UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 27, 2017, at 3:00 p.m.

1.	**15-25102-E-13** **PGM-2**	**LARRY/ROSEMARY CALKINS** **Peter Macaluso**	**MOTION TO APPROVE LOAN MODIFICATION** **5-26-17 [88]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 26, 2017. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Larry Calkins and Rosemary Calkins ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Southwest, N.A., fka Wachovia Mortgage, FSB, fka World Savings Bank, FSB ("Creditor"), whose claim the confirmed Plan provides for in Class 1 (a proposed Amended Plan provides for the claim in Class 4), has agreed to a loan modification that matures on September 1, 2049, and requires monthly payments of $1,180.29 at 3.125%. The modification will capitalize the pre-petition arrears and defer $6,295.46 of the principal balance.

The Motion is supported by Debtor's Declaration. Dckt. 90. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 13, 2017. Dckt. 95.

RULING

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Larry Calkins and Rosemary Calkins having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Larry Calkins and Rosemary Calkins ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Southwest, N.A., fka Wachovia Mortgage, FSB, fka World Savings Bank, FSB ("Creditor"), which is secured by the real property commonly known as 4509 Bluebill Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 91).

2. **17-22802-E-13** **RITA PEACH** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Gabriel Liberman** **PLAN BY DAVID P. CUSICK**
5-30-17 [25]

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 30, 2017. 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 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 Plan relies on a pending Motion to Value Collateral of Suncrest Bank.

B. Debtor cannot afford the Plan payments.

The Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Suncrest Bank. The court granted Debtor's Motion to Value Collateral of Suncrest Bank on June 6, 2017, resolving this matter, however.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee argues that Schedule J may not accurately reflect all household expenses. The Trustee also argues that during the First Meeting of Creditors on May 25, 2017, Debtor admitted that her

partner has $900 in income that was not disclosed on Schedule I. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The court's review of Debtor's Schedules has found that:

A. Debtor claims to own two single-family homes in fee simple absolute, for which she holds 100% of the interests. Schedule A/B.

B. Debtor claims that Wells Fargo Home Mortgage owns a first mortgage on one of Debtor's single-family homes. No creditor is listed having any claims secured by the other home (with a value on Schedule A stated to be $157,000). Schedule D.

C. On Schedule C, Debtor claims a $157,000.00 exemption on the unencumbered property pursuant to California Code of Civil Procedure § 704.730. Schedule C.

D. On Schedule J (Expenses), Debtor states under penalty of perjury that her:

1. Mortgage/rent expense is.....$ 0.00

2. Property Tax expense is.....$ 0.00

3. Homeowner's/renter's insurance expense is.....$ 0.00

4. Home maintenance/repair expense is.....$ 0.00

5. Transportation expense is.....$ 76.93

6. Vehicle insurance expense is.....$130.00

Dckt. 1. After monthly expenses totaling $1,236.93, Debtor has Monthly Net Income of $390.00 to fund a plan.

Schedule J also includes the additional information in response to Question 24 stating, "Debtor's son lives in the property at 1947 Huston Street and pays the mortgage directly." *Id.* The payment of the mortgage is not shown as income on Debtor's Schedule I.

In Class 2 of the Plan, Debtor wants to pay creditors for a $7,403.00 claim secured by a 2007 GMC Yukon and a $3,500.00 claim secured by a 1984 Melroe Bobcat. The Melroe Bobcat has been valued at$3,500.00, with the balance of the $33,494.00 claim determined to be unsecured pursuant to 11 U.S.C. § 506(a). Order, Dckt. 32.

In reviewing the Plan, the Class 4 treatment for the claim secured by the Huston Street Property is inconsistent with the statement on Schedule J that "son pays the mortgage." In ¶ 2.11 of the Plan, it states that "Debtor" is making a $1,350.26 monthly payment to Wells Fargo Bank, N.A. (the Plan references

"Wells Fargo Home Mortgage," which in other cases has been identified as a department within the Bank and not a separate legal entity).

The Trustee is correct that the financial information provided by Debtor under penalty of perjury on Schedules I and J demonstrates that Debtor does not have the ability to perform the Plan. Debtor has to be paying property taxes on the home she lives in. Debtor has to be paying maintenance expenses for the home she lives in. Debtor has to be paying for insurance for the home she lives in. No credible evidence has been provided by Debtor that she does not have those common, everyday expenses of a home owner.

Even if the son is paying the mortgage to Wells Fargo Bank, N.A., which presumably has an impound for taxes and insurance, Debtor still has maintenance costs and expenses for that property. Debtor states under penalty of perjury on Schedule J that she has none. She shows on Schedule I no income for renting the property to her son or other income with which to fund such expenses.

The court also questions a transportation expense of $76.93 per month. If there is a $125.00 annual vehicle registration, that averages $10.42 per month, leaving $75 per month for gas and repairs. Assuming annual routine maintenance of $240, which averages $20 per month, that leaves $55 for gas. At $3.00 per gallon, that is eighteen gallons of gas per month. Assuming 13.6 miles per gallon for non-highway driving for a 2007 GMC Yukon, that equates to being able to drive 244 miles in a month, which for a thirty-day month is only eight miles per day. Debtor has not demonstrated that her driving is limited to eight miles per day.

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 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.

3. **17-22606-E-13** **CALVIN/TAWANA COOPER** **CONTINUED MOTION TO VALUE COLLATERAL OF MILESTONZ AMERICAS CREDIT JEWELER**
RWH-2 **Ronald Holland** **5-4-17 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 4, 2017. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Motion to Value 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 Secured Claim of Milestonz Jewelers, LLC, dba Milestonz America's Credit Jeweler ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $200.00.

The Motion filed by Calvin Cooper and Tawana Cooper ("Debtor") to value the secured claim of an entity identified as Milestonz Americas Credit Jeweler is accompanied by Debtor's declaration. As addressed below, the evidence has been presented to show that the name "Milestonz Americas Credit Jeweler is a business name used by Milestonz Jewelers, LLC ("Creditor"). Pursuant to Federal Rule of Civil Procedure 15, which the court makes applicable to this Contested Matter pursuant to Federal Rule of Bankruptcy Procedure 9014, the Motion is amended to correct the misnomer in stating Creditor's dba rather than its legal name as registered with the State of California.

Debtor is the owner of a bracelet ("Property"). Debtor seeks to value the Property at a replacement value of $200.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 22, 2017. Dckt. 42. The Trustee contends that Debtor has not provided specific details of the property to be valued. Further, Creditor has not filed a Proof of Claim to date.

DEBTOR'S REPLY

Debtor filed a Reply on May 30, 2017. Dckt. 51. Debtor contends that Creditor sold the collateral to Debtor and is aware of the full and accurate description of the collateral. Further, there has been no Objection or Response filed by Creditor.

JUNE 6, 2017 HEARING

At the hearing the court continued the matter to 3:00 p.m. on June 27, 2017. As set forth in the Civil Minutes for that hearing, the court explicitly addressed with Debtor a problem with the Motion. The problem was in the apparent misidentification of the "defendant creditor" against whom relief was sought. Those Minutes are:

> "The Creditor that is the target of this Motion is identified in this Motion as Milestonz Americas Credit Jeweler. Motion, Dckt. 26. As noted by the Trustee, Debtor has not provided the court with the underlying contract evidencing the obligation, identifying the creditor, showing the date of the transaction, and providing for the grant of a security interest.
>
> Using the California Secretary's of State website for corporations and limited liability companies, the court cannot identify any entity named Milestonz Americas Credit Jeweler authorized to do business in California. FN.1.
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> https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=CORP&SearchCriteria=Milestonz+Americas+Credit+Jeweler&
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> The Certificate of Service states that the pleadings were served on Milestonz Jewelers LLC Attn: John Bubica Authorized Agent for Process of Service and Milestonz Americas Credit Jeweler. Dckt. 25. One entity is the same as named in the Motion, and the other entity name is not reported as an entity authorized to do business in California. The Secretary of State does identify as Milestonz Jewelers, LLC as registered to do business in California.
>
> While Debtor testifies that they have listed Milestonz Americas Credit Jeweler on the Schedules, the court does not find that bare testimony, without any documentation, persuasive or credible. In light of the Secretary's of State information, it appears that these less sophisticated consumers have not identified who their creditor is for the claim at issue. If the court were to blindly issue the order

merely because Debtor asked for it, Debtor may be in for an unhappy surprise at the end of the plan to learn that they never obtained any effective order against the real creditor."

Dckt. 59 at 2.

The Certificate of Service states that the pleadings seeking relief against Milestonz Americas Credit Jeweler were served on Milestonz Jewelers LLC Attn: John Bubica Authorized Agent for Process of Service and Milestonz Americas Credit Jeweler. Dckt. 25. One entity is the same as named in the Motion, and the other entity name is not reported as an entity authorized to do business in California. The Secretary of State does identify as Milestonz Jewelers, LLC as registered to do business in California.

DEBTOR'S SUPPLEMENTAL DECLARATION

Though the court identified a defect in the person named in the Motion against whom relief was requested, Debtor's response focuses on having served the pleading seeking relief against "Milestonz Americas Credit Jeweler" on agents for entities with different names. Debtor's Attorney filed a Supplemental Declaration on June 15, 2017. Dckt. 61. Debtor's Attorney states that he reviewed a billing statement provided by his client and issued by "Milestonz Americas Credit Jeweler." Dckt. 61, at 2:7–9. He used the billing address on that statement (which was also listed on the company's website at www.americascreditjeweler.com) as the address for service. He also reviewed the Secretary of State's website, found "Milestonz Jewelers, LLC," and identified John Bubica as the agent for service of process. *Id.* at 3:1–6. Debtor reviewed a Buzzfile report for Milestonz Jewelers LLC and learned that John Bubica is listed as President of Milestonz Jewelry located at 6160 Florin Road, Sacramento, California—the same address on Debtor's billing statement. Debtor's Attorney asserts that the Motion was served through certified mail on the agent for service of process as called for at his address.

Debtor provided various exhibits in support, including:

A. August 31, 2016 Billing Statement from Milestonz (Exhibit C);

B. Copies of Milestonz's main webpage and contact page (Exhibits D & E);

C. California Secretary of State details for Milestonz (Exhibits, F–H);

D. Buzzfile Report for Milestonz Jewelry (Exhibit I); and

E. Certified Mail Receipt and Tracking Results (Exhibits J & K).

Dckt. 62.

DISCUSSION

Debtor asserts that the lien on the Property secures a purchase-money loan incurred on December 1, 2015, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $780.00. Therefore, Creditor's claim is under-collateralized.

This bankruptcy case was filed on April 19, 2017. The deadline for creditors filing claims is August 23, 2017. Notice of Chapter 13 Bankruptcy, Dckt. 12. However, that deadline is an impediment to Debtor being able to expeditiously confirm a Chapter 13 Plan that provides for Creditor's claim as a Class 2 (§ 506(a) valuation) claim.

The Creditor against whom relief is requested is "Milestonz Americas Credit Jeweler," nobody else. Motion, Dckt. 26. The question becomes whether choosing to use the name "Milestonz Americas Credit Jeweler" is "close enough" for this court to issue an effective, enforceable order against Milestonz Jewelers, LLC, the entity that appears to be the actual creditor.

