the prior case required $4,900.00 a month payments. *Id.*, Dckt. 5. The Chapter 13 Trustee's Final Report states that Debtor paid $68,600.00 into the Plan. *Id.*, Dckt. 54. With $4,900 a month payments, this would represent fourteen (14) months payments. The case was filed in October 2016, the payments commenced in November 2016, and fourteen months would run through December 2017.

It does not appear that trust distribution payments were made to the Chapter 13 Trustee in the prior case. A review of Schedule A/B does not list any trust beneficiary interests. Dckt. 1 at 13-19, see Question 25 expressly stating that the Debtor have "no" interests in any trusts.

The Statement of Financial Affairs does not disclose any transfers to other persons within the two years prior to the commencement of this case. Presumably, paying medical expenses or other expenses of an ill son would be such transfers. *Id.* at 36-37.

Trustee states he is "uncertain" that $127,000.00 listed as Debtor's asset from a lawsuit is not actually inheritance of the type Debtor was ordered in the prior case to report and put towards the plan. No evidence is provided to the court clarifying the issue.

Though the court identified these serious good faith issues -diverting monies for a wedding and diverting the trust distribution -Debtor has elected to not file any further pleadings explaining why such conduct was reasonable and can be rebutted.

Though facing opposition, Debtor has elected not to provide any further testimony under penalty of perjury. No declarations or reply brief were filed in response to the opposition. Debtor could have explained these expenses, the magnitude of the expenses, and how Debtor will prosecute this case in good faith. Debtor has chosen to stay silently on the sideline, notwithstanding that there appear to be significant non-exempt and potentially recoverable transfers by a Chapter 7 trustee.

With respect to the alleged medical expenses, Debtor provides no testimony as to what reimbursements have been obtained and could/should be paid back for expenses paid by Debtor.

Debtor has not rebutted the presumption of bad faith, nor Debtor's conduct in choosing to fund a wedding and diverting trust distributions rather than funding the plan in the prior case. Quite possibly if Debtor had not elected to divert such monies, the Plan could have been performed, modified to address the son's injury, and the Trustee and creditors being left in the lurch.

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 pursuant to 11 U.S.C. § 362(c)(3)(B) filed by Michael and Bernadette Ambers, the Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

8.	**19-21042-E-13 JPJ-1**	**MICHAEL/BERNADETTE AMBERS Lucas Garcia**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 3-22-19 [32]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on March 21, 2019. By the court's calculation, 26 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 former Chapter 13 Trustee, Jan Johnson, who has now been succeed by Chapter 13 Trustee David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

A. The debtors, Michael Rae Ambers and Bernadette Elizabeth Ambers ("Debtor"), stated at the Meeting of Creditors the gross income of $127,000.00 listed on the Statement of Financial Affairs was incorrect–these funds were a distribution from Debtor's decedent mother's estate received in 2018. Because Debtor failed to accurately list this asset, Trustee argues the Plan has not been proposed in good faith.

B. Debtor has non-exempt assets of $201,195.67, but proposes a 0 percent dividend to unsecured claims.

C. The proposed plan payment of $5,000.00 is insufficient when considering Trustee's

fees. The plan payment would need to be increased to $5,244.57.

D. Debtor failed to provide a completed Class 1 Checklist.

No declaration or other evidence was filed supporting the Objection.

APRIL 16, 2019 HEARING

At the April 16, 2019 hearing the court continued the hearing on the Objection to allow Trustee to file a supplemental declaration. Civil Minutes, Dckt. 49.

SUPPLEMENTAL DECLARATION

Trustee filed the Declaration of Trustee on April 22, 2019. Dckt. 52. The Declaration provides testimony supporting the allegations in the Objection, including that Trustee's fee is 8 percent.

On April 23, 2019 the Trustee also filed the supplemental Declaration of Teryl Wegemer. Declaration, Dckt. 55. The Wegemer Declaration provides testimony that Debtor has made no payments and therefore is $5,000.00 delinquent under the plan and that the new Chapter 13 Trustee has a fee of 6.4 percent. *Id.*.

DISCUSSION

Debtor made an admission at the Meeting of Creditors that assets listed as a "lawsuit settlement" in the amount of $127,000.00 on Debtor's Statement of Financial Affairs (Dckt. 1) were not properly identified. The Standing Chapter 13 Trustee has since learned this property was an inheritance from Debtor's mother, which property was sold for $850,000.00 and divided among Debtor and 4 other siblings. Declaration ¶ 1.b., Dckt. 54.

Debtor failed to provide Form EDC 3–086 (Class 1 Checklist)(Declaration, Dckt. 52) as required by Local Bankruptcy Rule 3015-1(b)(6), and is therefore not cooperating as required by 11 U.S.C. § 521(a)(3).

The Plan payment of $5,000.00 is insufficient when considering the 8 percent Trustee's fee. The Trustee calculates the monthly amounts owing under the plan terms are $5,244.57. Declaration ¶ 5, Dckt. 52. Therefore, the plan is not feasible and this ground for objection is well-taken. 11 U.S.C. § 1325(a)(6).

Trustee also argues the plan fails the liquidation test. On Debtor's Schedules A/B, Debtor lists total assets of $841,596.00. Dckt. 1. Debtor also lists $127,000.00 from a lawsuit on her Statement of Financial Affairs. *Id*. Debtor claims exemptions totaling only $58,320.00 on Schedule C, and lists secured claims totaling $520,459.33 on Schedule D. *Id*.

Based on the above numbers, Debtor clearly has significant non-exempt assets. However, her proposed plan provides a dividend of 0 percent to unsecured claims. Plan, Dckt. 2. Therefore, Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4), and this ground for objection is also well-taken.

In reviewing Debtor's Schedules that there is significant income, in addition to the non-exempt assets which Debtor could use to fund a plan and prosecute a Chapter 13 case in good faith. The two debtors list having monthly gross income of $7,904.00 from wages and an additional $1,200 from "rent." Schedule I, Dckt. 1 at 28-29. This totals $9,104.00 a month.

For this $109,248 in annual income, Debtor lists only ($530.36) for Mr. Ambers and only ($574.34) in withholding for federal income taxes, state income taxes, Mr. Ambers Social Security contribution, and Mrs. Ambers Social Security contribution. *Id.*

From this Debtor has monthly expenses of ($2,582.16), from which Debtor computes having $5,064.45 in net income to fund a plan (which payments Debtor has failed to make).

Debtor with the assistance of Debtor's current counsel have filed multiple unsuccessful Chapter 13 cases that have been dismissed since July 2015. Though having confirmed a plan in the most recent case, Debtor chose to voluntarily dismiss it shortly after confirmation. Bankr. E.D. Cal. No. 16-2680, dismissed on July 21, 2018.

The court is addressing conduct of the Debtor that are asserted to be "unexpected financial circumstances" that were the basis of Debtor's "good faith" decision to dismiss the prior case - including paying for their son's wedding rather than funding their Chapter 13 plan in connection with Debtor's request to extend the automatic stay as it applies to the Debtor (11 U.S.C. § 362(c)(3)(B)). Additionally, that Debtor failed to have trust disbursements made to the Chapter 13 Trustee as required under the confirmed plan, but diverted away from the Trustee. Civil Minutes, Dckt. 50 at 4. The final hearing on the Motion to Extend is continued to June 11, 2019.

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.

9. **19-22262-E-13 DPC-1** **PAUL MAYARD Muoi Chea** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 5-21-19 [22]**

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

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

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

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

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

The Objection to Confirmation of Plan is XXXXXXXXXX.

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

A. The debtor, Paul Michael Mayard's ("Debtor"), Plan relies on the pending Motion to Value Collateral of Yolo Federal Credit Union, scheduled for hearing on May 21, 2019.

