

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

June 23, 2020 at 2:00 p.m.

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

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1.	<a href="#">19-26806</a> -C-13 <a href="#">DEF</a> -3	KIM PRUITT David Foyil	MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION 4-1-20 [ <a href="#">63</a> ]
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Thru #3

**Final Ruling:** No appearance at the June 23, 2020, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor on April 1, 2020. By the court's calculation, 84 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 Golden Once Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$25,556.92.**

The debtor Kim Pruitt ("Debtor") filed this motion seeking to value the secured claim of Golden Once Credit Union ("Creditor"), which is secured by a 2016 Ford Fusion (the "Vehicle"). The lien on the Vehicle's title secures a purchase-money loan incurred in July 28, 2017, which is fewer than 910 days prior to filing of the petition. Proof of Claim, No. 1. See 11 U.S.C. § 1325(a)(9) (hanging paragraph). But, Debtor argues there was negative equity carried into the loan which should be parsed out of the secured claim.

Debtor's Declaration states she purchased the Vehicle for \$38,516.92, and that an additional \$7,359.23 was financed to cover the debt on Debtor's prior vehicle being traded-in. Dckt. 65 at ¶ 3. Debtor notes that Creditor's claim was \$32,926.15 at the time of filing (Proof of Claim, No. 1), and argues that when subtracting the \$7,359.23 financed to cover negative equity the secured portion of Creditor's claim is \$25,566.92.

A review of the actual Retail Installment Sale Contract, included as an attachment to Proof of Claim, No. 1, shows the finance charge for prior credit was actually \$7,369.23.

In response to the Motion, Creditor amended its proof of claim to state the secured portion is \$25,566.92. Proof of Claim, No. 1-3.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 9, 2020, noting the plan treatment and that the Creditor appears to agree with Debtor's valuation.

## **DISCUSSION**

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

Here, the parties are in agreement that Creditor's secured claim amounts to \$25,556.92. <sup>FN.1.</sup>

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FN.1. The parties actually agree that value is \$25,566.92, which is based on a \$7,359.23 negative equity charge. The court notes the correct amount stated in the agreement is \$7,369.23. Using the math provided by the parties, the secured claim comes out to \$25,556.92.  
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Therefore, the Motion is granted

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

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

The Motion for Valuation of Collateral filed by debtor Kim Pruitt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Golden Once Credit Union ("Creditor") secured by an asset described as 2016 Ford Fusion ("Vehicle") is determined to be a secured claim in the amount of \$25,556.92. That is the amount of the secured claim pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a), and the balance of the claim, is a general unsecured claim to be paid through the confirmed bankruptcy plan.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2020. By the court's calculation, 84 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 granted.**

The debtor, Kim Pruitt ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$0 paid in month 1, and for payments of \$532 thereafter for the remaining plan term. Amended Plan, Dckt. 71. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CREDITOR'S OPPOSITION**

Harley-Davidson ("Creditor") holding a secured claim filed an Opposition on April 14, 2020. Dckt. 75. Creditor argues its claim, secured by a 2015 Harley-Davidson FltRuse CVO Road Glide Ultra, is entirely omitted from the Amended Plan.

**DEBTOR'S REPLY**

Debtor filed a Reply on June 9, 2020. Dckt. 83. The Reply reports that Creditor's claim was not provided for in the plan because Debtor's former spouse has possession of the Harley and maintains the payments. Debtor also reports that Creditor and Debtor have settled the matter, with Debtor intending to provide for Creditor's claim as a Class 3.

**DISCUSSION**

Notwithstanding whether Creditor agrees to the treatment, Debtor providing for Creditor's claim as a Class 3 makes the plan feasible.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on April 1, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which shall include language specifying the treatment of creditor Harley-Davidson's claim, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. [19-26806](#)-C-13  
[DEF](#)-4

KIM PRUITT  
David Foyil

OBJECTION TO CONFIRMATION OF  
PLAN BY HARLEY-DAVIDSON  
4-14-20 [[75](#)]

**The Creditor's Opposition (Dckt. 75) shall be heard in conjunction with the Debtor's Motion to Confirm (Dckt. 68) .**

4. [20-20715](#)-C-13                    FOUAD MIZYED  
[20-2016](#)  
MIZYED V. FAY SERVICING, LLC

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-14-20 [[1](#)]

Thru #5

The Status Conference is **XXXXXXX**

**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.  
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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 Plaintiff-Debtor's counsel on March 19, 2020.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion).