Debtor did not include a copy of the contract upon which the claim at issue is based—either with the original Motion or with the supplemental exhibits. Many of the supplemental exhibits are copies of webpages. Dckt. 62. Also included is a copy of the Secretary of State website reporting the existence of Milestonz Jewelers, LLC. Exhibit F, *Id.*

As the Motion was filed, it contains a "misnomer," the name of the person against whom relief is sought. It appears that counsel for Debtor used a business slogan from a billing statement rather than making sure that the creditor was identified correctly. Though this issue was identified, Debtor has continued down the path of getting an order which, on its face, would not apply to the creditor. The court will not issue such an order.

Though not identified by Debtor, the Federal Rules of Civil Procedure provide a mechanism for a party to correct such a misnomer. Federal Rule of Civil Procedure 15 allows a plaintiff to amend the complaint to correct an error in a defendant's name. *Roberts v. Michaels*, 219 F.3d 775, 779 (8th Cir. 2000). That includes a situation where the right party is sued, but the wrong name is used. *Id.*

Here, the evidence presented by Debtor is that Milestonz Jewelers, LLC does business with its consumer customers using the name "Milestonz Americas Credit Jeweler." Exhibit C, billing statement with the names "Milestonz Americas Credit Jeweler and "Milestonz Jewelers" (special message at upper right center of billing statement), Dckt. 62. Debtor's counsel has provided his declaration stating his investigation into the connection between Milestonz Jewelers, LLC and the Milestonz Americas Credit Jeweler listed on the billing statement. Dckt. 61. The pleadings identifying the transaction for the purchase of jewelry, the parties, and the relief requested has been served on both "Milestonz Americas Credit Jeweler" and Milestonz Jewelers, LLC (through the agent for service of process). Cert. of Serv., Dckts. 25 (original pleadings) & 63 (supplemental pleadings).

The court is satisfied that: (1) the real name of the creditor is Milestonz Jewelers, LLC, (2) Milestonz Jewelers, LLC has received notice that the relief is requested against it, and (3) the relief should be granted.

Creditor's secured claim is determined to be in the amount of $200.00, 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 Secured Claim filed by Calvin Cooper and Tawana Cooper ("Debtor") having been presented to the court, the Motion having been amended pursuant to Federal Rule of Civil Procedure 15, as made applicable by the court pursuant to Federal Rule of Bankruptcy Procedure 9014(c) to name the creditor to be Milestonz Jewelers, LLC, 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 Milestonz Jewelers, LLC, dba Milestonz Americas Credit Jeweler, ("Creditor") secured by an asset described as a bracelet ("Property") is determined to be a secured claim in the amount of $200.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $200.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

4. **17-22606-E-13** **CALVIN/TAWANA COOPER** **CONTINUED MOTION TO VALUE COLLATERAL OF MILESTONE AMERICAS CREDIT JEWELER**
RWH-3 **Ronald Holland** **5-4-17 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 4, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Secured Claim of Milestonz Jewelers, LLC, dba Milestonz America's Credit Jeweler ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $1,500.00.

The Motion filed by Calvin Cooper and Tawana Cooper ("Debtor") to value the secured claim of an entity identified as Milestonz Americas Credit Jeweler is accompanied by Debtor's declaration. As addressed below, the evidence has been presented to show that the name "Milestonz Americas Credit Jeweler is a business name used by Milestonz Jewelers, LLC ("Creditor"). Pursuant to Federal Rule of Civil Procedure 15, which the court makes applicable to this Contested Matter pursuant to Federal Rule of Bankruptcy Procedure 9014, the Motion is amended to correct the misnomer in stating Creditor's dba rather than its legal name as registered with the State of California.

Debtor is the owner of wedding rings ("Property"). Debtor seeks to value the Property at a replacement value of $1,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 22, 2017. Dckt. 36. The Trustee notes that Creditor has not filed a Proof of Claim, and that Debtor has failed to provide specific detail of the Property, such as the precious metal of the wedding rings, if gems are included, and the original purchase price.

DEBTOR'S REPLY

Debtor filed a Reply on May 30, 2017. Dckt. 53. Debtor objects to the Trustee's Opposition on the ground that the affected creditor is aware of the description of the collateral and that Debtor has stated a factual basis for the valuation. Further, Debtor states that there is no material disputed fact in this matter because the Creditor has not opposed the Motion.

JUNE 6, 2017 HEARING

At the hearing the court continued the matter to 3:00 p.m. on June 27, 2017. As set forth in the Civil Minutes for that hearing, the court explicitly addressed with Debtor a problem with the Motion. The problem was in the apparent misidentification of the "defendant creditor" against whom relief was sought. Those Minutes are:

> "The Creditor that is the target of this Motion is identified in this Motion as Milestonz Americas Credit Jeweler. Motion, Dckt. 26. As noted by the Trustee, Debtor has not provided the court with the underlying contract evidencing the obligation, identifying the creditor, showing the date of the transaction, and providing for the grant of a security interest.
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> https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=CORP&SearchCriteria=Milestonz+Americas+Credit+Jeweler&
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> While Debtor testifies that they have listed Milestonz Americas Credit Jeweler on the Schedules, the court does not find that bare testimony, without any documentation, persuasive or credible. In light of the Secretary's of State

> information, it appears that these less sophisticated consumers have not identified who their creditor is for the claim at issue. If the court were to blindly issue the order merely because Debtor asked for it, Debtor may be in for an unhappy surprise at the end of the plan to learn that they never obtained any effective order against the real creditor."

Dckt. 60 at 2.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor's Attorney filed a Supplemental Declaration on June 15, 2017. Dckt. 64. Debtor's Attorney states that he reviewed a billing statement provided by his client and issued by "Milestonz Americas Credit Jeweler." Dckt. 64, at 2:7–9. He used the billing address on that statement (which was also listed on the company's website at www.americascreditjeweler.com) as the address for service. He also reviewed the Secretary of State's website, found "Milestonz Jewelers, LLC," and identified John Bubica as the agent for service of process. *Id.* at 3:1–6. Debtor reviewed a Buzzfile report for Milestonz Jewelers LLC and learned that John Bubica is listed as President of Milestonz Jewelry located at 6160 Florin Road, Sacramento, California—the same address on Debtor's billing statement. Debtor's Attorney asserts that the Motion was served through certified mail on the agent for service of process as called for at his address.

Debtor provided various exhibits in support, including:

A. August 31, 2016 Billing Statement from Milestonz (Exhibit C);

B. Copies of Milestonz's main webpage and contact page (Exhibits D & E);

C. California Secretary of State details for Milestonz (Exhibits, F–H);

D. Buzzfile Report for Milestonz Jewelry (Exhibit I); and

E. Certified Mail Receipt and Tracking Results (Exhibits J & K).

Dckt. 65.

DISCUSSION

Debtor asserts that the lien on the Property secures a purchase-money loan incurred on January 1, 2015, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $2,835.73.

This bankruptcy case was filed on April 19, 2017. The deadline for creditors filing claims is August 23, 2017. Notice of Chapter 13 Bankruptcy, Dckt. 12. However, that deadline is an impediment to Debtor being able to expeditiously confirm a Chapter 13 Plan which provides for Creditor's claim as a Class 2 (§ 506(a) valuation) claim.

The Creditor against whom relief is requested is "Milestonz Americas Credit Jeweler," nobody else. Motion, Dckt. 26. The question becomes whether choosing to use the name "Milestonz Americas Credit Jeweler" is "close enough" for this court to issue an effective, enforceable order against Milestonz Jewelers, LLC, the entity that appears to be the actual creditor.

Debtor did not include a copy of the contract upon which the claim at issue is based—either with the original Motion or with the supplemental exhibits. Many of the supplemental exhibits are copies of webpages. Dckt. 65. Also included is a copy of the Secretary of State website reporting the existence of Milestonz Jewelers, LLC. Exhibit F, *Id.*

As the Motion was filed, it contains a "misnomer," the name of the person against whom relief is sought. It appears that counsel for Debtor used a business slogan from a billing statement rather than making sure that the creditor was correctly identified. Though this issue was identified, Debtor has continued down the path of getting an order which, on its face, would not apply to the creditor. The court will not issue such an order.

Though not identified by Debtor, the Federal Rules of Civil Procedure provide a mechanism for a party to correct such a misnomer. Federal Rule of Civil Procedure 15 allows a plaintiff to amend the complaint to correct an error in a defendant's name. *Roberts v. Michaels*, 219 F.3d 775, 779 (8th Cir. 2000). That includes a situation where the right party is sued, but the wrong name is used. *Id.*

Here, the evidence presented by Debtor is that Milestonz Jewelers, LLC does business with its consumer customers using the name "Milestonz Americas Credit Jeweler." Exhibit C, billing statement with the names "Milestonz Americas Credit Jeweler and "Milestonz Jewelers" (special message at upper right center of billing statement), Dckt. 65. Debtor's counsel has provided his declaration stating his investigation into the connection between Milestonz Jewelers, LLC and the Milestonz Americas Credit Jeweler listed on the billing statement. Dckt. 64. The pleadings identifying the transaction for the purchase of jewelry, the parties, and the relief requested has been served on both "Milestonz Americas Credit Jeweler" and Milestonz Jewelers, LLC (though the agent for service of process). Cert. of Serv., Dckts. 30 (original pleadings) & 66 (supplemental pleadings).

The court is satisfied that: (1) the real name of the creditor is Milestonz Jewelers, LLC, (2) Milestonz Jewelers, LLC has received notice that the relief is requested against it, and (3) the relief should be granted.

Creditor's secured claim is determined to be in the amount of $1,500.00, 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 Secured Claim filed by Calvin Cooper and Tawana Cooper ("Debtor") having been presented to the court, the Motion having been amended pursuant to Federal Rule of Civil Procedure 15, as made applicable by the court pursuant to Federal Rule of Bankruptcy Procedure 9014(c) to name the creditor to be Milestonz Jewelers, LLC, 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 Milestonz Jewelers, LLC, dba Milestonz Americas Credit Jeweler ("Creditor") secured by an asset described as wedding rings ("Property") is determined to be a secured claim in the amount of $1,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $1,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

5. 17-22606-E-13 DPC-1 | **CALVIN/TAWANA COOPER** **Ronald Holland** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-30-17 [45]**

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 Not Provided. A Proof of Service has not been filed for this Objection. 14 days' notice is required.

The Objection to Confirmation of Plan was not 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 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.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that it relies upon the court granting motions to value claims.

No Proof of Service was filed with the Objection. The Declaration of Christina Lloyd was filed twice. Dckts. 47 & 48. Without evidence that the necessary parties have been served, the Objection is overruled.

Additionally, on the merits, the basis of the Objection has been resolved—the court has granted the motions to value the secured claims of Milestonz Jewelers, LLC, dba Milestonz Americas Credit Jeweler.

The Objection to Confirmation is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by 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 is overruled. 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.

6. 13-34713-E-13 DAVID/RAMONA TAGUE MOTION TO MODIFY PLAN
SDB-1 W. Scott de Bie 5-12-17 [38]

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 12, 2017. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Response indicating non-opposition on June 13, 2017. Dckt. 53. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 12, 2017, is confirmed. Debtor's Counsel 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.

7. **17-22014-E-13** **OMID FANAIAN** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
5-24-17 [24]

Final Ruling: No appearance at the June 27, 2017 hearing is required.

The case having previously 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

8. **17-22014-E-13** **OMID FANAIAN** **OBJECTION TO DEBTOR'S CLAIM OF**
DPC-2 **Pro Se** **EXEMPTIONS**
5-24-17 [28]

Final Ruling: No appearance at the June 27, 2017 hearing is required.