B. Debtor admitted that at the First Meeting of Creditors held May 16, 2019 that the Class 3 creditor regarding the Parking for Newport Condo in Philippines, Megaworld Corp will not be surrendered and should not be listed as in Class 3.Further, no expense for this parking was listed on Schedule J.

C. Debtor admitted that he has been receiving rent in the amount of $806.51 from a single renter in the Philippine condo. The Debtor has scheduled two (2) Condos in Class 3. It is not clear if the rental income he received was pre or post filing of his Chapter 13.

DEBTOR'S RESPONSE

Debtor filed a Response on June 3, 2019. Dckt. 32. Debtor notes the Motion To Value was granted on May 21, 2019.

Debtor further states he does not want the Philippines condo parking, and that Debtor's rental income (which Debtor will no longer receive after surrendering all condos) was always used to pay his mortgage lender directly and never received.

DISCUSSION

A review of the docket shows the Motion to Value Collateral of Yolo Federal Credit Union ("Creditor") was granted on May 21, 2019. Order, Dckt. 31.

Debtor stated he wishes to surrender the Parking for Newport Condo expense referenced in Trustee's Objection. Dckt. 32. Debtor intends to surrender all condos (located in Newport and Makati City) in the Phillippines back to the lender, which renders the parking space useless to Debtor.

Furthermore, Debtor has now presented testimony clarifying (1) that he does not intend to keep the Philippines condo parking, and (2) that the rent proceeds (which he will no longer receive after surrendering the condos) for used to pay the condo mortgage. Declaration, Dckt. 33.

At the hearing, xxxxxxxxxxxxxx.

~~The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan 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 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 is overruled, and Paul Mayard's ("Debtor") Chapter 13 Plan filed on April 11, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to 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~~.

10. **19-22262-E-13** **PAUL MAYARD** **OBJECTION TO CONFIRMATION OF PLAN BY YOLO FEDERAL CREDIT UNION**
RTD-1 **Muoi Chea**
5-23-19 [26]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 23, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXXX.

Creditor, Yolo Federal Credit Union ("Creditor"), opposes confirmation of the Plan on the basis that the debtor, Paul Michael Mayard's ("Debtor"), proposed interest rate of 2.99% on Creditor's secured claim is below prime and does not provide for an adjustment for risk. Debtor's proposed monthly dividend of $940.00 in insufficient to pay the secured claim at an appropriate interest rate. Creditor proposes an interest rate to 6.75%, with monthly dividend of $1,030.00.

DEBTOR'S RESPONSE

Debtor filed a Response to the Objection on June 4, 2019. Dckt. 35. Debtor notes that the rate provided in the plan reflected the contractual amount, but states further the interest rate and plan payment can be increased to 6.75 and by $98.00 monthly, respectively, to address Creditor's concerns.

DISCUSSION

Interestingly, Creditor asserts that the 2.99% interest rate is not commercially reasonable and not an interest rate that an intelligent, prudent business person would make. Instead, it asserts that the commercially reasonable, market interest rate for a loan secured by this vehicle would need to be 6.75%.

Ironically, as pointed out by the Debtor, the evidence of what is the proper interest rate as computed under the *Till* analysis includes that this Creditor itself has set the reasonable, freely made, commercially reasonable interest rate for this loan is 2.99% in the contract for this loan - not the 6.75% interest rate that is 125.75% higher that the interest rate that Creditor has set in its market transaction. [FN. 1]

FN. 1. See Creditor's Amended Proof of Claim No. 3-1, Retail Installment Sales Contract attached as an exhibit. The proof of claim is *prima facie* evidence of the validity of a 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).

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 Yolo Federal Credit Union ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is **XXXXXXXXXXXXXX**.

11. **19-21686-E-13** **DAVID/BROOKE LEITE** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN SERVICES, LLC**
CJO-1 **Seth Hanson** **5-2-19 [12]**

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.

PennyMac Loan Services, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan does not provide for the total amount of pre-petition arrears due and owing to Creditor which totals $918.03 and thereby fails to comply with § 1322(b)(2), § 1322(b)(5), and § 1325.

Creditor filed Proof of Claim, No. 4 ("Claim") on May 2, 2019. The Claim states Creditor holds a secured claim in the amount of $ 366,735.69 with $918.03 necessary to cure any default as of the date of the petition.

The amount of the default is stated to be for "Projected escrow shortage." Proof of Claim No. 4, Attachment, p. 4. The Objection does not explain how this amount is calculated.

DEBTOR'S RESPONSE

Debtor filed a Response to the Objection on May 10, 2019 arguing that there is no pre-petition arrearage. Dckt. 16.

In support of the Response Debtor filed his Declaration providing testimony that as of March 11, 2019, (8 days before the March 19, 2019 filing) Debtor received a mortgage statement from Creditor showing no past due fees or charges owing. Dckt. 18.

Debtor also filed as Exhibit A, a copy of the March 11 Mortgage Statement. Exhibit A, Dckt. 17.

MAY 21, 2019 HEARING

At the May 21, 2019 haring, counsel for Debtor reported that an agreement has been reached to resolve the Objection and that such amendments to the plan are being documented. Civil Minutes, Dckt. 20. The court continued the hearing on the Objection to June 11, 2019 to allow the parties to resolve the Objection.

DISCUSSION

While the parties represented a resolution to the Objection was impending, no supplemental pleadings have been filed since the prior hearing.

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

Here, the Claim states there is an arrearage of $918.03 which is necessary to cure any default as of the date of the petition. In reviewing the Mortgage Proof of Claim Attachment, that arrearage is explained to be for a projected escrow shortage.

Reviewing the docket, Debtor has not filed any objection to the Claim. Rather, Debtor filed a Response to this Objection essentially seeking to bypass the process, asking the court determine the amount of the Claim while assessing whether the Chapter 13 Plan is suitable for confirmation. Even assuming the court could waive the requirement to bring a claim objection separately, determining the extent and validity of the Claim here would deny Creditor due process. *See* FED. R. BANKR. P. 3007(a)(1).

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed the Claim in which it asserts $918.03 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages. [FN. 1.]

FN. 1. If Debtor is correct and Debtor must prosecute a claim objection to address an erroneously claimed pre-petition arrearage then, presumably, the Debtor and Debtor's counsel will assert all rights to recover attorney's fees and costs to the extent that such right exists under the promissory note and deed of trust.

Of course, before pursuing such litigation the Debtor and Counsel will send a polite letter(s) communicating the request/demand before commencing such litigation. If creditor fails to correct such error, if it is in error, such creditor would be hard pressed to state that such objection litigation was not necessary in light of a proof of claim (given *prima facie* evidentiary value) that would otherwise require payment of an obligation that does not exist.

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 PennyMac Loan Services, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

12. **18-21488-E-13** **DANIEL/ALLISON BRENNAN** **MOTION TO MODIFY PLAN**
CLH-4 **Charles Hastings** **5-3-19 [132]**

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 May 3, 2019. By the court's calculation, 39 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.

Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") seek confirmation of the Modified Plan to extend the time to sell Debtor's residence under the Confirmed Plan because of Debtor Daniel Lawrence Brennan's heart attack. Declaration, Dckt. 134 at p. 2:14-26. The Modified Plan allows for a three month extension of the time limit for the debtor to sell their property. Dckt. 132. 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 28, 2019. Dckt. 137. Trustee opposes confirmation substantially on the basis the Modified Plan is not feasible. Based on the Trustee's calculations (described fully in Trustee's Opposition (Dckt. 137)), after 60 months there will be $54,177.00 inclusive of trustee's fees to be paid. Declaration ¶ 3, Dckt. 138. Trustee also notes the Modified Plan is not feasible because it states a lump sum of $359,000.00 will be made to pay 100 of unsecured claims, where the unsecured claims are actually $471,575.18. *Id.*, ¶ 2.