**The Motion to Dismiss Adversary Proceeding is denied without prejudice as moot.**

The defendant Fay Servicing, LLC ("Defendant") moves for the court to dismiss all claims against it in the plaintiff-debtor Fouad Afif Mizyed's ("Plaintiff-Debtor") Complaint according to Federal Rule of Civil Procedure 12(b)(6).

The Motion argues the complaint fails in the following respects:

1. Plaintiff-Debtor fails to state a claim for relief because he fails to allege standing under Bus. & Prof. Code § 17200, et seq., and fails to otherwise state a claim as this count is premised on the other counts in the Complaint which also fail.
2. Plaintiff-Debtor fails to state a claim for relief as to fraud by deceit because this count

is not pleaded with the required specificity, and as Plaintiff fails to allege facts to establish the elements of a claim for fraud, including resulting damages

3. Plaintiff-Debtor fails to state a claim for relief as to the accounting claim because he does not plead facts to establish a fiduciary relationship or that his account is so complicated that an accounting is warranted.
4. Plaintiff-Debtor fails to state a claim for relief as to unjust enrichment because this is not a cognizable cause of action in California.
5. Plaintiff-Debtor fails to state a claim for relief as to wrongful foreclosure because he fails to allege facts to establish the elements of such a claim, including a sale, resulting harm, and tender or excuse from tending.
6. Plaintiff-Debtor fails to state a claim for declaratory relief because he does not plead facts to show that a present controversy exists, as the underlying allegations are more properly addressed in the other claims for relief stated in the Complaint, and as declaratory relief is not a stand-alone cause of action.
7. Plaintiff-Debtor fails to state a claim for injunctive relief because injunctive relief is a remedy and not a claim for relief.
8. Plaintiff fails to state a claim for quiet title relief because he does not allege that he satisfied the outstanding debt due and owing.

The Motion also generally argues that Plaintiff-Debtor's claims are based on improper securitization, Plaintiff-Debtor lacks standing.

#### **APPLICABLE LAW**

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at

235-36 (3d ed. 2004) (“[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); see also *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court’s formulation of Federal Rule of Civil Procedure 12(b)(6), a plaintiff cannot “plead the bare elements of his cause of action, affix the label ‘general allegation,’ and expect his complaint to survive a motion to dismiss.” *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (“[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do.”).

In ruling on a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), the Court may consider “allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court “required to “accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994) (citations omitted).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

## **DISCUSSION**

Rather than file an opposition to this Motion, Plaintiff-Debtor has opted to file a First Amended Complaint. Dckt. 25.

Therefore, the Motion To Dismiss is denied without prejudice

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 Dismiss Adversary Proceeding filed by defendant Fay Servicing, LLC ("Defendant") 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 denied without prejudice as moot.

**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).**

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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 June 3, 2020. By the court's calculation, 20 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.**

Dennis Paul Campbell and Kim Cheri Campbell ("Debtor") seek 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. 16-22359) was dismissed on January 23, 2020, after Debtor fell delinquent in plan payments and was unable to propose a plan to complete within 60 months. See Order, Bankr. E.D. Cal. No. 16-22359, Dckt. 67, January 23, 2020. 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 a secured creditor's claim was roughly \$15,000 greater than scheduled, causing difficulty in completing the plan within a 60 month period. Debtor notes \$164,370.00 was paid in the course of the prior case.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 9, 2020 (Dckt. 14) indicating non-opposition.

## DISCUSSION

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

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently rebutted the presumption of bad faith

under the facts of this case and the prior case for the court to extend the automatic stay. Debtor paid in significant amounts in the prior case, but underestimated the extent of certain secured claims. That is unlikely to occur again in this second filing.