The case having previously 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

9.	**17-22014-E-13** **RMP-1**	**OMID FANAIAN** **Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY SETERUS, INC.** **5-18-17 [20]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

The case having previously 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

10. 17-22620-E-13 JEANNIE REES
DPC-1 David Foyil
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-30-17 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 30, 2017. 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 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 Plan relies on Debtor filing a Motion to Value Collateral for "Citimortgage."

B. The Plan payments are mathematically inconsistent with what the Plan proposes to pay in attorney fees and to unsecured creditors.

C. The Plan is not signed by either Debtor or Debtor's attorney.

The Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of "Citimortgage." Debtor has failed to file a Motion to Value the Secured Claim of "Citimortgage," however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Plan proposes a $100 per month payment for thirty-six months for a total of $3,600.00 in plan payments. The Plan also proposes paying $2,600.00 in attorney fees and an estimated $43,227.41 to unsecured creditors, however. Debtor cannot pay the Plan payments and also comply with the Plan; thus the Plan does not comply with applicable law. 11 U.S.C. § 1325(a)(1) & (6).

The Plan filed on April 20, 2017, is not signed by either Debtor or Debtor's attorney. The Trustee asks, pursuant to Local Bankruptcy Rule 9004(c)(1)(D), that Debtor's attorney provide him with the originally signed document for review.

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 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. 17-22620-E-13 JEANNIE REES
RMP-1 David Foyil

OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL LLC
6-5-17 [19]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 June 5, 2017. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the 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.

Ditech Financial LLC, Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. The Plan does not propose to cure pre-petition arrearages owed to Creditor.

B. Debtor may be unable to pay both the Plan payments and Creditor's arrearages.

Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,518.73 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.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that Debtor only has a net income of $143.33 per month such that Debtor may be unable to pay both the $100.00 per month Plan payment and Creditor's arrearages. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 a creditor with 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. 17-22021-E-13 JGD-1 | **CYNTHIA WIGART** **John Downing** | **MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING 6-1-17 [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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 1, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Secured Claim of Ocwen Loan Servicing, LLC is denied without prejudice.

The Motion to Value filed by Cynthia Wigart ("Debtor") to value the "secured lien" of Ocwen Loan Servicing, LLC ("Creditor") is accompanied by Debtor's declaration. Motion, p. 1:19.5–20.5. Debtor is the owner of the subject real property commonly known as 1694 Arapahoe Street, South Lake Tahoe, California ("Property"). Debtor seeks to value the Property at a fair market value of $265,000.00 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).

LACK OF REAL PARTY IN INTEREST BEFORE THE COURT

At the June 6, 2017 hearing, the court addressed an objection to confirmation in this case. Dckt. 32. While discussing that objection, the court explained to Debtor that the real party in interest for the Second Deed of Trust does not appear to be stated in this case. The court noted that the proposed plan provides for a secured claim of Ocwen Loan Servicing in Class 2, but professionals commonly know that

Ocwen Loan Servicing, LLC, provides third-party loan servicing work for banks, financial institutions, trustees, and other investors who are the actual creditors. *Id.* Debtor has not provided the court with any evidence that Ocwen Loan Servicing, LLC, is an actual creditor in this case.

Buried in paragraph 5 of the Motion is the statement, "Debtor is informed and believes that the holder of the rights to the second deed of trust is Wilmington Trust, N.A., as successor indenture Trustee to Citibank, N.A. as Indenture Trust for Saco l Trust 2006-8." Motion, p. 2:7–10; Dckt. 23. No relief is requested against Wilmington Trust, N.A. et al. Additionally, Debtor is merely informed and believes that Wilmington Trust, N.A. et al. somehow holds merely the "rights to" the second deed of trust. Who owns the note (or holds a note endorsed in blank) is the real party in interest creditor against whom relief must be sought. 11 U.S.C. § 101(10) & (5); *Cervantes v. Countrywide Home Loans, Inc., et al*, 656 F.3d 1034 (9th Cir. 2011).

The court does not and cannot issue orders in the names of mere placeholders. The court exposed this looming impediment to the exercise of federal judicial power at the June 6, 2017 hearing, commenting that valuing the claim of Owen Loan Servicing, LLC as presented in this Motion would be having the court issue a constitutionally void order against a party who is not the real party in interest (i.e., the creditor).

Debtor has not amended the Motion to reflect the name of the real creditor and has not served the real creditor.

Without a real party in interest before the court, there is no appropriately identified creditor with a claim for the court to value. The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Cynthia Wigart ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

13. **17-22021-E-13** **CYNTHIA WIGART** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **John Downing** **5-9-17 [19]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 9, 2017. 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 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.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor may not be able to make plan payments or comply with the Plan.

C. Debtor's plan fails the Chapter 7 liquidation analysis.

D. Debtor fails to provide her full legal name on the petition.

The Trustee's objections are well-taken.

The Trustee asserts that Debtor is $135.00 delinquent in plan payments, which represents one month of the $135.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a Motion to Value Collateral of Ocwen Loan Servicing. While Debtor has filed such a motion, it has been denied. The court has not been presented that Ocwen Loan Servicing, LLC is actually the creditor having a claim for which the court could exercise the federal judicial power. Debtor's plan does not have sufficient monies to pay the claim. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's plan fails the Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4). Debtor's non-exempt equity totals $8,200.00, and Debtor is proposing a 1% dividend to unsecured claims, or approximately $1,080.00 to unsecured claims. Non-exempt assets include $7,800.00 from a Ford F350 and $400.00 from a snowblower.

Debtor failed to provide her full legal name on the petition filed on March 28, 2017. At the Meeting of Creditors held on May 4, 2017, Debtor's identification card listed the name Cynthia Christine Wigart. The petition lists Cynthia C. Wigart.

DEBTOR'S RESPONSE

Debtor filed a late Response on June 1, 2017. Dckt. 30. Debtor asserts that she is current on plan payments, that she has filed a motion to value secured claim, that she has amended Schedules A, B, and C, and that she has amended the petition to include her middle name.

JUNE 6, 2017 HEARING

At the hearing, the court discussed how it had not been presented with a real party in interest because Ocwen Loan Servicing, LLC, is known to provide third-party servicing work and not be the actual creditor. The court continued the hearing to 3:00 p.m. on June 27, 2017. Dckt. 34.

TRUSTEE'S STATUS UPDATE

The Trustee filed a Status Update on June 14, 2017. Dckt. 36. The Trustee states that the delinquency, liquidation analysis, and identity grounds have been resolved. All that remains is the Trustee's Objection relying upon the court granting a motion to value a secured claim.

DISCUSSION

The Trustee has acknowledged that three of his four grounds for objecting have been resolved. The final ground—that the Plan relies upon a motion to value secured claim—was heard and denied without prejudice at the June 27, 2017.

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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and Debtor's Chapter 13 Plan filed on March 28, 2017, is not confirmed. The denial of confirmation is without prejudice to Debtor seeking to have this Plan confirmed at a future date.

14. **17-22324-E-13 AP-1** | **MARIA VEGA DE MENDOZA** **Mohammad Mokarram** | **OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WELLS FARGO BANK, N.A.** **5-16-17 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 16, 2017. 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 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.

Wells Fargo Bank N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. The Plan does not propose to cure pre-petition arrearages owed to Creditor.

Creditor's objection is well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,081.92 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a creditor with 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.

15. **17-21525-E-13** **CHERI GOETZ** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Eric Vandermey** **4-26-17 [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 April 26, 2017. By the court's calculation, 41 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 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 2:00 p.m. on July 26, 2017.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. The Plan relies on a pending Motion to Value the Secured Claim of Trinity Financial Services on June 13, 2017.

B. Debtor cannot afford the plan payment.

The Trustee's objections are well-taken.

Debtor proposes to value the secured claim of Trinity Financial Services, LLC, for a Second Deed of Trust, to reduce the secured claim from $71,339.00 to $0.00. That Motion to Value was continued to 3:00 p.m. on June 13, 2017.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meting of Creditors held on April 20,2017, that she failed to list an expense on Schedule J for real estate taxes and insurance. Debtor stated that her insurance expense was $78.00 per month and her real property tax was $3,800.00 per year, which is $316.67 per month. Debtor is proposing a plan payment of $120.00 per month for thirty-six months. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

JUNE 6, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on June 27, 2017. Dckt. 49.

DISCUSSION

The motion to value that is referenced in the Trustee's Objection is scheduled to be heard at 2:00 p.m. on July 26, 2017. Dckt. 53. Continuing this matter to be heard in conjunction with that motion is appropriate to fully rule on this Objection. Continuing the hearing will also allow Debtor to address the Trustee's concerns relating to feasibility. The hearing is continued to 2:00 p.m. on July 26, 2017.

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 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 the Plan is continued to 2:00 p.m. on July 26, 2017.

16. **17-21525-E-13** **CHERI GOETZ**
PPR-1 **Eric Vandermey**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR CAPITAL ONE, N.A.
4-27-17 [35]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 27, 2017. By the court's calculation, 40 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court continued the matter for a second hearing on June 27, 2017.

The Objection to Confirmation of Plan is sustained.

Capital One, N.A., Creditor with an asserted-secured claim, opposes confirmation of the Plan on the basis that the Plan does not pay Creditor's secured claim fully and is not feasible because it does not include an arrearage dividend.

Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. *See* Exhibits, Dckt. 39. Creditor provides the declaration of Casey Kehr as evidence of the asserted claim. Dckt. 38. 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.

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The proposed payment of $120.00 for thirty-six months will not cure Creditor's secured claim. Thus, the Plan may not be confirmed.

JUNE 6, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on June 27, 2017, to be heard in conjunction with an Objection to Confirmation filed by Trinity Financial Services, LLC. Dckt. 48.

DISCUSSION

This Objection to Confirmation is based on the Chapter 13 Plan failing to provide for the cure of the pre-petition arrearage of $17,083.30. Though a proof of claim has not yet been filed by Creditor, Casey Kehr provides testimony as evidence of the pre-petition arrearage. Declaration ¶ 8, Dckt. 38.

The proposed Chapter 13 Plan provides for only a $120.00 per month plan payment for thirty-six months. Plan, ¶ 1.01.; Dckt. 5. Creditor's claim is provided for as a Class 4 Claim, providing for Debtor to only pay a currently monthly mortgage installment payment of $1,025.00, with no arrearage. Plan, ¶ 2.11. This treatment also provides that if the Plan is confirmed, the automatic stay will be terminated to allow Creditor to "exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." *Id.*

Based on Debtor's finances, the Plan proposes to pay a 0.00% dividend to creditors holding general unsecured claims. Plan, ¶ 2.15; *Id.* Debtor's Schedule I states Debtor having Monthly Income of $3,083.00 (Dckt. 1 at 26) and Schedule J lists expenses (for Debtor and a minor child) of ($2,963.00) (*Id*. at 27–28). The Expenses include $1,205.00 for the current monthly mortgage installment.

It appears that the $120.00 in plan payments (which total $4,320.00) will be exhausted paying Debtor's counsel $4,000.00 in fees and the Chapter 13 Trustee's fees of $302.40 (estimated at 7% of the monthly plan payments).

Debtor has shown, based on the uncontradicted evidence presented by Creditor, that Debtor has improperly classified Creditor as having a Class 4 Claim (for which there can be no defaults on the claim). Debtor has also shown that there is not "money in the budget" to fund a plan to cure a $17,083.30 over thirty-six months (additional $474.52 monthly payment required) or over sixty months (additional $284.72 monthly payment required).