Trustee also notes the Modified Plan was filed using an outdated plan form.

DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee's calculations (described fully in Trustee's Opposition (Dckt. 137)), after 60 months there will be $54,177.00 inclusive of trustee's fees to be paid. Declaration ¶ 3, Dckt. 138. Debtors Plan would need to increase the monthly payments by approximately $1,153.00 to be feasible at 100% to unsecured creditors. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Modified Plan is also not feasible because it states 100 percent of unsecured claims will be paid, but proposes a lump sum of only $359,000.00 to pay claims totaling $471,575.18. *Id.*, ¶ 2; 11 U.S.C. § 1325(a)(6).

Additionally, the Modified Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. 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.

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 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.

13. **19-22292-E-13 DPC-1** **BICH TRAN Mary Ellen Terranella** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 5-21-19 [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 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 21, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to provide various business documents required by 11 U.S.C. § 521. Declaration ¶ 3, Dckt. 15.

DISCUSSION

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

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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. **19-23292-E-13 PLC-1** **THOMAS PEARSON** **Peter Cianchetta** **MOTION TO EXTEND AUTOMATIC STAY** **5-28-19 [14]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 28, 2019. By the court's calculation, 14 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.

Thomas Michael Pearson ("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. 19-22372) was dismissed on May 21, 2019, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 19-22372, Dckt. 29, May 21, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor's counsel failed to file a Motion to Confirm Chapter 13 Plan prior to a deadline set by the court. Declaration ¶ 5, Dckt. 17. Debtor states that all the documents in this case have been filed.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C.

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

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

A. Why was the previous plan filed?

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Thomas Michael Pearson ("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.

15. **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]**

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.

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

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

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

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

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

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.

JUNE 4, 2019 HEARING

At the June 4, 2019 hearing the court continued the hearing on the Objection to June 11, 2019 to allow the Trustee's Objection with Creditor's Objection.

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. Furthermore, a review of the docket shows Debtor failed to appear at the continued Meeting of Creditors on May 9, 2019. 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).

A review of the docket shows Trustee's Objection to Claim of Exemption was dismissed without prejudice. Dckt. 59. Therefore, that ground for objection was resolved.

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

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

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

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

16. **19-21310-E-13 RMP-1** **WANDA COLLIER-ABBOTT** **Richard Jare** **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS, INC. . 5-13-19 [50]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee, and Office of the United States Trustee on May 13, 2019. By the court's calculation, 29 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.

Real Time Resolutions, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

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

Creditor's objections are well-taken.

Creditor asserts a claim of $221,536.60 in this case. Proof of Claim, No. 4. Debtor's Schedule D estimates the amount of Creditor's claim as only $124,857.00 and indicates that the claim is secured by a 2nd deed of trust on the Debtor's residence. Dckt. 23. The Plan does not list or provide for Creditor's claim at all. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, the court notes the Trustee has filed an Objection to the Plan set to be heard the same day as the hearing on this Objection. Dckt. 29. A review of the docket shows that the court sustained that Objection.

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 Real Time Resolutions, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17. **19-20026-E-13 LBG-1** **THOMAS IVERS** **Lucas Garcia** **CONTINUED MOTION TO CONFIRM PLAN** **3-26-19 [40]**

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

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

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

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

The Motion to Confirm the Amended Plan is denied.

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

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

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

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

PROVIDENT FUNDING'S OBJECTION

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

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

CITIBANK'S OBJECTION

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

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

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

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

D. The plan is not feasible.

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

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

REVIEW OF PLAN

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

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

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

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

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

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

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

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

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

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

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

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

MAY 7, 2019 HEARING

At the May 7, 2019 hearing, the court continued the hearing to allow the parties to seek appointment of a special representative to be authorized to have all rights and responsibilities for the sale of the Property. Dckt. 61. The court continued the hearing to June 11, 2019 at 3:00 p.m.

STATUS CONFERENCE STATEMENT

Debtor filed a Status Conference Statement on June 4, 2019. Dckt. 73. Debtor states that there is a conference with Creditor's representatives to discuss the selection of a representative on June 6, 2019.

DISCUSSION

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

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

Civil Minutes, Dckt. 31.

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

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

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

At the hearing, xxxxxxxxxxxxxx.

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

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Thomas James Ivers ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied.

18. 14-28961-E-13 MLA-4 — RODEL MAULINO AND MIMSY ABARA-MAULINO — MOTION TO MODIFY PLAN
Mitchell Abdallah — 5-1-19 [125]

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 March 19, 2019. By the court's calculation, 63 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.

The debtors, Rodel Montevirgen Maulino and Mimsy Descallar Abara-Maulino ("Debtor"), seek confirmation of the Modified Plan to deal with unexpected changes in our month-to-month finances, secured debt delinquency, and overwhelming unsecured debts. Dckt. 127. The Modified Plan provides for $170,254.12 to be paid through April 2019 and payments of $3,830.00 from months 56 through 60. Dckt. 128. 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 23, 2019. Dckt. 130. Trustee opposes confirmation on the following grounds:

1. Debtor filed Amended Schedules, not Supplemental Schedules.

2. The Motion does not state with particularity why the Modified Plan is sought. The Trustee had a motion to dismiss filed based on Debtor's delinquency, and Debtor's declaration provides a statement that there were "unexpected changes" which are not further explained.

3. The Debtor's Declaration is made on "information and belief."

DISCUSSION

Inadequacy of Witness Information and Belief Testimony

Debtor's Declaration 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).

Declaration Made Without Personal Knowledge

Additionally, it appears Debtor provides testimony that is questionable, with Debtor providing testimony as to things not within Debtor's personal knowledge. For example, Debtor states:

> Our Modified Chapter 13 Plan provides for every secured debt that we owe, **either by surrendering the collateral or paying them** in accordance with the Bankruptcy Code.

Declaration ¶ 4.e., Dckt. 127(emphasis added).

The above statement is peculiar. In reviewing the proposed Modified Plan, there are no Class 3 claims provided for through the surrendering of collateral. Thus, it appears Debtor is unsure what secured claims there are and how they are provided for, and is merely signing whatever documents are put in front of Debtor to get the modified plan confirmed.

Supplemental Schedules Filed as "Amended"

On May 1, 2019, Debtor filed Amended Schedules I and J. Dckts. 120, 121. That was not correct.

Amended Schedules I and J state under penalty of perjury income and expenses at the date of filing the petition. In filing a Modified Plan, a debtor should file supplemental schedules to show updated income and expenses.

What Debtor here has done has provided the court information that Debtor has had $3,830.00 net disposable monthly income as of the filing of the case in 2014.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such

> motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

The Motion states the following with particularity:

1. Debtor moves for an order confirming the modified plan.

2. The case was filed September 2, 2014.

3. The Meeting of Creditors was conducted October 23, 2014.

4. The modified plan was proposed in good faith.

5. The modified plan meets the liquidation test.

6. Debtor does not have domestic support obligation.

7. Debtor has filed all tax returns.

Motion, Dckt. 125.

The Bankruptcy Code provides the following:

> At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—
>
> > (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
> >
> > (2) extend or reduce the time for such payments;
> >
> > (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
> >
> > (4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that
> >
> > . . .

11 U.S.C. § 1329.

What the Motion tells the court is that a modified plan has been filed, and the modified plan meets various requirements for confirmation of a plan pursuant to 11 U.S.C. § 1325.

However, not stated in the Motion is what the modification is, and whether there is a legal basis for making the change.

A debtor does not have to show cause for a modification. 8 COLLIER ON BANKRUPTCY P. 1329.02 (16th 2019). But, the court cannot grant unknown modifications.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Rodel Montevirgen Maulino and Mimsy Descallar Abara-Maulino ("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.