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 Dennis Paul Campbell and Kim Cheri Campbell ("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.

**Thru #8**

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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) .**

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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 27, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the plan on the basis it is not feasible because the debtor ("Debtor") is relying on tax refunds Debtor has not received.

**DEBTOR'S RESPONSE**

Debtor's counsel filed a response on June 16, 2020. Dckt. 24. The Response does not address the reliance on not-received tax refunds, but instead argues that Debtor had been able to make the payments, which Debtor is able to do because "with a family this size

has a certain amount of flexibility in his budget to manage a small plan payment of \$110 a month." Debtor's counsel argues further there is no prejudice to just allowing Debtor to make payments.

## **DISCUSSION**

Contrary to Debtor's counsel's argument, there is a problem with just letting Debtor make payments—the plan must comply with the Bankruptcy Code in order to be confirmed.

The Trustee has raised doubts as to the plan's feasibility because Debtor lists monthly income of \$743 coming from "tax refunds." Dckt. 1. The Bankruptcy Code sets as a prerequisite to plan confirmation that Debtor will be able to make the payments under the plan, and it is the Debtor's burden to demonstrate that. 11 U.S.C. § 1325(a) (6).

Debtor's counsel's argument is a catch-22. Either Debtor's plan is not feasible and not confirmable because Debtor does not have the income he actually is stated to have on Schedule I, or the plan is not confirmable because Debtor has misrepresented what his actual monthly income is, deflating the number to allow Debtor to pay what Debtor wants to pay. The discrepancy is actually not modest—with \$743 a month reported from a tax refund, if that is money not being received then Debtor apparently has wiggle-room of at least \$743 each month to decide whether or not to fund the plan with.

The present plan is a 36 month plan in which unsecured claims, totaling \$140,337.00, are receiving only a 1% dividend. For Debtor to be proposing a plan without stating accurate information on Schedules I and J simply means the plan was not proposed in good faith.

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.

8. [20-21939](#)-C-13                      PORFIRIO LOPEZ                      OBJECTION TO DISCHARGE BY DAVID  
[DPC-2](#)                                      Mark Hannon                              P. CUSICK  
5-26-20 [[16](#)]

**Final Ruling:** No appearance at the June 23, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 26, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Objection to Discharge is sustained.**

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

Debtor filed a Chapter 7 bankruptcy case on September 3, 2016, Case No. 16-25926. Debtor received a discharge on December 19, 2016. Case No. 16-25926, Dckt. 21.

The instant case was filed under Chapter 13 on April 2, 2020.

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

the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on December 19, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 16-25926, Dckt. 21. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 20-21939), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 20-21939, the case shall be closed without the entry of a discharge.

Thru #10

**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) .**

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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 27, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that claims were greater than scheduled, resulting in the proposed plan taking 70 months. scheduled.

#### **DISCUSSION**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 70 months due to claims being filed in amounts that are greater than Debtor scheduled.

Declaration, Dckt. 20. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

**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 U.S. Trustee on May 19, 2020. By the court's calculation, 35 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.**

Bank of New York Mellon ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor has provided for Creditor's prepetition arrearage in the amount of \$52,945.00 where the actual amount is \$55,459.07
- B. Debtor's proposed plan already provides all Debtor's disposable income and therefore is not

feasible when accounting for the increased payment necessary to address the understated arrearage.

## **DISCUSSION**

The current proposed plan has not been demonstrated to be feasible. Creditor filed Proof of Claim, No. 2, reflecting a \$55,459.07 prepetition arrearage. The plan only provides for an arrearage of \$52,945.00. Dckt. 2. Furthermore, the proposed plan payment of \$1,700 is all Debtor's disposable income. Dckt. 1.

Therefore, the Debtor cannot make the necessary increased payment and the plan is not feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by Bank of New York Mellon ("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.