It appears that the $120.00 per month plan payment may well have been a constructed number to ensure that only Debtor's counsel's fees are paid and that Debtor has not attempted to compute Debtor's projected disposable income 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 a Creditor with 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. 17-23227-E-13 SDB-1 | **CHRISTINE STRYBOS** / **W. Scott de Bie** | **MOTION TO VALUE COLLATERAL OF AMERICAN CREDIT ACCEPTANCE** / **5-25-17 [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.

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 25, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Secured Claim of American Credit Acceptance, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $4,751.00.

The Motion filed by Christine Strybos ("Debtor") to value the secured claim of American Credit Acceptance, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Ford Freestar SE ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $4,751.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

The Trustee filed a Response on June 13, 2017. Dckt. 20. The Trustee asserts that Creditor has not filed a claim of $13,571.70 for the 2006 Ford Freestar SE, but the claim is provided for in Section 2.09(b) of the Plan in the amount of $13,571.70, with 4% interest and a monthly dividend of $141.00.

CREDITOR'S PROOF OF CLAIM

On June 14, 2017, Creditor filed a proof of claim of $13,890.07 secured by a lien on Debtor's 2006 Ford Freestar SE. Claim 2. The filing of this claim cures the discrepancy listed in the Trustee's Response.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on May 1, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,890.07, according to Proof of Claim 2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $4,751.00, 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 Secured Claim filed by Christine Strybos ("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 American Credit Acceptance, LLC ("Creditor") secured by an asset described as a 2006 Ford Freestar SE ("Vehicle") is determined to be a secured claim in the amount of $4,751.00, 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 $4,751.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

18. **17-22333-E-13** **THOMAS WARREN** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Lucas Garcia** **PLAN BY DAVID P. CUSICK**
5-30-17 [19]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 30, 2017. 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 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.

Daivd Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. Tax returns have not been provided to the Trustee.

B. Pay advices have not been provided to the Trustee.

C. Thomas Warren ("Debtor") cannot make the payments under the Plan or comply with the Plan because there is no evidence of $600.00 being provided in rent from a roommate.

DEBTOR'S REPLY

Debtor filed a Reply on June 16, 2017. Dckt. 24. Debtor argues that he has not been required to file tax returns for approximately ten years, and there are no records to provide. Debtor reports that his only income is from Social Security, so there are no paystubs to show to the Trustee.

Regarding the Trustee's observation about rental income, Debtor responds that he lived with a caretaker up until the petition filing date. That caretaker contributed money informally to support Debtor's needs. Debtor and the caretaker decided to set $600.00 per month as an official amount to track the various contributions, but no bank statement from Debtor would show those payments.

DECLARATION OF LORI CHILDE

Lori Childe filed a Declaration on June 16, 2017. Dckt. 26. Ms. Childe states that she is Debtor's roommate and live-in caretaker. She reports that she manages Debtor's bank accounts and has provided several hundred dollars per month for various expenses on Debtor's behalf. After conferring with Debtor's Attorney, the parties decided to use $600.00 per month as an average for the contributions Ms. Childe has made, even though that amount does not reflect a written rental agreement.

DISCUSSION

Debtor has provided explanations in his Reply that he has not filed taxes for approximately ten years and that his only income is from Social Security. Those two explanations resolve the Trustee's objections for not having been provided tax returns and pay advices.

As to the Plan's feasibility, Debtor and Ms. Childe have explained that $600.00 per month is not actually being provided to Debtor as rental income that can be contributed to the Plan. Ms. Childe explains that $600.00 per month represents an average that she spends for Debtor's expenses based upon her role as live-in caretaker. No rental income that would appear on bank statements appears to exist, which resolves the Trustee's final objection.

The Trustee's Objection has been resolved. The Plan complies 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 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 Debtor's Chapter 13 Plan filed on April 21, 2017, 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.

19. 16-26438-E-13 MWB-1 | **BILLY TENBERG** **Mark Briden** | **CONTINUED MOTION TO CONFIRM PLAN** **1-31-17 [41]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 31, 2017. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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.

Billy Tenberg ("Debtor") seeks confirmation of the Amended Plan that was filed to include previously unaccounted-for debts. Dckt. 43. The Amended Plan reduces monthly payments for attorneys' fees, adds creditors to their respective classes, and reduces the dividend to unsecured claims by six percent. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 22, 2017. Dckt. 49.

The Trustee asserts that Debtor has not disclosed the changes in the Amended Plan in the Motion. The Motion therefore does not state with particularity the grounds upon which relief is sought. The Trustee notes that the new plan differs for the following reasons:

A. Monthly payment for attorney fees has been reduced by $100.00;

B. Bank of America has been added to Class 1 for a Second Deed of Trust to be paid $135.00 per month, and arrears are to be paid forty-seven percent interest;

C. Wells Fargo has been added to Class 2(a) for $4,030.60 secured by jewelry to be paid $50.00 per month, at four percent interest;

D. Wells Fargo has been added to Class 4 for a First Deed of Trust to be paid $1,800.00 per month directly by Debtor; and

E. The dividend to unsecured claims has been reduced to no less than eight percent, down from no less than fourteen percent.

The Plan payments remain $600.00 per month for sixty months. No amended Schedule I or J or Statement of Financial Affairs has been filed. Schedule C was amended and now includes a $130.00 claim in Jewelry that had not been listed on Schedule B.

The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay an eight-percent dividend to unsecured claims, which total $81,069.88. Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) is unclear with no documentary evidence to support his declaration statement that he averages $5,000.00 per month on an annual basis.

The Trustee asserts that Debtor has presented 1099-C forms, from 2014 and 2015, along with a document supposedly relating to an accounting of Debtor's income. Debtor does not explain in Debtor's Declaration the origins of the document representing an accounting of Debtor's gross income.

The Trustee notes that if this document is correct, however, then Debtor has income exceeding what was claimed on the Statement of Financial Affairs. Also, Schedule I lists a gross income of $5,000.00 from wages and $1,100.00 from Social Security, which does not add up to $5,000.00 per month of gross income.

REQUEST FOR CONTINUANCE

Debtor requested that this matter be continued on March 14, 2017. Dckt. 55. Debtor requested a continuance to provide time to compile the financial records requested by the Trustee. The court granted Debtor's request on March 14, 2017, and continued the hearing to 3:00 p.m. on April 25, 2017. Dckt. 57.

SUPPLEMENTAL FILING

Debtor filed a supplemental document entitled Business Income and Expenses on April 17, 2017. Dckt. 63. The document estimates $13,243.00 in future gross monthly income and $8,243.00 in future monthly expenses, netting $5,000.00 per month in income.

The listed monthly expenses are:

A.	$340.00	Worker's Compensation
B.	$625.00	Other Taxes
C.	$110.00	Utilities
D.	$740.00	Repairs and Maintenance
E.	$500.00	Vehicle Expenses
F.	$1,040.00	Travel and Entertainment
G.	$100.00	Equipment Rental and Leases
H.	$200.00	Legal/Accounting/Other Professional Fees
I.	$460.00	Insurance
J.	$220.00	Employee Benefits (e.g., pension, medical, etc.)
K.	$100.00	Laundry
L.	$1,600.00	Fuel
M.	$158.00	Licensing
N.	$50.00	Scale Fees
O.	$2,000.00	Labor

APRIL 25, 2017 HEARING

At the hearing, the parties agreed to continue the hearing to address the financial issues. Dckt. 65. The court continued the hearing to 3:00 p.m. on June 27, 2017. Dckt. 67.

DECLARATION OF JAMES WEAVER

James Weaver filed a Declaration on May 18, 2017. Dckt. 68. Mr. Weaver asserts that he holds power of attorney for Debtor. *Id.* at 1:19–20. A signed and notarized copy of the power of attorney form dated January 8, 2013, is provided as Exhibit D. Dckt. 69.

Mr. Weaver states that he is a bookkeeper with All Seasons Moving and Storage DBA Don Hemsted and that Debtor is employed by the company as an independent contractor driving moving vans throughout the United States. He states that Debtor "is paid 52% of the Gross income for approximately 80% of contracts[,] . . . 54% for approximately 10% of contracts[, and] . . . 69% for approximately 10% of

contracts." Dckt. 68, at 2:11–14. He states that Debtor incurs out-of-pocket expenses (called "Accessorials") for fuel, labor, packing and unpacking assets, and shuttle costs.

TRUSTEE'S AMENDED RESPONSE

The Trustee filed an Amended Response on May 23, 2017. Dckt. 71. The Trustee states that he no longer opposes confirmation because Debtor addressed six outstanding issues and Mr. Weaver provided supplemental information on the docket. The Trustee believes that Debtor has the income he represented to fund the Plan.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee no longer opposes confirmation. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by 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 January 31, 2017, is confirmed. Debtor's Counsel 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.

20. 17-22742-E-13 DPC-1 — SHARON DONNELL, Mikalah Liviakis — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 5-30-17 [22]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 27, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

21. **16-26043-E-13** **SUSAN GEDNEY** **CONTINUED MOTION TO EMPLOY**
TAG-5 **Aubrey Jacobsen** **JCL REALTY, INC. AS REALTOR(S)**
4-11-17 [99]

APPEARANCE OF TED GREENE, AUBREY JACOBSEN, SUSAN GEDNEY, AND DAWN ROBINSON REQUIRED FOR THE JUNE 6, 2017 HEARING

NO TELEPHONIC APPEARANCES PERMITTED

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is denied.

Susan Gedney ("Debtor") seeks to employ realtor Dawn Robinson of JCL Realty, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of a realtor to assist with short selling her property.

Debtor argues that the realtor's appointment and retention is necessary because the Chapter 13 Plan contemplates the short sale of her property.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 105. The Trustee states that there is a pending adversary proceeding (No. 17-02006) dealing with a prior real estate listing agreement between Debtor and realtor Sarah Wright and broker Gabriel Witkin.

The Trustee notes that JCL Realty, Inc. is owned by Ted Greene who is also the owner of Law office of Ted A. Greene, Inc., who represents Debtor in this Chapter 13 case.

The Trustee does not oppose the Motion.

MAY 9, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017, specially set with the court's Chapter 13 dismissal calendar. Dckt. 119. The court ordered Ted Greene, Aubrey Jacobsen, Susan Gedney, and Dawn Robinson to appear personally at the continued hearing. The court suspended the application of Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041 as made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014(c), with dismissal of the Motion only by court order.

ORDER CONTINUING HEARING

On May 9, 2017, the court granted Debtor's *ex parte* request for the hearing to be continued, and the court continued the hearing to 3:00 p.m. on June 6, 2017. Dckt. 116.

MAY 31, 2017 HEARING

Due to a mistake, the continued hearing was set for the May 31, 2017 calendar and the June 6, 2017 calendar. At the May 31, 2017 hearing, the court announced that the matter would be heard on June 6, 2017, and the court reissued its order to appear and reannounced suspension of Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041. Dckt. 129.

ORDER CONTINUING HEARING

On June 2, 2017, the court granted Debtor's *ex parte* request for the hearing to be continued, and the court continued the hearing to11:00 a.m. on June 15, 2017. Dckt. 126.

JUNE 6, 2017 HEARING

At the hearing, the court continued the hearing to 11:00 a.m. on June 15, 2017, pursuant to granting the *ex parte* request to continue the hearing. Dckt. 136.

ORDER RESETTING HEARING

On June 14, 2017, the court issued an Order Resetting Hearing and scheduled the hearing on this Motion for 3:00 p.m. on June 27, 2017. Dckt. 146.