19. 18-25141-E-13 BLG-5 | **BLAKE HARBIN** Chad Johnson | **MOTION TO EMPLOY RE/MAX GOLD AS REALTOR(S)** 5-20-19 [79]

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, parties requesting special notice, and Office of the United States Trustee on May 20, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is granted.

The debtor, Blake Harbin ("Debtor") seeks to employ real estate broker Re/Max Gold ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to establish a fair market value for, market, and sell Debtor's residence commonly known as 4000 Madeline Ct, Vacaville, California (the "Property").

Liz Alarcon, a real estate salesperson employed by Broker, testifies that she has met with Debtor to discuss the sales of the Property. Declaration, Dckt. 81. Alarcon further testifies no employee represents or holds any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Re/Max Gold as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 82. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the debtor, Blake Harbin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ real estate broker Re/Max Gold ("Broker") for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 82.

20. **18-25141-E-13** **BLAKE HARBIN** **MOTION TO SELL**
BLG-6 **Chad Johnson** **5-20-19 [83]**

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 Not 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 May 20, 2019. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

As discussed more fully below, the contents of the Notice fail to meet the requirements of Federal Rule of Bankruptcy Procedure 2002(c)(1).

The Motion to Sell Property 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 Sell Property is denied without prejudice.

The Bankruptcy Code permits Blake Harbin, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property that is identified as only "real property" (the "Unidentified Property"). [FN. 1]

FN. 1. While not stated in the Motion, the address of the property listed in the Purchase and Sale Agreement is listed as 4000 Madeline Court, Vacaville, California.

The proposed purchaser of the Unidentified Property is unidentified in the Motion ("Undisclosed Buyer") for $588,000.00 on non-specified terms. [FN. 2]

FN. 2. While not identified in the Motion, the Purchase and Sale Agree lists Gerardo Ramos and Maria Duvon as purchasers.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on May 24, 2019. Dckt. 91. Trustee does not oppose the Motion, and notes that a "check swap" will be made to meet escrow requirements. Trustee notes further that the exempt proceeds from the sale must be reinvested within six months to remain exempt.

SERVICER'S CONDITIONAL NON-OPPOSITION

Caliber Home Loans, Inc. as servicer for U.S. Bank National Association, as Trustee for COLT 2017-1 Mortgage Loan Trust ("Servicer") filed a "Conditional Non-Opposition" on June 4, 2019. Dckt. 93. Servicer states that it (and the creditor holding the claim) have no opposition so long as the Property is sold free and clear of its lien and is contingent upon its lien being paid in full.

DISCUSSION

Notice of Proposed Sale

Federal Rule of Bankruptcy Procedure 2002(c)(1) states the following:

> (1) Proposed Use, Sale, or Lease of Property. Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. **The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property.** The notice of a proposed sale or lease of personally identifiable information under §363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information.

Here, the Notice of Hearing states that there is a motion to sell real property filed by the debtor. Dckt. 84. No further information is provided as to what property is being sold, or what the proposed terms of sale are.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for

"particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

A. Debtor filed her petition on August 15, 2018.

B. Debtor hired Liz Alarcon to list the property.

C. "On or about May 5, 2019, Debtor received an offer to purchase the property for $565,000.00 to which she countered $588,00.00 and said counter offer was agreed to (See Exhibit A)."

D. Debtor obtained a preliminary report.

E. Debtor estimates net sale proceeds of $36,074.30.

F. Debtor has Scheduled unsecured claims totaling $22,855.00 for "Scheduled Amount" and $34,653.43" for "Claim Amount."

G. The last day for filing proof of claim was October 24, 2018, and February 11, 2019 for government claims.

H. The Escrow holder is Old Republic Title Company.

Motion ¶¶ 1-8, Dckt. 83.

This Motion is grossly deficient. The court is told there is an offer for property at a sale price of $588,00.00, and that net proceeds of $36,074.30 are anticipated. That is all.

The Motion does not posit or assert that this price is the fair market value for the Property. No terms of the sale, other than the price, are explained to the court.

The Motion does not even identify the property to be sold.While the Motion states, "Debtor moves this court for an order authorizing the Debtor to sell real property, described below . . . " there is no description of the property provided.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

Some of the information that should have been provided in the Motion is included in the evidence filed along with the Motion (including the Debtor's Declaration (Dckt. 127) and the purchase agreement. Exhibit A, Dckt. 86. From those documents the court can determine what property is being sold and what the terms for sale are. However, still missing is any attempt to explain whether this sale is a reasonable exercise of business judgement (i.e. whether close to fair market value is being received).

Furthermore, the court generally declines an opportunity to do associate attorney work and assemble motions for parties.

Colliers provides an overview of the standard for approval of a sale pursuant to 11 U.S.C. § 363:

> **In determining whether to approve a proposed sale under section 363, courts generally apply standards that, although stated various ways, represent essentially a business judgment test**. Some earlier decisions describe the standard as one of "good faith" or of whether the transaction is "fair and equitable" or whether the sale is "in the best interest of the estate." However, the **more recent cases tend to focus on whether a sale is supported by a sound business reason and is based on a sound exercise of business judgment**. The "business judgment" test here differs from the general corporate law business judgment rule, which protects corporate directors from liability where they exercised due care and were not self-interested in the transaction. Here, by contrast, the bankruptcy court reviews the trustee's (or debtor in possession's) business judgment to determine independently whether the judgment is a reasonable one. The court should not substitute its judgment for the trustee's but should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms. For example, in one case, the unsecured creditors' committee's objection to the debtor in possession's proposed sale to its undersecured lender resulted in modifications of the sale terms to establish a trust for the sole benefit of unsecured creditors. The court held the trust unsupported by a business justification, noting that the debtor in possession had no interest in it and agreed only to appease the committee, which breached the debtor in possession's fiduciary duty.
>
> In addition, to obtain approval in a chapter 11 case before confirmation of a plan of a sale of substantially all of the assets of the estate, the trustee must show a sound business reason, that there has been adequate and reasonable notice and that the sale has been proposed in good faith. Appeasement of the loudest creditor

> does not constitute a good business reason. These factors are considered to assure that the interests of all parties in interest are protected and that the sale is not for an illegitimate purpose. Attempts to determine plan issues in connection with the sale are improper and should result in a denial of the relief requested. A party in interest opposing a sale of substantially all the estate's assets on the ground that the sale would determine issues properly left for a plan must articulate the specific chapter 11 rights or protections denied by the sale.
>
> **The price to be paid should be "fair and reasonable."** Although a trustee normally would be expected to sell to the highest bidder at an auction, there may be sound business reasons to accept a lower bid, particularly in a negotiated sale. For example, the payment terms may be more favorable, or the trustee may have substantial reason to doubt the ability of the higher bidder to raise the cash necessary to complete the purchase. Or the higher bid might have arrived after the close of a court-approved auction process, in which case a court may reopen the auction where there are irregularities in the auction procedures, where the price is grossly inadequate, where complexity prevented a clear winner from emerging or where the bid procedures expressly authorize it. Otherwise, a court should not reopen bidding even to obtain a higher price for the estate, because doing so undermines bidder expectations, encourages bidders to hold their best bids until the court approval hearing after the auction and undercuts confidence and faith in the integrity of the judicial system.

3 COLLIER ON BANKRUPTCY P 363.02 (16th 2019)(emphasis added).

As discussed already, the Debtor has not stated grounds in the Motion to show the sale is "fair and reasonable."

Requirements for Sale Not in Ordinary Course of Business

Federal Rule of Bankruptcy Procedure 6004(f)(1) states the following:

> (1) Public or Private Sale. All sales not in the ordinary course of business may be by private sale or by public auction. **Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale**. If the property is sold by an auctioneer, the auctioneer shall file the statement, transmit a copy thereof to the United States trustee, and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement and transmit a copy thereof to the United States trustee.