11. [20-22066](#)-C-13 GREGORY/CHERIE BORGERSON OBJECTION TO CONFIRMATION OF  
[LBJ-1](#) Randall Ensminger PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
5-12-20 [[27](#)]

**Thru #13**

**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, and Office of the United States Trustee on May 12, 2020. By the court's calculation, 42 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 XXXXXXXXXXXX**

Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1, its successors and/or assignees, ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan's "ensminger provisions" impermissibly modify Creditor's claim secured by Debtor's primary residence. Creditor also argues the plan does not propose a reasonable schedule for repayment of Creditor's claim.

## DISCUSSION

The Objection concludes that the plan impermissibly modifies Creditor's rights. However, the Creditor does not explain what rights it has and how the plan modifies those rights.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

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

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

The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1, its successors and/or assignees, ("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 ~~XXXXXXXXXX~~

12. [20-22066](#)-C-13 GREGORY/CHERIE BORGERSON OBJECTION TO CONFIRMATION OF  
[RAS](#)-1 Randall Ensminger PLAN BY HSBC BANK USA, N.A.  
5-8-20 [[23](#)]

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

**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 8, 2020. By the court's calculation, 46 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 ~~XXXXXXXXXXXX~~**

HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-ASAP6, Asset Backed Pass-Through Certificates, by and through its authorized loan servicing agent, PHH Mortgage Corporation (collectively, "Creditor") holding a secured claim opposes confirmation of the Plan because the plan states Creditor's prepetition arrearages are \$20,090.00 where the total is actually \$27,534.93 according to Proof of Claim, No. 7.

**DISCUSSION**

The Creditor's sole ground for opposing confirmation is that the incorrect prepetition arrearage amount is stated in the plan. That argument fails because the plan does provide for the correct arrearage.

Section 3.02 of the plan states "The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Thus, notwithstanding the amount stated in the plan, the actual amount provided for is \$27,534.93 as stated in Proof of Claim, No. 7.

The real problem with the plan understating the arrearage is whether the plan is adequately funded and feasible.

At the hearing, **xxxxxxxxxxxxxxxx**.

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

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

The Objection to the Chapter 13 Plan filed by HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-ASAP6, Asset Backed Pass-Through Certificates, by and through its authorized loan servicing agent, PHH Mortgage Corporation (collectively, "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 **xxxxxxx**

13. [20-22066](#)-C-13 GREGORY/CHERIE BORGERSON OBJECTION TO CONFIRMATION OF  
[DPC-1](#) Randall Ensminger PLAN BY DAVID P. CUSICK  
6-3-20 [[34](#)]

**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 June 3, 2020. 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 XXXXXXXXXXXX**

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

- A. Debtor's plan includes an "Ensminger provision" as to two secured creditors. While a loan modification is reportedly sought, no details about the terms sought or the present steps taken to achieve loan modification have been provided.
- B. Pay advices from both Gregory Roger Borgerson

and Cherie Marquez Borgerson ("Debtor") reflect deductions for retirement loans which were not reported on Schedule I. Debtor has not provided information as to when repayment will end.

## **DISCUSSION**

Trustee argues that the plan should not be confirmed because it is unclear when retirement loans, which were not reported on Schedule I, will be paid off. In the event they complete before the plan, Debtor will have additional disposable income that needs to be committed to the plan.

The Trustee has also noted little detail has been provided as to the status of the two loan modifications sought, and that both creditors with secured claims Debtor hopes to modify have filed objections set for hearing the same day as this Objection.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

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

**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 27, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to provide proof of Social Security number at the Meeting of Creditors on May 21, 2020.

**DEBTOR'S REPLY**

Debtor filed a Reply to Trustee's Objection to Confirmation of Plan on June 9, 2020. Dckt. 19. Debtor states that he has ordered a new Social Security card and will provide it to Trustee at the next Meeting of Creditors on June 11, 2020 if Debtor has his card by then.

**DISCUSSION**

A review of the docket shows Debtor did not appear at the June 11, 2020, continued Meeting of Creditors.

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

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

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

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

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

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

**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 June 5, 2020. By the court's calculation, 18 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.**

Daniel Alexander Arana ("Debtor") seeks to employ a real estate broker. Nicole Nevins ("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 market and sell his real property commonly known as 1160 Araquipa Court, Vacaville, California ("Property").