JUNE 15, 2017 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 27, 2017, in line with its Order Resetting Hearing. Dckt. 148.

DISCUSSION

Dawn Robinson, realtor with JCL Realty, Inc., testifies that she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. She testifies that her fee for selling Debtor's property will be 3.5% of the purchase price.

This case has had an interesting dynamic in which the real estate broker that Debtor hired pre-petition was determined post-petition to "not be qualified." No mention was made during the long, multiple hearings that the new, better realtor was one owned by Debtor's attorney, Ted Greene. Though Mr. Greene has a new, young associate appearing as attorney of record in this case, it is his law firm that has Debtor as the client. Mr. Greene's name appears on all the pleadings.

The court is concerned whether Mr. Greene and his firm can fulfill their duties as counsel to the Debtor, who is the fiduciary to the bankruptcy estate and will be the fiduciary under a Chapter 13 Plan (if one can be confirmed). The court is unsure how Mr. Greene and his firm can represent Debtor and advise Debtor as to the performance by Mr. Greene's real estate company, advocating for her with Mr. Greene's real estate company.

The pleadings also do not contain evidence showing compliance with California Rule of Professional Conduct 3-300.

Debtor filed a Motion to Sell Property on May 30, 2017, with JCL Realty, Inc., included as the listing agent. Dckt. 120; Exhibit A, Dckt. 124. Debtor states in that Motion that she has withdrawn the Motion to Employ JCL Realty, Inc., however, and will be filing a new motion to employ another realtor. Despite Debtor stating that she has withdrawn the present Motion, the court has suspended the use of Federal Rule of Civil Procedure 41(a)(1), and Debtor will not be able to withdraw this Motion without court approval.

At the continued hearing, the parties reported **xxxxx**.

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

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

The Motion to Employ 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 the Motion to Employ is denied.

22. 16-26043-E-13 TAG-8 | **SUSAN GEDNEY** **Aubrey Jacobsen** | **MOTION TO EMPLOY CENTURY 21 AS REALTOR(S)** **6-6-17 [130]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2017. By the court's calculation, 21 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 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.

Susan Gedney, Debtor, seeks to employ Edda Nix, Broker, of Century 21 pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to sell real property commonly known as 16560 Leafwood Court, Meadow Vista, California.

Debtor argues that Broker's appointment and retention is necessary to effectuate the short sale of property that Debtor's plan anticipates. Debtor seeks to compensate Broker with a six percent commission from the purchase price, which will be split evenly with the buyer's real estate agent.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 13, 2017. Dckt. 143. The Trustee states that he has no opposition to the Motion. He reports that there is a pending a Motion to Employ JCL Realty, Inc., related to the same proposed sale of property.

DISCUSSION

Edda Nix, a Realtor of Century 21, testifies that she has agreed to six percent commission to list and sell Debtor's real property. Ms. Nix testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Edda Nix of Century 21 as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 134. 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 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 Edda Nix as Broker for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 134.

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

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

23. **16-26043-E-13** **SUSAN GEDNEY** **MOTION TO SELL**
TAG-7 **Aubrey Jacobsen** **5-30-17 [120]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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 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 granted.

The Bankruptcy Code permits Susan Gedney, 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 commonly known as 16560 Leafwood Court, Meadow Vista, California ("Property").

The proposed purchasers of the Property are Genevieve Greever and Gene Greever, and the terms of the sale are:

A. Purchase price of $360,000.00, all cash.

B. No net proceeds to Movant.

C. All costs of sale (e.g., escrow fees, title insurance, and commissions) will be paid fully from the sale proceeds.

D. Movant will not relinquish title and possession of the proper before the purchase price is paid fully.

E. Seller may occupy the property for up to sixty days past closing of escrow at no charge, if needed.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 13, 2017. Dckt. 140. The Trustee does not oppose the Motion, but he makes two points.

First, Deutsche Bank filed Claim 3 on January 18, 2017, claiming a total of $496,546.69, including arrears of $121,553.52, secured by the Property. The Trustee cannot determine that the claim will be paid in accordance with the Plan if there is no evidence that Deutsche Bank will accept less than full payment of its claim. The Trustee notes that the Second Amended Plan references a stipulation with the bank, but that stipulation has not been provided to the court. A Notice of Mortgage Payment Change was filed on May 24, 2017, however.

On June 22, 2017, a Stipulation between Debtor rand Deutsche Bank was filed. Dckt. 151. That Stipulation provides for an adequate protection payment in an unstated amount. The Second Amended Plan provides for a monthly adequate protection payment in the amount of $2,291.00 per month for the undersecured Deutsche Bank claim. With such adequate protection payment, Deutsche Bank agrees to allow Debtor six months to sell the property, and Deutsche Bank will consider any proposed short sale in good faith.

The Trustee requests that any disbursement of funds to Deutsche Bank be paid by him through the check swap process. So far, the Trustee has paid $7,910.00 to Deutsche Bank. The Trustee requests that he be the party disbursing monies toward the claim with payment made out of escrow to the Trustee, and he will provide a check to escrow for payment to Deutsche Bank.

DISCUSSION

A review of Proof of Claim 3 and the May 24, 2017 Notice of Mortgage Payment Change shows that the total monthly payment has *increased* from $2,917.53 to $2,983.56. *Compare* Proof of Claim 3, *with* Notice of Mortgage Payment Change, filed May 24, 2017. Debtor's proposed Amended Plan states in Section 6.04(e) that Deutsche Bank will receive payments of $2,291.00 "per the Stipulation," but that stipulation has not been provided, and the bank's Notice of Mortgage Payment Change that increased monthly payments indicates that such a stipulation may not exist. Nevertheless, Deutsche Bank has not presented any opposition to the proposed sale of the Property.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it satisfies the claims secured by the Property. Additionally, the Trustee has requested that he receive payments from escrow that will be distributed to Deutsche Bank. That is a reasonable request because the Trustee has disbursed funds to the bank already, and he is responsible for accounting for the bankruptcy estate.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $21,600.00. Exhibit B, Dckt. 124. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

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 Susan Gedney, Chapter 13 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 Susan Gedney, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Genevieve Greever and Gene Greever or nominee ("Buyer"), the Property commonly known as 16560 Leafwood Court, Meadow Vista, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $360,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 124, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> C. For the payment of the secured claim of Deutsche Bank National Trust Company, Trustee for Carrington Mortgage Loan Trust, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**
>
> D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> E. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Chapter 13 Debtor's broker, Edda Nix of Century 21, and to Buyer's broker.

F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

24. **16-26043-E-13** **SUSAN GEDNEY** **MOTION TO CONFIRM PLAN**
TAG-4 **Aubrey Jacobsen** **5-3-17 [109]**

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. FN.1.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 3, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is xxxxx.

Susan Gedney ("Debtor") seeks confirmation of the Amended Plan because she missed payments and needed to provide differently for Deutsche Bank's claim. Dckt. 111. The Amended Plan proposes a plan term of sixty months and provides for Deutsche Bank's Class 1 claim by attempting to short sell real property. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 13, 2017. Dckt. 137. The Trustee argues that prior plan payments may not be authorized by the Amended Plan, specifically payments

to Deutsche Bank. The Trustee had been paying adequate protection payments of $1,582.00 since January 25, 2017, under the prior proposed plan—with a total of $7,910.00 paid so far. The Trustee argues that $7,910.00 paid already may not be authorized by the Plan.

According to the Trustee, the Amended Plan fails to specify how the Deutsche Bank's claim will be paid upon sale of real property. The Trustee states that he can submit a disbursement check to the escrow company for funds paying the bank's secured claim in exchange for payment of the Trustee's demand—a check swap.

The Trustee received a Notice of Mortgage Payment Change on May 24, 2017, indicating that as of July 1, 2017, Class 1 payments will increase to $2,983.56. Debtor proposes in the Amended Plan that Class 1 will be paid $2,291.00 pursuant to an unprovided stipulation with the bank.

The Trustee believes that the Amended Plan conflicts with itself regarding adequate protection payments to Deutsche Bank. The Trustee notes the following:

A. In Section 6.3(a), Debtor proposes that payments to Deutsche Bank begin on April 25, 2017, and continue until escrow is closed, at which time, Debtor will modify the Plan.

B. In Section 6.3(d), Debtor proposes that if the short sale has not completed within six months of confirmation, then the Class 1 claim will be moved to Class 3.

C. Section 6.4(d) repeats Section 6.3(d).

D. In Section 6.4(e), Debtor proposes that payments of $2,291.00 begin on April 25, 2017, and continue until terminated by–

1. A modified plan,

2. An order modifying the automatic stay, or

3. By further order of the court.

The Trustee argues that Debtor cannot afford plan payments or comply with the Amended Plan while the Plan relies upon the court granting two motions: a Motion to Sell (TAG-7) and a Motion to Employ (TAG-8). 11 U.S.C.§ 1325(a)(6).

DISCUSSION

At the hearing, Debtor proposed the following amendment to authorize the Trustee's payments to Deutsche Bank: **xxxxxxxxxxx**.

Regarding the Trustee's proposed check swap, the court has authorized a check swap procedure on Debtor's Motion to Sell at the June 27, 2017 hearing.

At the hearing, Debtor proposed the following amendments to clarify plan terms that the Trustee believes are contradictory: **xxxxxxxxxxx**.

Confirmation of this Amended Plan relies upon the court granting Debtor's Motion to Sell (TAG-7) and Motion to Employ (TAG-8). Without granting them, the Trustee argues that Debtor will not be able to comply with the Plan or afford plan payments. The court granted those motions at the June 27, 2017 hearing, resolving that portion of the Trustee's Opposition.

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

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 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 **xxxxxxxxxx**.

25. **14-21444-E-13** **JEFFREY/ANN BROONER** **MOTION TO MODIFY PLAN**
MET-2 **Mary Ellen Terranella** **5-21-17 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2017. By the court's calculation, 37 days' notice was provided. 35 days' notice is required.

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 xxxxxxxxxxxxx.

Jeffrey Brooner and Ann Brooner ("Debtor") seek confirmation of the Modified Plan because of increased medical insurance, childcare expenses, and home repairs. Dckt. 47. The Modified Plan proposes plan payments of $102.00, for the remaining twenty-three months of the Plan. Further, the Plan calls for Debtor to keep tax refunds, with those funds going toward home repairs. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 13, 2017. Dckt. 59. The Trustee states that this Plan may not be Debtor's best effort. The Trustee states that the funding of the home repairs is ambagious. Further, he notes that Debtor proposes a childcare expense of $270.00 per month when it was $0.00 previously. The Trustee argues that without the proposed expenses Debtor would be able to pay the monthly plan payment in full.

DISCUSSION

The Trustee alleges that the Plan should not be confirmed because it violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a zero percent dividend to unsecured claims, though Debtor's projected disposable income without the proposed expenses under 11 U.S.C. § 1325(b)(2) totals $672.00.

The evidence in support of confirmation begins with the joint declaration of Jeffrey Brooner and Ann Brooner, the two debtors. In it they testify under penalty of perjury that:

A. The Original Confirmed Chapter 13 Plan in this case requires $539.00 per month payments for thirty-six months. Under the Confirmed Plan, Debtor is paying two claims secured by vehicles and making at least a 0% dividend to creditors holding general unsecured claims. Declaration, p. 2:1–3; Dckt. 49.

B. Because Debtor is over median income, the Trustee objected to a thirty-six month plan. The order confirming the plan included amendments extending the term to sixty months and requiring Debtor to turn over all tax refunds to the Trustee. *Id.*, 2:3–6.5.