This information was not provided in an itemized statement, or in the Motion. To find what property is being sold and who the buyer is, the court would be forced to review the declaration and agreement filed along with the Motion. Debtor has not argued that it was impracticable to provide this information.

ADDITIONAL RELIEF REQUESTED BY SERVICER CAILBER HOME LOANS, INC., CREDITOR U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

As addressed above, the present Motion, brought by the Debtor exercise the powers of a trustee to sell property (11 U.S.C. Sec. 1303) requests the court approve a sale of the Property as provided in 11 U.S.C. Sec. 363(b). SERVICER Caliber Home Loans, Inc. and CREDITOR U.S. Bank National Association, as Trustee for Colt 2017-1 Mortgage Loan Trust ("U.S. Bank N.A., as Trustee") have filed a "Conditional Non-Opposition." The condition of the non-opposition is stated to be:

> [s]o long as any form of order states that approval of the sale is free and clear of U.S. Bank's lien and is contingent upon U.S. Bank's receipt of proceeds sufficient to pay U.S. Bank's lien in full, as determined by the date demand is made upon U.S. Bank based on an unexpired payoff quote.

Conditional Non-Opposition, p. 2:912; Dckt.93. By this "Non-Opposition" it appears that Servicer and Creditor are attempting to become the movant and amend the Motion.

The court has stopped to consider what legitimate, legal basis there could be for such relief. Pursuant to 11 U.S.C. Sec. 363(f)(3) a creditor may consent to the sale of property free and clear of lien. Here Creditor, U.S. Bank, N.A., as Trustee has so consented with and through SERVICER, Caliber Home Loans. The court accepts such consent and would issue an order consistent therewith if the Motion is granted.

Such a request by a creditor is curious, as most creditors want to ensure that their lien is not released until they have their reconveyance of the deed of trust or release of lien recorded. Here, SERVICER and U.S. Bank N.A., as Trustee choose to abandon that right. Possibly it is too challenging a task for U.S. Bank N.A., as Trustee and SERVICER to issue the reconveyance that is required by both contract and statute. Possibly U.S. Bank N.A., as Trustee and SERVICER find it more profitable if they shift the reconveyance responsibility to the court by demanding an order selling the property free and clear, but subject to conditions based on U.S. Bank N.A., as Trustee's unilateral discretion.

The Servicer and Creditor's request further requires that the court order permitting the sale free and clear be "contingent upon:" U.S. Bank, N.A., as Trustee not only receiving payment in full of its claim, but that it be the amount as "determined" by U.S. Bank, N.A., as Trustee in its then current demand. Thus, it would appear that U.S. Bank, N.A., as Trustee is seeking to take the responsibility of the court to determine claims and allow U.S. Bank, N.A., as Trustee to make such determination in its unilateral discretion.

The demand of conditions imposed by Servicer and U.S. Bank N.A., as Trustee include that any order of the court is contingent upon the determinations by U.S. Bank, N.A., as Trustee. While the court cannot issue such orders transferring federal judicial power to U.S. Bank, N.A., as Trustee, the court could fashion an order and relief as demanded by SERVICER and U.S. Bank N.A., as Trustee.

If the court were able to grant the Motion and morphed it into a motion for a sale free and clear of the Deed of Trust and interests of U.S. Bank, N.A., as Trustee, such order would be condition

that there are net sales proceeds of not less than $510,000.00 after the payment of the items specified above; that the lien and interests of U.S. Bank, N.A. pursuant to the Deed of Trust attach to all of the net sales proceeds; and that all of the net proceeds, which includes the $510,000.00 and all net amounts in excess thereon, are disbursed directly from the sales escrow to the Clerk of the United States Bankruptcy Court for the Eastern District of California to be held pending further order of this court.

U.S. Bank, N.A., as Trustee shall, would then be required within thirty days of the close of the sale and the deposit of the $510,000.00+ in net sales proceeds with the Clerk of the Court, file a motion for disbursement of the net sales proceeds to pay the U.S. Bank, N.A., as Trustee secured claim computed as of the close of the escrow. This additional motion would be been necessitated by SERVICER and CREDITOR inserting their condition that the sale be free and clear of CREDITOR's Deed of Trust and that CREDITOR be paid the amount actually due as of the close of escrow. CREDITOR not having provided the court with evidence of the amount that would be due or a methodology to so compute that amount, CREDITOR has required the court to conduct a further hearing to grant the relief requested. Such further motion and proceeding is required due to the unilateral acts of SERVICER and CREDITOR and not Debtor, the bankruptcy estate, title company, party in interest, or other third-party.

CONCLUSION

The Motion fails to meet the requirements of Federal Rules of Bankruptcy Procedure 2002, 6004, and 9013, and 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 Sell Property filed by Blake Harbin, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

21. **18-25141-E-13 BLG-4** **BLAKE HARBIN** **Chad Johnson** **CONTINUED MOTION TO MODIFY PLAN** **3-19-19 [62]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2019. By the court's calculation, 63 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 XXXXXXX.

Blake Harbin ("Debtor") seeks confirmation of the Modified Plan because she has moved to Maryland and desires to defer payments on her Vacaville property until after it is sold. Dckt. 62. The Modified Plan provides for $17,000.00 to be paid through January 2019; payments of $1,453.00 for months 7 though 60; and for Debtor to sell his residence on or before month 13. Dckt. 63. 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 7, 2019. Dckt. 72. Trustee opposes confirmation on the grounds that Debtor is delinquent $1,453.00 under the Modified Plan payments proposed; Debtor's proposes plan does not provide adequate protection payments to secured creditors pending the sale of her residence; and Debtor has stated he moved to Maryland but has not filed a Change of Address form.

CREDITOR'S OPPOSITION

Creditor Caliber Home Loans, Inc. as servicer for U.S. Bank National Association, as Trustee

for COLT 2017-1 Mortgage Loan Trust ("Creditor") filed an opposition on May 7, 2019. Dckt. 75. Creditor opposes the Modified Plan on the basis that the it does not provide for ongoing payments on its claim or towards the cure of arrearages.

MAY 21, 2019 HEARING

At the May 21, 2019 hearing the court continued the hearing on the Motion to June 11, 2019. Dckt. 90.

DISCUSSION

A review of the docket shows that Debtor has filed a Motion To Sell his residence set for hearing the same day as this Objection.

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 Modified Chapter 13 Plan filed by Blake Harbin ("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 **XXXXXXXXXX**.

22. **19-22078-E-13 MAS-2** | **EDUARDO/MARIE ORTEGA** **Peter Macaluso** | **MOTION TO DISMISS CASE** **5-9-19 [23]**

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).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Dismiss is granted, and the bankruptcy case is dismissed with prejudice as to each of the two Debtors.

The request for an injunction (Fed. R. Bankr. P. 7001) barring the filing of a future bankruptcy case in this Motion is denied without prejudice.

Creditor, Robert Guerra ("Creditor"), filed this Motion seeking dismissal of this case filed by debtors, Eduardo M Ortega and Marie E Ortega ("Debtor"), pursuant to 11 U.S.C. § 1307.

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

1. Debtor is incapable of keeping their promises, whether paying creditors or complying with the terms of their own Chapter 13 plans. This case

was filed in bad faith.

2. Debtor has filed the following prior cases:

Filing Date	Case No.	Result
10/10/2012	12-38100	Discharge entered June 25, 2013
07/22/14	14-27476	Dismissed September 25, 2015
03/02/16	16-21304	Dismissed January 23, 2017
04/03/17	17-22226	Dismissed January 16, 2019

3. The Debtors have been in and out of Chapter 13 for the last 6 years. Where a plan has been confirmed, the cases were dismissed for defaults in payments.