The Motion is supported by Broker's declaration, which provides testimony that the Broker not represent or hold any interest adverse to Debtor or to the Estate and that she has no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their

respective attorneys. Dckt. 56. The Declaration also describes the Broker's qualifications.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 16, 2020, indicating non-opposition. Dckt. 59.

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 Nicole Nevins as Broker for the Debtor on the terms and conditions set forth in the Residential Listing Agreement with Modification filed as Exhibit A, Dckt. 57. 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 Daniel Alexander Arana ("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 Nicole Nevins as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement with Modification filed as Exhibit A, Dckt. 57.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**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 6, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is denied.**

The debtor, Selenia Brittany Michelle Charles ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments in the amount of \$151.00 for sixty months and a 0% dividend to unsecured claims totaling \$40,351.18. Amended Plan, Dckt. 51. 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 June 9, 2020. Dckt. 58. Trustee opposes confirmation because Debtor is \$104 delinquent in plan payments.

**DEBTOR'S REPLY**

Debtor filed a Reply to Trustee's Opposition on June 16, 2020. Dckt. 62. Debtor's counsel reports Debtor has set up payments through TFS to electronically withdraw a payment of \$150.00 on June 16, 2020 and a subsequent payment of \$105.00 on June 24, 2020. Debtor's counsel requests the plan be confirmed or conditionally confirmed.

However, no evidence was filed in support of the Reply's allegations.

**DISCUSSION**

Debtor is \$104.00 delinquent in plan payments, which represents slightly less than one month of the \$151.00 plan payment. Dckt. 59. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6). While the Debtor's counsel has made representations as to what Debtor has planned to pay, no evidence has been provided in support of those allegations.

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

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

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

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

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

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

**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.

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 June 16, 2020. The court issued an Order Shortening Time to the 7 days' notice provided. Dckt. 15.

The Motion to Extend the 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. At the hearing -----.

**The Motion to Extend the Automatic Stay is denied.**

Norman Franklin Civello ("Debtor") filed this Motion arguing the stay is limited by the provisions of 11 U.S.C. § 362(c) (3) in this case and seeking to have the provisions of the automatic stay provided by extended beyond thirty days. Debtor argues 11 U.S.C. § 362(c) (3) applies because Debtor filed a prior case under Chapter 7, No. 19-26176, which was pending within the year preceding filing.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition to the Motion arguing that the prior case was pending but not *dismissed*, which is a requirement for 11 U.S.C. § 362(c) (3) to apply.

## DISCUSSION

11 U.S.C. § 362(c)(3) (emphasis added) provides:

if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period **but was dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) -

Because Debtor's prior case was not dismissed, 11 U.S.C. § 362(c)(3) does not apply. Therefore, the Motion will be 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 Extend the Automatic Stay filed by Norman Franklin Civello ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied.

18. [20-20109](#)-C-13  
[PGM-1](#)

KARLA SLADARIU  
Peter Macaluso

CONTINUED MOTION TO VALUE  
COLLATERAL OF DEUTSCHE BANK  
NATIONAL TRUST COMPANY  
3-6-20 [[31](#)]

Thru #20

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 6, 2020. By the court's calculation, 45 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Deutsche Bank National Trust Company ("Creditor") is  
XXXXXX**

The debtor Karla L. Sladariu ("Debtor") filed this Motion seeking to value the secured claim of Deutsche Bank National Trust Company ("Creditor"), which claim is secured by Debtor's real property located at 7231 Suncreek Way, Orangevale, CA ("Property").

Debtor argues that the Property has a value of \$300,000 at the time of filing, and that the property is encumbered by US Bank, N.A.'s first deed of trust in the amount of \$340,810.28. Debtor argues that as a result, Creditor's second mortgage is completely under-collateralized and should be valued \$0.00.

Creditor filed an Opposition on April 7, 2020. Dckt. 50. The Creditor argues it obtained a verified appraisal showing the value of

the Property was \$350,000 at the time of filing.

Debtor filed a Reply on April 13, 2020, arguing that Creditor failed to actually provide evidence supporting its valuation. Dckt. 56.