C. Debtor purchased a home in 2004 and has been remodeling it since that time. The home is more than 120 years old. *Id.*, 2:7.5

D. Debtor's children are now 6 and 3 ½ years old (this case being filed three years ago). Debtor believes that repairs to the home must be made to be safe. That includes completing stairs to the front door, stairs to the rear exit, replacing sections of siding, repairing or replacing broken windows, and repairing a leaking door. Further, there are areas of the house with no flooring, and some electrical work is required. *Id.*, p. 2:9–15.

E. The "most pressing" repairs are estimated to cost $28,553.00. Debtor states that before filing this bankruptcy case Debtor obtained an estimate of $35,000.00 for the repairs in general. *Id.*, 2:18–22.

F. Debtor testifies that they receive "modest tax refunds each year," which total approximately $1,200.00. *Id.*, p. 2:23–24.

G. Debtor testifies that it has been "difficult" for Debtor to turn over the refunds when there are basic repairs (which well pre-date the filing of this bankruptcy case) that need to be done. *Id.*, p. 2:24–25.

H. Debtor explains an increase in expenses, including medical expenses for their children.

I. To address this, Debtor seeks to reduce the monthly play payments for the final twenty-three months to $102.00 (from the $595.00 required under the Confirmed Plan).

Debtor provides as Exhibits A, B, and C the pre-petition Appraisal Report, pre-petition photos of the property, and the pre-petition repair estimates. Dckt. 50. Looking at the photographs, they demonstrate a hazardous living environment for Debtor and Debtor's two children.

Debtor has provided updated income and expense statements as Exhibits D and E. *Id.* For Monthly Income (after withholding and deductions, including an increased health insurance expense), Debtor reports having $6,426.00 per month in take-home income. For expenses, Debtor states now having (for two adults and two small children) monthly expenses of $6,324.00. Based on that Debtor asserts having only $102.00 of projected disposable income to fund a plan.

In looking at Debtor's necessary expenses, the court notes that one is an $80.00 per month "Timeshare maintenance fees." *Id.* at 23. In addition, Debtor allocates $400.00 per month to home maintenance and repairs. *Id.* at 22.

Prior Financial Information Provided

Debtor previously confirmed a plan in this case, which was based on information provided under penalty of perjury. At the time such information was provided and the Original Plan confirmed, all of the "deficiencies" in with the property were well known.

On Schedule A, Debtor lists owning the 7th Street Property, stating that it had a value of only $325,000.00 but was encumbered by ($364,658) in debt. Dckt. 1 at 12.

On Schedule B, Debtor lists owning a "RCI timeshare - Florida; 1 week per year," with a value of $500.00. As is shown from Debtor's finances, this appears to be a "dead asset," with Debtor being financially unable to use it. *Id.* at 14.

On Schedule D, Debtor lists two creditors having deeds of trust (one having been determined to have $0.00 value as a secured claim pursuant to 11 U.S.C. § 506(a)) encumbering the 7th Street Property. *Id.* at 17. Debtor states that the 7th Street Property was purchased in 2004 for $365,000.00. Based on the value given on Schedule A of $325,000.00, Debtor asserts that this property has decreased 12% over the eleven-year period from purchase to bankruptcy filing.

The holder of the senior deed of trust, Wilmington Trust, N.A., filed Proof of Claim No. 5 for $365,304.32. Using that number, an additional $35,000.00 in repairs, and the $325,000.00 value stated by Debtor, there is a negative ($75,000.00) value to Debtor for this property which has been declining in value.

To keep this dangerous property, Debtor is paying $2,575.00 per month to the creditor holding the senior lien.

Debtor has offered no explanation as to why Debtor is paying $2,575.00 per month to continue in possession of a physically dangerous, possibly heath-impairing property, for which at least $35,000.00 will have to be spent to deal with the immediate safety issues. That is not credible on a personal or financial basis, and it makes the court question the veracity of the other statements made by Debtor.

Creditors

While Debtor's credibility is significantly impaired, the court notes that on Schedule F Debtor listed only two claims—a medical claim for $1,860.00 and a student loan for $4,000.00. Dckt. 1 at 19. There are no priority unsecured claims scheduled. *Id.* at 18. That is consistent with the proofs of claims filed, with all being secured claims, except for the junior secured claim that has a value of $0.00, with the balance of $49,315.00 being deemed unsecured for purposes of this case and plan.

The Chapter 13 Plan accomplishes two main goals. First, it allows Debtor to restructure the two car loans. That takes care of two of the four proofs of claim filed. Second, it allows Debtor to continue to make the current monthly payments on the claims secured by the senior deed of trust.

Finally, it allows Debtor to value the junior secured claim at $0.00 and upon completion of the plan obtain the "lienstrip," with that junior deed of trust being reconveyed.

Ruling

Because First Tennessee Bank, N.A. had a junior deed of trust encumbering the property, it has validated Debtor's contention that there was not any significant value in excess of the obligation owed Wilmington Trust, N.A., the holder of the senior lien. No other creditors have stepped forward.

The court has serious doubts about Debtor and whether this case has been prosecuted honestly. All of the "needed repairs" were known well in advance of the filing of this case. Debtor had children, and while younger than they are now, it was not an unforeseeable event for Debtor and their experienced bankruptcy counsel that the children would grow older and the household expenses would increase. That had to be built into the original Schedules I and J—if Debtor and Debtor's counsel were being honest with the court and creditors.

Debtor now having completed three years of the Plan, which Debtor hoped it would be able to slip by the Trustee as the total term of the Plan, Debtor's "expenses" have risen. That coincides with Debtor having completed the three-year payoff for the two creditors who hold claims secured by Debtor's vehicles.

The creditors with the claims secured by the two vehicles having been paid off in full and the one creditor having a lien on the dangerous, damaged, and possibly health-impairing home getting paid in full monthly, there is only one creditor left to object, but that creditor is silent.

The Trustee objected because Debtor, having completed the three years of the plan Debtor desired, unilaterally took a $1,235.00 tax refund that was required to be paid over to the Trustee. Being caught and facing a motion to dismiss (filed on May 17, 2017), Debtor filed an amended plan and motion to confirm on May 21, 2017.

Debtor argues that Debtor was discussing with the Trustee not turning over the $1,235.00 tax refund for 2017 prior to that time, but Debtor did not act until after the Trustee forced Debtor's hand. It was reported at the hearing on the motion to dismiss this case that Debtor had finally, facing the dismissal of the case, provided the $1,235.00 tax refund.

The Trustee also objects, stating that while Debtor stated under penalty of perjury that the house, in the same condition now as it was back in 2014 when this case was filed, only required $100.00 per month in home maintenance, not the $400 per month demanded now. Additionally, only one of the debtors work outside the home, with the mother stating she is not employed but a "Homemaker." Exhibit D, Income Statement; Dckt. 50 at 20. The Trustee questions how "childcare expenses" have risen from $0.00 under penalty of perjury on Schedule I, Dckt. 1, to now $270.00 per month under the Expense Schedule filed as Exhibit E, Dckt. 50.

Debtor's Declaration offers no explanation of how there is a $270.00 per month childcare expense. Dckt. 49.

Debtor and Debtor's counsel have convinced the court of several things. First, the home that Debtor and Debtor's counsel have worked hard to retain is rundown, in poor condition, and likely a health hazard. Debtor wants to keep that, though, and Debtor's counsel wants to assist Debtor in maintaining such a living condition for two adults and two small children. Such is Debtor's choice.

Debtor and Debtor's counsel have also convinced the court that they never intended to comply with the Bankruptcy Code and fulfill the obligations of an over-median income debtor and fund a sixty-month plan. Debtor and Debtor's counsel were only going to do a thirty-six month plan, and now that such has been completed, they are cutting the plan payments to a nominal amount for the remaining twenty-three months of the plan, which likely will work to pay Debtor's counsel to the extent that she seeks the allowance of additional reasonable and necessary fees.

Debtor and Debtor's counsel have proposed a plan that will do just enough to support the lienstrip, but pay nothing for the benefit of the creditor for the last twenty-three months of the Plan.

With respect to the $400.00 per month in house maintenance expenses (which Debtors states may be diverted to address a health issue for a child), based on the evidence presented, that amount does not appear unreasonable. It is not unreasonable on two counts. First, the evidence of the basic work that needs to be done for health and safety issues warrants it. Likely much of the work will be undone during this plan, with Debtor hopefully actually saving the money and not diverting to other purposes (such as travel to the Florida timeshare). Second, the only creditor who could complain has not complained. This creditor extended the credit based on the value of the house (taking it as security). Under the circumstances, it does not cause the court pause in having Debtor divert some possible Class 7 distribution monies to fix the serious problems with the property that the one remaining creditor chose as its collateral.

However, with respect to the $270.00 "childcare expense," Debtor has offered no evidence that such expense is necessary or reasonable for this family unit with a parent whose "employment" is as a homemaker. That appears to be a made-up expense or a luxury expense created to prevent money going to pay creditors over the final twenty-three months of the Plan.

At the hearing, Debtor addressed this expense, explaining, **xxxxxxxxxxxxxxxxxxxxxxx**

~~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.~~

26. **17-22646-E-13** **JAYWAUN CLARK** **MOTION TO IMPOSE AUTOMATIC STAY**
HLG-1 **Kristy Hernandez**
5-22-17 [26]

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Extend the Automatic Stay 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 Extend the Automatic Stay is granted.

Jaywaun Clark ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) 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. 16-22797) was dismissed on April 13, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 16-22797, Dckt. 44, April 13, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and differs from the prior case because he now has roommates providing rent payments, which helps Debtor with plan payments.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 13, 2017. Dckt. 33. The Trustee states that he has no basis to oppose the Motion and that Debtor is current with plan payments.

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 has demonstrated to the court that he now has sufficient additional income from renting living space to support the Plan.

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 the 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.

27. 16-26447-E-13 CK-4 | **DOUGLAS TOOLEY** **Catherine King** | **MOTION TO CONFIRM PLAN** **5-12-17 [74]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2017. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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.

Douglas Tooley ("Debtor") seeks confirmation of the Amended Plan to correctly list the Class One claim of National Mortgage LLC and to increase Plan payments due to expected increases in Debtor's income. Dckt. 74.

The Amended Plan proposes Debtor pay the Trustee $2,178.00 per month for twelve months, then $2,379.00 per month for twelve months, then $2,932.00 per month for twelve months, then $5,283.00 per month for the remaining twenty-four months of the Plan. The Amended Plan also proposes Debtor pay $480.00 per month in Class One arrears starting one year into the Plan and for twelve months, then $1,000.00 per month for twelve months, then $3,214.00 per month for the remaining twenty-four months. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 23, 2017. Dckt. 81. The Trustee asserts that Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes plan payment increases of $201.00 per month, $553.00 per month, and $2,351.00 per month. Debtor states that he expects future increases in his business income through the reduction of business expenses; however, the Trustee notes that Debtor fails to provide any financial analysis of the relevant bank statements he has provided, nor does the Debtor explain what his normal business expenses are. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CREDITOR'S OPPOSITION

HSBC Bank USA, National Association as Trustee for The Holders of The Ellington Loan Acquisition Trust 2007-2, Mortgage Pass-Through Certificates, Series 2007-2, its assignees and/or successors in interest, Creditor with a secured claim, filed an Opposition on June 9, 2017. Dckt. 87. Creditor argues that the Amended Plan is identical to the Debtor's plan filed on February 1, 2017, and denied confirmation by the court at the hearing held on March 21, 2017. Dckt. 62.