4. Debtor currently owes Creditor slightly less than $8,000 under the 1999 non-discharge and forbearance agreement.

5. Debtor defaulted on the balloon payment on April 1, 2019 under the recent forbearance agreement.

6. This is the fifth filing by Debtor in the past five or six years. Debtor is a high wage earner but has failed to complete a Chapter 13 file in recent years.

7. Debtor lists $100,000.00 in arrearages in this case, indicating their financial situation has gotten worse since prior filings.

8. The instant case was filed not listing Creditor's secured claim, and appears to have been filed for the sole purpose of thwarting Creditor's enforcement of judgment.

9. Debtor's serial filings and inaccurate schedules demonstrate bad faith and warrant dismissal with prejudice to refiling for at least one year.

Motion, Dckt. 23.

DISCUSSION

Creditor's arguments are well-taken.

This case is Debtor's fifth since 2012. While Debtor's Chapter 7 was concluded with entry of a discharge in 2013, the subsequent three Chapter 13 cases have been dismissed for defaults in plan payments.

Debtor's filing, failing to perform, and dismissal of the three prior Chapter 13 cases did not

occur because Debtor was not represented by knowledgeable, experienced counsel. In the two immediately prior cases Debtor was represented by the same counsel as in this case, and in the third prior case by another bankruptcy attorney. If Debtor was filing and attempting to prosecute the Chapter 13 cases in good faith they were represented by more than sufficient legal horsepower.

A review of the record in the prior Chapter 13 cases indicate monetary defaults in plan payments that were included in the grounds for the dismissal of those cases:

A. Case 17-22226, dismissed January 16, 2019.....$30,389.42 default

B. Case 16-21304, dismissed January 22, 2017.....$15,625.00 default

The file indicates that Debtor failed to make an additional five months of payments of $5,650.00 while the court continued the hearing to allow the Debtor in good faith to cure the default and prosecute a plan in that case before dismissing the case. This indicates that there is $43,875.00 in net monthly income that was not paid into the Plan in Case 16-21304.

C. Case 14-27476, dismissed September 24, 2015.....$23,948.00 default

Just for the periods during the Chapter 13 cases in which the Debtor defaulted and did not modify the plans, there is at least $70,467.00 of monthly net income that has disappeared. This does not take into account all of the additional income for the months Debtor was not in the non-productive, multiple plan default prior Chapter 13 cases.

On Schedule A/B Debtor states under penalty of perjury that there is only nominal money in bank accounts, $400, and there are no other assets in which what is more than $100,000 of net monthly income has been transferred or converted. Dckt. 1 at 13-72.

Debtor in this case lists on Schedule I a gross monthly income of $17,306.11. Schedule I, Dckt. 1. After monthly expenses of $3,790.70 (which exclude any rent or mortgage and appear facially to be far more than modest), Debtor's disposable monthly income is $7,900.53. Notwithstanding this significant income, Debtor has struggled to make payments under four Chapter 13 cases filed in the last few years.

Debtor's significant income and failure to prosecute a successful Chapter 13 suggest that Debtor is merely filing cases to delay payment, hinder creditors' ability to collect on their claims. At best, this is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Notably, Debtor has not filed an opposition to this Motion brought on 28 days' notice.

DISMISSAL WITH PREJUDICE

The Motion requests that this, the fourth recent bankruptcy case filed by Debtor, be dismissed with prejudice. Generally, a dismissal is without "prejudice" unless otherwise ordered by the court "for cause." 11 U.S.C. § 349(a). The "prejudice" is that normally the dismissal of a bankruptcy case does not result in the Debtor not being able to obtain a discharge of the debts in the dismissed case in a subsequent case. *Id.*

The Seventh Circuit Court of Appeals addressed the concept of dismissal with prejudice in In *re Hall*, 304 F.3d 743, 746 (7th Cir. 2002), stating:

> Normally, a dismissal of a bankruptcy petition has no long-term consequences for the debtor's ability to re-file. *Umbenhauer v. Woog*, 969 F.2d 25, 30 (3d Cir. 1992). There is an exception, however, if the court "for cause" orders that the dismissal of the case is with prejudice. See 11 U.S.C. § 349(a). In that instance, the order may either bar the later dischargeability of debts that would have been dischargeable in the dismissed proceeding, or it may preclude the debtor from filing a subsequent petition related to those debts. *Id.* **Dismissals with prejudice are therefore generally reserved for extreme situations, such as when a debtor conceals information from the court, violates injunctions, files unauthorized petitions, or acts in bad faith**. *Id.*; *In re Tomlin*, 105 F.3d 933, 937 (4th Cir. 1997) (filing six bankruptcy petitions in seven years); *In re Martin-Trigona*, 35 B.R. 596, 601 (Bankr. S.D.N.Y. 1983).

The Ninth Circuit Court of Appeals addressed dismissal with prejudice in *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223-1224 (9th Cir. 1999), stating:

> Generally, dismissals are ordered without prejudice to carry out the remedial purpose of the Bankruptcy Code and to restore property rights, insofar as is practicable, to the same positions as when the case was first filed, but without affecting the disposition of debts. *In re Tomlin*, 105 F.3d 933, 936-37 (4th Cir. 1997); *In re Lawson*, 156 B.R. 43, 45 (9th Cir. BAP 1993). **The phrase "unless the court, for cause, orders otherwise" in Section 349(a) authorizes the bankruptcy court to dismiss the case with prejudice.** *See also In re Tomlin*, 105 F.3d at 937; 3 Collier on Bankruptcy § 369.01, at 349-2-3 (15th ed. 1997). A dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues. *Tomlin*, 105 F.3d at 936-37.
>
> "Cause" for dismissal under § 349 has not been specifically defined by the Bankruptcy Code. For Chapter 13 cases, §§ 1307(c)(1) through (10) provide that the bankruptcy court may convert or dismiss, depending on the best interests of the creditors and the estate, for any of ten enumerated circumstances. Although not specifically listed, bad faith is a "cause" for dismissal under § 1307(c). *Eisen*, 14 F.3d at 470 ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."); *In re Hopkins*, 201 B.R. at 995 (holding that the debtors' filing of frivolous tax returns with no intention to pay taxes warranted dismissal of a Chapter 13 petition for bad faith). Therefore, it follows that **a finding of bad faith based on egregious behavior can justify dismissal with prejudice**. *Tomlin*, 105 F.3d at 937; *In re Morimoto*, 171 B.R. at 86; *In re Huerta*, 137 B.R. 356, 374 (Bankr. C.D.Cal. 1992). We hold that bad faith is "cause" for a dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c).

In *Leavitt v. Soto (In re Leavitt)*, 171 F.3d at 1224-1225(*See also, In re Khan*, 846 F.3d 1058, 1065 (9th Cir. 2017)), the Ninth Circuit stated that this analysis is a consideration of bad faith in the dismissal of a

Chapter 13 case with prejudice as follows:

> Bad faith, as cause for the dismissal of a Chapter 13 petition with prejudice, involves the application of the "totality of the circumstances" test. Eisen, 14 F.3d at 470. The bankruptcy court should consider the following factors:
>
> > (1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner," id. (citing *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir. 1982));
> >
> > (2) "the debtor's history of filings and dismissals," id. (citing *In re Nash*, 765 F.2d 1410, 1415 (9th Cir. 1985));
> >
> > (3) whether "the debtor only intended to defeat state court litigation," id. (citing *In re Chinichian*, 784 F.2d 1440, 1445-46 (9th Cir. 1986)); and
> >
> > (4) whether egregious behavior is present, *Tomlin*, 105 F.3d at 937; *In re Bradley*, 38 B.R. 425, 432 (Bankr. C.D. Cal. 1984).
>
> A finding of bad faith does not require fraudulent intent by the debtor.
>
> > Neither malice nor actual fraud is required to find a lack of good faith. The bankruptcy judge is not required to have evidence of debtor illwill directed at creditors, or that debtor was affirmatively attempting to violate the law - malfeasance is not a prerequisite to bad faith.
>
> *In re Powers*, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991) (relying on *In re Waldron*, 785 F.2d 936, 941 (8th Cir. 1986)).