The hearing on the Motion has been continued three times. Dckts. 67, 80, 86. During that time period, Debtor has filed two appraisal reports. Dckts. 75, 82.

## **DISCUSSION**

Federal Rule of Bankruptcy Procedure 9014(d) provides that testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding. That would require this Contested Matter to be set for evidentiary hearing.

At the hearing, the parties reported **xxxxxxxxxxxxxxxx**.

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

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

The Motion to Value Collateral and Secured Claim filed by Karla Lorraine Sladariu ("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 **xxxxxxxxxxxx**

**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 March 2, 2020. By the court's calculation, 22days' 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 XXXXXXXXXXXX**

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

- A. The additional provisions of the plan attempt to circumvent the plans own terms by allowing debtor to pay the Class 1 claim of Money source directly, outside the plan like a Class 4. Trustee opposes this due to the prepetition arrearage.

- B. Trustee has disbursed post-petition mortgage payments to The Money Source in the amount of \$12,771.00, representing the months of January 2020 through April 2020, pursuant to the terms of debtors' previously filed plans. Some of these payments are no longer authorized under the plan terms. In the event that Debtors' motion is granted the Trustee requests that the order confirming include the following language: "All previously disbursed amounts made to secured creditors are allowed in the amount already paid by the Trustee."

## **DISCUSSION**

The hearing on this Objection has been continued four times since March 2020 to allow the parties to resolve Debtor's Motion To Value (Dckt. 31) because that motion affects the outcome of this Objection.

At the hearing, the parties reported the current status of the Contested Matter **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 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 **xxxxxxxxxx**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on March 5, 2020. 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 XXXXXXXXXXXX**

Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1 (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the plan proposes valuing Creditor’s secured claim at \$0, and Creditor believes there is equity remaining to secure its claim.

Creditor has requested time to perform an appraisal of the real property securing its claim. Creditor also states that its note matures on November 1, 2021.

**DISCUSSION**

The hearing on this Objection has been continued four times since March 2020 to allow the parties to resolve Debtor's Motion To Value (Dckt. 31) because that motion affects the outcome of this Objection.

At the hearing, the parties reported the current status of the Contested Matter **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 Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1 ("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 **xxxxxxxxxxxxxx**

## FINAL RULINGS

21. [19-25356](#)-C-13                      JARNAIL SINGH MINHAS    MOTION TO CONFIRM PLAN  
[PR-2](#)    Patrick Riazzi                      5-11-20 [[62](#)]

**Final Ruling:** No appearance at the June 23, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 11, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Jarnail Singh Minhas ("Debtor") filed this Motion seeking to confirm the Chapter 13 Plan filed September 9, 2019. Dckt. 14. The Motion is supported by Debtor's declaration. Dckts. 64, 65. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 9, 2020. Dckt. 73. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Chapter 13 Plan filed on September 9, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the June 23, 2020, hearing is required.  
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Local Rule 9014-1(f)(1) Motion-No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 19, 2020. By the court's calculation, 35 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 Hyundai Motor Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$10,419.00.**

The Motion filed by Paul Francis Ottaviano ("Debtor") to value the secured claim of Hyundai Motor Finance ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 68. Debtor is the owner of a 2016 Hyundai Sonata SE ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$10,419.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred in May 2016 which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$15,715.25. Proof of Claim, No. 5. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$10,419.00, the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Paul Francis Ottaviano ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Hyundai Motor Finance ("Creditor") secured by an asset described as 2016 Hyundai Sonata SE ("Vehicle") is determined to be a secured claim in the amount of \$10,419.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$10,419.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling:** No appearance at the June 23, 2020 hearing is required.  
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**The Motion To Confirm is dismissed without prejudice.**

Vicklyn Marie Ritchie ("Debtor") having filed a Notice of Withdrawal of Motion", which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on June 15, 2020, Dckt. 56; 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 responsive pleadings filed; the Ex Parte Motion is granted, 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 Confirm filed by Vicklyn Marie Ritchie ("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. 56, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion To Confirm is dismissed without prejudice.