DISCUSSION

Both the Trustee and Creditor point out that the court denied without prejudice Debtor's plan filed on February 1, 2017, for insufficient notice and that the Amended Plan mirrors that plan. A review of the docket shows that the court denied the February 1, 2017 plan without prejudice. Dckt. 62. That proposed plan remains "alive" to be considered by the court. The denial without prejudice was based on inadequate notice.

Going to the merits, Creditor and the Trustee have a common feasibility objection. Under the proposed Plan, the payment on the substantial $96,222.30 Class 1 arrearage will be made for the first year at only $280.00 per month, jump 71% in year two to $480.00 per month; jump 108% in year three to $1,000.00 per month; and jump 221.4% in years four and five to $3,214.00 per month. Plan, Additional Provision 6.01; Dckt. 44 at 7.

Other than general "business-speak" about "adjusting staff," "positive change," "increase in the market for my industry" (with no specific analysis for this business), "increase my profit margin," "strategic relationships with business partners," and "spotlight for being the local market leader for relevant clientele," Debtor's declaration offers little substance. Dckt. 76. The declaration does not provide any discussion of what this business is for which there are "strategic relationships."

On Schedule I, Debtor states that he is a "Business Manager" for Tooley Technologies, Inc. Dckt. 1 at 31. He further states that he has been employed there for fifteen years. His income as of the September 2016 filing of the bankruptcy case was gross wages/commissions of $2,200.00, for which he had only $200.00 per month withheld for taxes. *Id.* at 32. Debtor reports having additional Social Security Income of $1,518.00, for total Monthly Income of $3,518.00.

On Schedule I, Debtor states that he expects there to be an increase in income, reporting in response to Question 13:

> " Debtor anticipates that his income will increase as he builds his business and gains greater market share as well as streamlines business in such a way as to maximize profitability. Contracts and adjustments are underway in the business to allow that to occur."

Id. While such a short answer is not unexpected on Schedule I, Debtor's Declaration offers nothing more.

On Schedule B, Debtor reports owning 100% of Tooley Technologies, Inc., with that stock having a value of $100. *Id.* at 12. Debtor describes the assets as:

> "Tooley Technologies, Inc. (Debtor is sole owner of all of the stock in the corporation. Corporation has no positive book value as its debts significantly exceed its assets and A/R.)"

Id. It does not appear that there is any value locked up in Tooley Technologies, Inc. to be unleashed for the benefit of Debtor.

What actually may be at play in this case and with respect to the almost $100,000.00 pre-petition arrearage on Creditor's claim is the following statement in response to Question 24 on Schedule J:

> "Debtor does not anticipate significant change in expenditures except to the extent that greater income will be required to make the arrears payments until a modification is obtained. **Debtor will apply for a modification immediately after filing so as to address the arrears with the lender and reduce overall payment and mortgage obligation.**"

Id. at 36 (emphasis added). It appears that Debtor's avenue to address the almost $100,000.00 arrearage is not with the substantially increased cure payments in years four and five (which are 1,047.85% higher than the monthly payments in year one), but that there can be some loan modification obtained during the low payments during the initial year.

The proposed Plan is not feasible. Debtor has not provided the court with credible evidence showing an ability to make the plan payments. Debtor has not provided the court with evidence of his business, what his business does, and how he can so dramatically increase his earning from the business that he has operated for the past fifteen years.

The proposed Plan does not comply with 11 U.S.C. § 1325 and § 1322, and 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 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.

28. 17-22150-E-13 MJD-1 | **JAMES SMITH** **Matthew DeCaminada** | **MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES, INC.** **5-30-17 [30]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

The Motion to Value Secured Claim is dismissed without prejudice.

Debtor having filed a "Withdrawal of Motion", which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on June 20, 2017, Dckt. 52; 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 Consumer Portfolio Services, Inc.; 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 Value Secured Claim filed by 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. 52, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value Secured Claim is dismissed without prejudice.

29.	**17-22651-E-13 WW-1**	**MARIO/CHRISTINE BORREGO Mark Wolff**	**MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP 5-30-17 [25]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Secured Claim of Wheels Financial Group ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $1,788.00.

The Motion filed by Mario Borrego and Christine Borrego ("Debtor") to value the secured claim of Wheels Financial Group ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Cadillac Deville ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $1,788.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, Chapter 13 Trustee, filed a Response on June 13, 2017. Dckt. 34. The Trustee does not oppose the Motion; however, the Trustee notes that Debtor failed to provide specific information on the style of the Vehicle. The Trustee also notes a $17.00 difference between the Creditor's proof of claim for a secured amount of $1,805.00 and the Debtor's proposed value of $1,788.00.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on September 16, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $6,905.21. Proof of Claim 4. 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 $1,788.00, the value of the collateral—$17.00 less than Creditor asserts is secured in its proof of claim. *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 Secured Claim filed by Mario and Christine Borrego ("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 Wheels Financial Group ("Creditor") secured by an asset described as 2004 Cadillac Deville ("Vehicle") is determined to be a secured claim in the amount of $1,788.00, 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 $1,788.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

30. 17-22651-E-13 WW-2 | **MARIO/CHRISTINE BORREGO** Mark Wolff | **MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE** 5-30-17 [28]

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Secured Claim of Capital One Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,926.00.

The Motion filed by Mario Borrego and Christine Borrego ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Toyota Corolla ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,926.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, Chapter 13 Trustee, filed a Response on June 13, 2017. Dckt. 37. The Trustee does not oppose the Motion because Creditor filed a claim on May 12, 2017, agreeing with the proposed valuation.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on January 22, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,899.92. Proof of Claim 2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $5,926.00, 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 Secured Claim filed by Mario and Christine Borrego ("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 Capital One Auto Finance ("Creditor") secured by an asset described as 2010 Toyota Corolla ("Vehicle") is determined to be a secured claim in the amount of $5,926.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,926.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

31. 17-22651-E-13 DPC-1 | **MARIO/CHRISTINE BORREGO** **Mark Wolff** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-30-17 [21]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection—No 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 30, 2017. 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 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 overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. The Plan relies on Debtor filing a Motion to Value Collateral for Capital One Auto Finance and for Wheels Financial Group.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Capital One Auto Finance and of Wheels Financial Group. Debtor has since filed a Motion to Value the Secured Claim of Capital One Auto Finance and of Wheels Financial Group on May 30, 2017. Dckts. 25 & 28. Those motions were granted at the June 27, 2017 hearing, thus resolving the Trustee's Objection.

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 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 Debtor's Chapter 13 Plan filed on April 21, 2017, 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.

32. 17-22357-E-13 DPC-1 | **KAYLENE RICHARDS-EKEH Chinonye Ugorji** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-24-17 [24]**

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 24, 2017. 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 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. A mortgage listed in Class 4 should be in Class 1.

B. The Plan exceeds sixty months.

C. There is ambiguity in attorney fees.

D. Tax returns have not been submitted to the Trustee.

The Trustee's objections are well-taken. Debtor listed Specialized Loan Servicing in Class 4 of the Plan and stated that there are mortgage arrears of $297,783.62. That claim should be listed in Class 1.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in seventy-six months due to inadequate funding of a priority claim by the Internal Revenue Service (Claim No. 1-2). The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor does not indicate if Debtor's attorney opts into the guidelines for payment of attorney fees or opts out of the guidelines. Debtor failed to check the correct box in § 2.06.

Debtor has not provided the Trustee a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). This is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1). The Trustee asserts that Debtor admitted at the First Meeting of Creditor's held on May 18, 2017 that she had not yet filed her 2016 income tax returns.

Prior Bankruptcy Cases

Debtor has filed several other recent bankruptcy cases, in each one represented by her current counsel.

In the most recent, Debtor filed a Chapter 13 Case on January 9, 2012, confirmed a Chapter 13 Plan, completed the plan, and obtained her discharge on May 23, 2016. Bankr. E.D. Cal. 12-20370. The final Modified Plan in that case provided for the claim secured by the Domino Avenue property to be paid as a Class 4 Claim, for which there were no reported arrearage. *Id.*; Dckt. 49.

In the second most recent case, Debtor filed a Chapter 13 case on July 24, 2008, which was dismissed on November 2, 2011 (almost three and one half years later). Bankr. E.D. Cal. 08-30090. That case was dismissed due to multiple defaults in plan payments of only $330.00 per month. *Id.*; Notice of Default, Dckt. 45; Chapter 13 Plan, Dckt. 5. As in the later case, Debtor provided for the claim secured by her residence as a Class 4, not in default, claim in her Chapter 13 Plan.

In the current case, Debtor also provides for the home loan as a Class 4 Claim. However, the Trustee directs the court to the Deutsche Bank National Trust Company, as Trustee, ("DBNTC") Objection to Confirmation (Dckt. 21) asserting that there is a $297,715.52 pre-petition arrearage in monthly payments (not including "administrative fees"). Dckt. 21.

Unfortunately, DBNTC has not filed a proof of claim and no declaration is filed to provide evidence of such an alleged arrearage. The mere "argument" of such an arrearage is not evidence.

However, if there is such an arrearage, it may well explain why Debtor has been effectively living in bankruptcy since 2008. The court notes that in Case No. 12-20370 DBNTC filed Proof of Claim No. 3 in which it asserts there was $84,734.18 arrearage as of the January 19, 2012 filing of that case.

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 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.

33. **17-22357-E-13** **KAYLENE RICHARDS-EKEH** **OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY**
TGM-1 **Chinonye Ugorji** **5-3-17 [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 3, 2017. By the court's calculation, 55 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 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.

Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2006-FF4, Mortgage Pass-Through Certificates, Series 2006-FF4, Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan improperly modifies a lien secured by Debtor's principal interest and that the Plan is infeasible because Debtor cannot afford plan payments.

Creditor's objections are well-taken.

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor asserts that $297,783.62 is in arrears and that the Plan does not account for it. Creditor has not filed a Proof of Claim, but Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Creditor notes that Debtor has $451.95 in disposable income, but proposes payments of $405.00 to claims of other Creditors, leaving $46.95 per month for Creditor, which is insufficient to pay the arrearages of $297,783.62. Thus, the Plan may not be confirmed.

Unfortunately, Creditor has not filed a proof of claim and no declaration is filed to provide evidence of such an alleged arrearage. The mere "argument" of such an arrearage is not evidence.

However, if there is such an arrearage, it may well explain why Debtor has been effectively living in bankruptcy since 2008. The court notes that in Case No. 12-20370 Creditor filed Proof of Claim No. 3 in which it asserts there was $84,734.18 arrearage as of the January 19, 2012 filing of that case.

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 a creditor with 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.

34. 15-29663-E-13 MICHAEL WALKER MOTION TO MODIFY PLAN
MET-3 Mary Ellen Terranella 5-15-17 [65]

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 15, 2017. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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.

Michael Walker ("Debtor") seeks confirmation of the Modified Plan because Debtor's expenses have unexpectedly increased. Dckt. 67. The Modified Plan requires payments of $884.00 per month for two months, followed by $692.00 per month for fourteen months, and $845.00 per month for forty-four months. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 13, 2017. Dckt. 79. The Trustee argues that Debtor failed to serve the Internal Revenue Service per the Roster of Governmental Agencies at:

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

The Trustee further argues that Debtor added a Class Five Internal Revenue Service claim for post-petition tax claim in the amount of $2,802.00; however, the Internal Revenue Service has not filed a claim for post-petition taxes and only the creditor may do so. *See* 11 U.S.C. § 1305.