The evidence presented in support of the Motion, the files in this and the prior bankruptcy cases filed and not prosecuted by Debtor, clearly support a finding that Debtor, and each of them, have not filed or attempted to prosecute this bankruptcy case in good faith.

Debtor, and each of them, have used this case as one in a series of bankruptcy case filings in a bad faith scheme to hinder and delay creditors, and effectively defraud them out of the monthly net income that Debtor had committed to pay under the various plans, in the various Chapter 13 cases, which Debtor filed and then failed to perform.

Debtor, and each of them, have actively worked with knowledgeable bankruptcy counsel to manipulate, improperly use, and abuse the Bankruptcy Code to divert monies from the bankruptcy estate and plan, not pay creditors, and “live in bankruptcy protection” to the prejudice of creditors (as well as the bankruptcy estates from which property of the estates, the monthly net income, was diverted by Debtor).

Debtor, and each of them, have misrepresented the plans that they purport to present in good faith and "promise" to perform. As discussed above, Debtor has "used" the Bankruptcy Code to divert more than $100,000 in monthly net income instead of funding their Chapter 13 plans as "promised."

In the prior bankruptcy cases, though the court continued hearings on Motions to Dismiss filed by the Chapter 13 Trustee, the Debtor failed to fulfill the promises Debtor made to prosecute those cases, which in addition to the substantial defaults in plan payments, include the following.

A. Case 17-22226

Though promising diligently to prosecute a loan modification and being granted a one hundred and one (101) day continuance, Debtor failed to seek approval of a loan modification or demonstrate that Debtor was in good faith pursuing the represented loan modification. 17-22226; Civil Minutes, Dckts. 90, 91.

B. Case 16-21304

Though promising to diligently file evidence of how Debtor could generate an extra $10,000+ to cure the defaults in the case and having been given an eighty four (84) day continuance to diligently prosecute the case and present he promised evidence, Debtor failed to so do. 16-21304; Civil Minutes, Dckts. 80, 92, 95.

Over five years Debtor has filed five bankruptcy cases, with four dismissed for failure to prosecute, failure to make plan payments, and failure to present evidence to support what they have promised to do. Debtor has grossly defaulted in plan payments, though by Debtor's own admissions/evidence Debtor has substantial monthly net income to easily make the required payments.

Debtor has used these series of bankruptcy cases as part of Debtor's scheme to delay creditors, prevent foreclosures, not pay debts, and divert significant monies, amounts in excess of $100,000 from creditors and the bankruptcy estates or plan estates (if there was a confirmed plan) in the prior bankruptcy cases.

Debtor, and each of them, intentionally and willfully, with the assistance of multiple experienced bankruptcy counsel, have abused and misused the bankruptcy laws to improperly hinder and delay creditors.

Debtor's intentions and affirmative conduct in these series of bankruptcy cases has not been to propose, confirm, and perform a Chapter 13 Plan in good faith.

Though the Motion clearly seeks dismissal with prejudice, the Motion was filed using the notice procedure specified under Local Bankruptcy Rule 9014-1(f)(1) for which written opposition is required. Debtor, and each of them, chose not to oppose the present Motion. As shown above, even when a party chooses to default the court carefully reviews the law and evidence to determine whether the requested relief is proper. Such relief is proper for a dismissal with prejudice. Debtor's silence appears to be an acknowledgment that Debtor, and each of them, have no defense to a dismissal with prejudice.

Based on the foregoing, cause exists to dismiss this bankruptcy case with prejudice. The

Motion is granted, and the case is dismissed with prejudice. [FN. 1.]

FN. 1. As stated by the Ninth Circuit Court of appeals in Colonial Auto Ctr. v. Tomlin (In re Tomlin), 105 F.3d 933, 937 (9th Cir. 1977), the effect of a stated to be as follows:

> Indeed, although the Bankruptcy Code establishes a general rule that dismissal of a case is without prejudice, it also expressly grants a bankruptcy court the authority to "bar the discharge, in a later case . . . of debts that were dischargeable in the case dismissed . . . ." 11 U.S.C. § 349(a) (1994); 3 Collier on Bankruptcy § 349.02[2] (15th ed. rev. 1994).

Request for Injunction

Creditor also requests in the Motion that the court bar Debtor from filing a bankruptcy case for at least a year. In substance, this is a request for an injunctive relief.

Federal Rule of Bankruptcy Procedure 7001 provides that a proceeding to obtain an injunction or other equitable relief is an adversary proceeding. Creditor has not provided authority for the court to grant such relief pursuant to this Contested Matter.

The Bankruptcy Code does in some instances allow injunctive relief without bringing an adversary proceeding. For example, 11 U.S.C. § 362(d)(4) allows relief preventing automatic stay from going into effect as to certain property in any future case. However, Creditor has not sought such relief.

Therefore, the request for injunctive relief barring Debtor from filing a bankruptcy case for at least year is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by Creditor, Robert Guerra ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed with prejudice, by which Debtor Eduardo Mendez Ortega, Jr. and Debtor Marie Esquivel Ortega, and each of them, are barred from obtaining a discharge of any and all debts that would have been dischargeable in the current bankruptcy case, No. 19-22078.
>
> **IT IS FURTHER ORDERED** that the request for injunctive relief barring Debtor from filing a bankruptcy case for at least year is denied.

23. **19-22078-E-13 DPC-1** **EDUARDO/MARIE ORTEGA** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **5-14-19 [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.

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 14, 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 overruled as moot, the case having been dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan relies on valuing the secured claim of Wheels Financial Group, LLC.

DISCUSSION

Trustee's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wheels Financial Group, LLC. Debtor has filed a Motion to Value Collateral to be heard on June 11,

2019. A review of the docket shows the court has granted that Motion.

Objection of Robert Guerra &
Motion To Dismiss

While the Trustee's sole grounds for Objection were addressed, also set to be heard are the Objection of and Motion To Dismiss filed by creditor Robert Guerra ("Creditor"). Dckts. 18, 23.

A review of the docket shows the court has granted the dismissal motion and dismissed the case. The case having been dismissed, the Objection is overruled 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 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 overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

24. **19-22078-E-13 MAS-1** **EDUARDO/MARIE ORTEGA** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY ROBERT GUERRA** **5-8-19 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 8, 2019. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled as moot, the case having been dismissed.

Robert Guerra ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan fails to make provision for payment of the creditor's judgement lien

DISCUSSION

Creditor's objections are well-taken.

Creditor asserts a claim of $7,927.76 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $1.00 and indicates that it is secured by Debtor's residence. Dckt 1. The proposed Plan does not provides for creditors claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's

residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Objection of Robert Guerra &
Motion To Dismiss

Also set to be heard on June 11, 2019, are the Objection of and Motion To Dismiss filed by creditor Robert Guerra ("Creditor"). Dckts. 18, 23.

A review of the docket shows the court has granted the dismissal motion and dismissed the case. The case having been dismissed, the Objection is overruled 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 Objection to the Chapter 13 Plan filed by Robert Guerra ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled as moot, and the proposed Chapter 13 Plan is not confirmed.

25. **19-22078-E-13 PGM-1** | **EDUARDO/MARIE ORTEGA** **Peter Macaluso** | **MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC** **5-13-19 [28]**

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)(1) Motion—Hearing Required.

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

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

The Motion to Value Collateral and Secured Claim of Wheels Financial Group, LLC ("Creditor") is dismissed as moot, the case having been dismissed.

The Motion filed by Eduardo M Ortega and Marie E Ortega ("Debtor") to value the secured claim of Wheels Financial Group, LLC, ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 30. Debtor is the owner of a 2003 Toyota Sequoia ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $2,000.00 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).

DISCUSSION

Motion To Dismiss

Also set to be heard June 11, 2019 is a Motion To Dismiss filed by creditor Robert Guerra ("Creditor"). Dckts. 23.

A review of the docket shows the court has granted the dismissal motion and dismissed the case. The case having 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 Value Collateral and Secured Claim filed by Eduardo M Ortega and Marie E Ortega ("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 dismissed as moot, the case having been dismissed.

FINAL RULINGS

26. **19-22077-E-13** **DARIN DOWD** **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
DPC-1 **Asusan Turner** **5-15-19 [33]**

Final Ruling: No appearance at the June 11, 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 15, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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:

A. The debtor, Darin Wayne Dowd ("Debtor"), failed to appear of the First Meeting of Creditors on May 9, 2019. The Meeting was continued to June 20, 2019.

B. Debtor's plan relies on a motion to value the secured claim of creditor Elite Acceptance.

C. The first plan payment of $668.00 will come due prior to the hearing date.

In the original Objection filed, Trustee asserted Debtor had not provided various 11 U.S.C. § 521 documents. Dckt. 21. In the Amended Objection filed May 15, 2019, Trustee states these documents have now been provided.

DEBTOR'S REPLY

Debtor filed a Reply to the Objection on May 16, 2019. Dckt. 37. Debtor states he will appear at the continued Meeting of Creditors, that the 521 documents have been provided to Trustee, that there are no anticipated issues with making the first plan payment, and Debtor notes that a Motion To Value has been set for hearing May 21, 2019.

DISCUSSION

Trustee's objections are well-taken. Debtor is required to attend the Meeting of Creditors, and the feasibility of the plan relies on the court granting a motion to value the secured claim of Elite Acceptance.

A review of the docket shows Debtor's Motion To Value was heard on May 21, 2019. Dckt. 10. The court denied the Motion without prejudice because service was not provided to the creditor. Civil Minutes, Dckt. 43.

A new Motion To Value was filed on May 23, 2019 and set for hearing June 25, 2019. Dckt. 42. It appears the issue with service was corrected. Dckt. 42.

The court shall continue the hearing on the Objection to June 25, 2019 at 3:00 p.m. to be heard alongside the Motion to Value and to allow Debtor to appear at the continued Meeting of Creditors.

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

27. **19-20671-E-13 MET-2** **LATANYA GREY** **Mary Ellen Terranella** **OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1 4-28-19 [29]**

Final Ruling: No appearance at the June 11, 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 28, 2019. By the court's calculation, 44 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 1 of Cavalry SPV I, LLC as assignee of Americredit Financial Services, Inc., is sustained, and the claim is disallowed in its entirety.

Latanya Lavette Grey, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC as assignee of Americredit Financial Services, Inc. ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $17,415.17. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date was October 10, 2001 and charge off date was September 5, 2000.

DISCUSSION

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

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

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

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

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

A review of Proof of Claim No. 1 lists the last transaction date was October 10, 2001 and charge off date was September 5, 2000.

No payment or other transaction occurred after October 10, 2001. Thus, the four-year statute of limitations expired on October 10, 2005.

This bankruptcy case was filed on February 5, 2019—more than a decade after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Cavalry SPV I, LLC as assignee of Americredit Financial Services, Inc. ("Creditor"), filed in this case by Latanya Lavette Grey, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

28. **19-20671-E-13 MET-3** **LATANYA GREY Mary Ellen Terranella** **OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 2 4-28-19 [33]**

Final Ruling: No appearance at the June 11, 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 28, 2019. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 2 of LVNV Funding, LLC ("Creditor") is sustained, and the claim is disallowed in its entirety.

Latanya Lavette Grey, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $433.63. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was December 15, 2006.

DISCUSSION

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

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

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

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

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

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

A review of Proof of Claim No. 2 lists the charge off date as January 10, 2007 (after a last payment date of December 15, 2006). The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after January 10, 2007. Thus, the four-year statute of limitations expired on January 10, 2011.

This bankruptcy case was filed on February 5, 2019—several years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of LVNV Funding, LLC (“Creditor”) filed in this case by Latanya Lavette Grey, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 2 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

29. **19-22165-E-13 DPC-1** **ROBERT SKIFF** **W. Steven Shumway** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **5-21-19 [26]**

Final Ruling: No appearance at the May 21, 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 21, 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 25, 2019 at 3:00 p.m.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Debtor failed to appear and be examined at the First Meeting of Creditors held on May 16, 2019. The Meeting was continued to June 20, 2019. Trustee requests the Court continue this Objection to Confirmation to June 25, at 3:00 p.m., following the Continued First Meeting of Creditors set for June 20, 2019.

DISCUSSION

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

In light of the Trustee's request and good cause shown, the court shall continue the hearing on the objection to June 25, 2019 at 3:00 p.m. to allow Debtor to appear at the Continued Meeting of Creditors scheduled for June 20, 2019.

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

30. **14-20150-E-13 DJC-4** | **MICHAEL/DEBORAH SOUZA** **Diana Cavanaugh** | **MOTION TO DEEM CLAIM #7 (OCWEN LOAN SERVICING, LLC) CURRENT 4-29-19 [91]**

Final Ruling: No appearance at the June 11, 2019 hearing is required.

The Motion To Deem Claim No. 7 Current is dismissed without prejudice.

Michael A. Souza and Deborah L. Souza ("Debtor") having filed a "Withdrawal of Motion", which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on June 3, 2019, Dckt. 100; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Ocwen Loan Servicing, LLC ("Creditor"); the Ex Parte Motion is granted, the Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Deem Claim, No. 7, Current filed by Michael A. Souza and Deborah L. Souza ("Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 100, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

31. **19-21530-E-13 BB-1** **GENEA PEERY** **Bonnie Baker** **CONTINUED MOTION TO CONFIRM PLAN** **3-26-19 [9]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 24 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The hearing on the Motion to Confirm the Plan is continued to June 25, 2019 at 3:00 p.m.

Genea Marie Peery ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan proposes monthly payments of $189.00 for 36 months and a 0 percent dividend to unsecured claims totaling $148,256. Dckt. 12. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 7, 2019. Dckt. 24. Trustee argues the present Motion set a confirmation hearing prior to the dates set in the Notice of Meeting of Creditors for objections and requests the hearing be continued to June 11, 2019 at 3:00 p.m.

TRUSTEE'S OBJECTION

Trustee also filed an "Objection" to confirmation of the plan on May 14, 2019. Dckt. 28. In the Objection, Trustee adds that the plan relies on a motion to value secured claim, which if not granted would render the plan not feasible.

MAY 21, 2019 HEARING

At the May 21, 2019 hearing, the court continued the hearing to June 11, 2019 to conform with objection deadlines set in the Notice of Meeting of Creditors, and to allow Debtor's Motion To Value to be heard.

DISCUSSION

In Trustee's Objection filed before the May 21, 2019 hearing, it was indicated Debtor's plan relies on a motion to value the secured claim of Wells Fargo Bank. On May 24, 2019 Debtor filed that Motion. Dckt. 36.

The court shall continue the hearing on the Motion to June 25, 2019 at 3:00 p.m. to allow it to be heard alongside

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 Genea Marie Peery ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm the Plan is continued to June 25, 2019 at 3:00 p.m.

32. **19-21530-E-13 DPC-1** | **GENEA PEERY** **Bonnie Baker** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **5-14-19 [28]**

The Objection To Confirmation shall be heard in conjunction with the the Motion to Confirm the Plan (Dckt. 9) filed by the Debtor on March 26, 2019.