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.

35. 11-49364-E-13 SNM-2 | **ALLEN/MARCI FOX** **Stephen Murphy** | **MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON 5-25-17 [58]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 25, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Secured Claim of The Bank of New York Mellon ("Creditor") is denied as moot.

The Motion to Value filed by Allen Fox and Marci Fox ("Debtor") to value the secured claim of The Bank of New York Mellon, as Trustee for the Benefit of the Certificate Holders and the Certificate Insurer for Flagstar Asset Backed Pass Through Certificates Series 2007-1, Its Successors and/or Assigns ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 836 Granada Lane, Vacaville, California ("Property").

Debtor seeks to amend a Motion to Value that was filed on December 22, 2011, and granted by the court on January 24, 2012. *See* Dckt. 19. Debtor asserts that the pleadings for the original Motion to Value do not include the document recording numbers and property APN. Now, Debtor seeks to amend the original pleadings—and, necessarily, the court's subsequent order—to include those identifying numbers.

DISCUSSION

At the January 24, 2012 hearing, the court granted Debtor's Motion to Value and valued the Property at $280,600.00, noted that the first deed of trust secured a loan with a balance of approximately

$452,386.00, and valued Creditor's claim (secured by a second deed of trust) at $0.00. Dckt. 19. The court did not need document recording numbers and the Property's APN to perform those functions under 11 U.S.C. § 506(a). Additionally, with the court granting Debtor's Motion to Value in January 2012, Creditor's secured claim has been valued already, and there is nothing for the court to value now.

What Debtor seemingly seeks from the court is permission to amend Debtor's Motion to Value, filed on December 22, 2011. *See* Dckt. 8. In contested matters, Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9014(c) incorporates various rules governing adversary proceedings. Bankruptcy Rule 7015 applies Federal Rule of Civil Procedure 15 to adversary proceedings and establishes how parties and amend and supplement pleadings. Bankruptcy Rule 9014 does not incorporate Bankruptcy Rule 7015 into contested matters, however. Nevertheless, Bankruptcy Rule 9014 states that "[t]he court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply." Therefore, the court has authority to apply Bankruptcy Rule 7015 to this matter to allow Debtor to amend pleadings.

Debtor has not presented a motion to amend, though. Debtor presented to the court a brand new motion seeking to value Creditor's secured claim once again, specifying that this time the pleadings include additional documentation numbers and the Property's APN. Creditor's claim has been valued already (at $0.00), which means that there is nothing for the court to value. The Motion is denied as moot, the claim having been valued already. Debtor can file pleadings again, seeking to amend, instead of seeking to value.

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 Secured Claim filed by Allen Fox and Marci Fox ("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 as moot.

36. 17-23464-E-13 MET-2 | **JOSEPHINE MELONE**
Mary Ellen Terranella | **MOTION TO VALUE COLLATERAL OF BOSCO CREDIT II, LLC TRUST SERIES 2010-1**
6-9-17 [25]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 9, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Value Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 hearing on the Motion to Value Secured Claim of Bosco Credit II, LLC Trust Series 2010-1 ("Creditor") is continued to 3:00 p.m. on August 15, 2017.

The Motion to Value filed by Josephine Melone ("Debtor") to value the secured claim of Bosco Credit II, LLC Trust Series 2010-1 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1049 Lilly Court, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $550,000.00 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).

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 13, 2017. Dckt. 30.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on June 20, 2017. Dckt. 38. Creditor notes that Debtor "significantly reduces the value of the Property based upon necessary repairs to the pool and pond." *Id.* at 3:15–16. Creditor states that it is owed $143,119.90, as of the petition filing date. Creditor opposes the Motion on the ground that it has not had an opportunity to conduct an appraisal, and Creditor requests that the court continue the hearing on the Motion approximately forty-five days to allow time for an appraisal to be conducted.

DISCUSSION

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

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

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $575,000.00, according to Schedule D. Creditor's second deed of trust secures a claim with a balance of approximately $143,119.90. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized.

Allowing time for Creditor to conduct an appraisal is not unreasonable. That also afford Debtor and Creditor time to address the economic realities of the junior lien position, the amount of the secured lien, and whether the parties can craft a better economic resolution than through litigation.

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 Secured Claim filed by Josephine Melone ("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 is continued to 3:00 p.m. on August 15, 2017.

37. 15-26266-E-13 SLH-1 — RICHARD BLOOMFIELD, Seth Hanson — MOTION TO MODIFY PLAN, 5-17-17 [27]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 17, 2017. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

Richard Bloomfield ("Debtor") seeks confirmation of the Modified Plan to account for several unsecured claims that came in higher than listed on the original Chapter 13 plan, resulting in the completion of the Plan being extended from sixty months to sixty-seven months. Dckt. 27. The Modified Plan keeps monthly payments the same at $525.00, but it reduces the percentage that unsecured creditors will be paid back through the Plan to 54.8% . 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 13, 2017. Dckt. 39.

The Trustee argues that the Plan may not be feasible under 11 U.S.C. § 1325(a)(6), or may not be the Debtor's best effort under 11 U.S.C. § 1325(b) because the Trustee is unaware of Debtor's current rent.

DEBTOR'S RESPONSE

Debtor filed a late Response on June 21, 2017. Dckt. 42. Debtor states that Amended Schedule J—filed on June 21, 2017—reflects that Debtor's rent has increased by $150.00. Debtor anticipates that his electric bill will decrease by $50.00 and that he can save an additional $100.00 per month by reducing food and clothing expenses.

DISCUSSION

Debtor's Amended Schedule J reflects that his monthly rent has increased by $150.00. Debtor has proposed reducing food and clothing expenses by $100.00 and electricity expenses by $50.00. Debtor has not provided any testimony or explanation to the court about how those expenses can be reduced believably. Debtor merely asserts that the expenses will be lower. Absent an explanation, the court is unable to evaluate both the feasibility of the Modified Plan and whether the Modified Plan is Debtor's best effort. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6); *see* 11 U.S.C. § 1325(b).

However, under these facts, the dollar adjust is very modest. The amendment is required not because of a change in income or expenses, but because the original projected minimum unsecured claim dividend is too high based on the actual claims filed. The court recognizes the need to be open to such amendments in light of the Chapter 13 Plan requiring debtors and their counsel to be reasonable in setting the minimum percentage. Sometimes, it needs to be reduced.

Given that Debtor has no dependants, he has greater flexibility in squeezing down his food, housekeeping supplies, and utilities expenses. It appears that there may be a little "extra" in the transportation expense, as well as the discretionary entertainment expense.

The Modified Plan does comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by 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 filed on May 16, 2017, is granted and said plan is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

38. 15-23668-E-13 MET-3 | **JUAN/GENEVA GOMEZ** | **Mary Ellen Terranella** | **MOTION TO MODIFY PLAN** | **5-17-17 [98]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, party requesting special notice, and Office of the United States Trustee on May 17, 2017. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Response on June 13, 2017, stating no opposition

to Debtor's Modified Plan. Dckt. 112. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 17, 2017, is confirmed. Debtor's Counsel 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.

39. **17-21770-E-13** **WILLIAM GLOVER** **OBJECTION TO DISCHARGE BY**
DPC-1 **Lucas Garcia** **DAVID P. CUSICK**
5-23-17 [29]

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 23, 2017. By the court's calculation, 35 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"), filed the instant Objection to Debtor's Discharge on May 23, 2017. Dckt. 29.

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

Debtor filed a Chapter 7 bankruptcy case on May 6, 2016. Case No. 16-22973. Debtor received a discharge on August 22, 2016. Case No. 16-22973, Dckt. 15.

The instant case was filed under Chapter 13 on March 17, 2017.

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 August 22, 2016, which is less than four years preceding the date of the filing of the instant case. Case No.16-22973, Dckt. 15. 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. 17-21770), 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 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. 17-21770, the case shall be closed without the entry of a discharge.

40. 17-21770-E-13 WILLIAM GLOVER MOTION TO CONFIRM PLAN
LBG-1 Lucas Garcia 5-4-17 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 4, 2017. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Plan is denied.

William Glover, Jr. ("Debtor") seeks confirmation of the Plan because the Plan will result in a 100% payment to the general unsecured claims. Dckt. 23. **The Plan pays $250.00 per month for sixty** months. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 13, 2017. Dckt. 33. The Trustee asserts that Debtor is $500.00 delinquent in plan payments. The Trustee asserts that Debtor has paid $0.00 into the Plan to date.

Further, the Trustee asserts that there is a lack of evidence in the record to indicate that the Internal Revenue Service consents to the possibility that its claim will not be paid in full. Finally, the Trustee asserts that Debtor's plan is not Debtor's best effort under 11 U.S.C. § 1325(b) because Debtor's Schedule J shows net income of $474.30, and he proposes to pay only $250.00 each month.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended 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 the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

41. 17-20471-E-13 PGM-1 | **DEANNA TORREZ** **Peter Macaluso** | **MOTION TO CONFIRM PLAN** **5-16-17 [39]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 16, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a statement of non-opposition on May 23, 2017. Dckt. 46. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by 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 May 16, 2017, is confirmed. Debtor's Counsel 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.

42. 17-20875-E-13 RJ-1 — EVA LUNA — Richard Jare — OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 2 — 4-13-17 [19]

Final Ruling: No appearance at the June 27, 2017 hearing is required.

Eva Luna, Debtor, filed a Notice of Dismissal of the Objection to Claim No. 2 of Bank of America, N.A. (Dckt. 36). Debtor having filed the Objection and no opposition having been filed, Debtor may dismiss the Objection pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The Objection having been dismissed without prejudice by Debtor, **the hearing is removed from the calendar.**

43. 17-21081-E-13 DOREEN TORRES MOTION TO CONFIRM PLAN
RSG-2 Robert Gimblin 4-27-17 [25]

Final Ruling: No appearance at the June 27, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 2017. By the court's calculation, 61 days' notice was provided. 42 days' notice is required.

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.

Doreen Torres ("Debtor") seeks confirmation of the Amended Plan that requires that the secured claim of Ford Motor Credit Company, LLC, to be valued pursuant to 11 U.S.C. § 506(a). Dckt. 41. The Amended Plan provides for monthly payments of $495.00 for sixty months, paying a 100% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 15, 2017. Dckt. 33. The Trustee states that Debtor's finances remain uncertain until the Motion to Value Collateral of Ford Motor Credit is heard. That motion was granted on June 12, 2017. Dckt. 41.

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 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 27, 2017, is confirmed. Debtor's Counsel 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.

44. 13-34582-E-13 PGM-1 | **LISA RAVAZZOLO** **Peter Macaluso** | **MOTION TO MODIFY PLAN** **5-16-17 [32]**

Final Ruling: No appearance at the June 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Response, indicating no opposition, on June 13, 2017. Dckt. 49. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 16, 2017, is confirmed. Debtor's Counsel 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.

45. 17-22593-E-13 DPC-1 | **HOWARD THOMAS** **W. Steven Shumway** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-31-17 [20]**

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 31, 2017. 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 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. Debtor has made no plan payments.

B. Debtor failed to appear at the Meeting of Creditors.

C. Debtor has not provided tax returns to the Trustee.

D. Debtor has not provided pay advices to the Trustee.

The Trustee's objections are well-taken.

The Trustee asserts that Debtor did not commence making plan payments and is $1,780.00 delinquent in plan payments, which represents one month of the $1,780.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

Debtor has not provided the Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds 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 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.