

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 16, 2019 at 2:00 p.m.

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 26.

1.	17-26404-C-13 PSB-5	JAYME/HEATHER WOOD Pauldeep Bains	MOTION TO MODIFY PLAN 5-29-19 [127]
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THRU #2

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 29, 2019. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

July 16, 2019 at 2:00 p.m.
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The debtors, Jayme Wood and Heather Wood (“Debtor”) seek confirmation of the Modified Plan because Debtor had a change in circumstance since the confirmation of the Second Modified Plan. Debtor plans to sell their residence by December 2019 and have the plan funded at 100%. Debtor also plans on reducing food budget and home maintenance budget to make sure the plan is feasible. Declaration, Dckt. 130. The Modified Plan provides that the plan payment will be \$32,113.00 through May 2019 and then Debtor will pay \$700 per month for 6 months starting in June 2019. Debtor will list and see their home by December 2019 and pay the remaining Chapter 13 in full. Modified Plan, Dckt. 129. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 1, 2019. Dckt. 133. The Chapter 13 Trustee asserts that Debtor is \$700.00 delinquent in plan payments, which represents one month of the \$700.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

~~At the hearing ----~~

~~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 Jayme Wood and Heather Wood (“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 29, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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—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 1, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is ~~XXXX~~.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

The debtor, Jayme Lewis Wood (“Debtor”), is in material default with respect to the term of a confirmed plan. Debtor has paid a total of \$32,113.00 at the date of filing the original Motion to Dismiss on May 1, 2019. Dckt. 121. At the date of this filing the last payment received was on March 1, 2019. The Trustee shows there is a total of \$35,113.00 due which means that Debtor is in delinquent \$3,000.00 in Plan payments. Debtor’s monthly payment is in the amount of \$1,500.00. To be current by the May 29, 2019 hearing Debtor needed to pay \$4,5000.00 to bring the Plan current.

DEBTOR’S RESPONSE

Debtor filed a Response on May 15, 2019. Dckt. 125. Debtor acknowledged the delinquency and urged that the Court not dismiss the case. Debtor has changed how they desire to proceed with the Chapter 13 case and have decided to sell their home. Debtor will modify the plan and that modified plan will propose that they be given some time to sell their home.

May 29, 2019 Hearing

At the May 29, 2019 hearing, the Court allowed the continuance of the motion for the Debtor to proceed with modifying the plan and selling the residence. The Court continued the Motion to July 16, 2019 at 2:00 p.m. Civil Minutes. Dckt. 132.

DISCUSSION

At the July 16, 2019 hearing Debtor's Motion to Modify Plan was xxxx accordingly the Motion to Dismiss is xxx.

~~Based on the foregoing, the Motion is denied, and the case is not dismissed.~~

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

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

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

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

THRU #4

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 27, 2019. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, James Marven Hurley (“Debtor”) seeks confirmation of the Modified Plan because Debtors’ income from the business has increased. Declaration, Dckt. 62. The Modified Plan provides that beginning with the May 25, 2019 payment, debtor will pay \$900.00 a month for 22 months for a total plan length of 60 months. The percentage to be paid to unsecured claims is not less than 21%. Modified Plan, Dckt. 63. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on July 1, 2019. Dckt. 66. The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

The Trustee also argues that Debtor’s Schedules I and J filed on May 27, 2019 are marked as

amended rather than supplemental, checking the box that this is an amended filing rather than a supplemental filing. Dckt. 59. Debtor is stating the income and expenses previously given were never accurate and that their current budget is what their budget was when the case was filed. Debtor's prior Schedule I and J filed on September 13, 2016 reflect a monthly income of \$2,611.75 and monthly expenses of \$2,011.77. Opposition, Dckt. 66.

DISCUSSION:

The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03. Additionally, most recent Schedules I and J are marked both supplemental and amended, as such the Debtor has provided insufficient information to assess the feasibility of the plan. Accordingly, cause exists to deny confirmation.

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 James Marven Hurley ("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 Modified Plan is denied.

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—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 April 25, 2019. 28 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~XXXX~~.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor is delinquent \$3,200.00 in plan payments and another payment of \$960.00 will come due prior to the hearing. Debtor has paid \$25,810.00 into the plan.

DEBTOR'S RESPONSE

Debtor's counsel filed a Response on May 15, 2019. Dckt. 57. Debtor's counsel states the delinquency will be cured prior to the hearing date through the filing of a modified plan.

MAY 29, 2019 HEARING

At the May 29, 2019 hearing, the matter was continued to 2:00 p.m. on July 16, 2019. At the hearing, Debtor's Counsel stated that Debtor has filed a Modified Plan. Dckt. 63. A summary review of the Motion to Confirm and Declaration in support appear to be consistent with the pleading requirements of Federal Rule of Bankruptcy Procedure 9013 and the declaration provides specific testimony, not merely the Debtor's personal findings and conclusions.

The Trustee concurred with the continuance of the hearing.

DISCUSSION

At the July 16, 2019 hearing Debtor's Motion to Confirm Modified Plan was xxx.

~~Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.~~

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

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

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

~~**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

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 Counsel on June 18, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtors' Plan is not their best effort.

A. Debtors appear to be under the median income and proposes Plan payments of \$1,390.00 per month for 60 months, with no less than 8% dividend to the unsecured creditors.

B. Debtors do not report any Federal or California Tax Refunds for 2017 and 2018. However, Debtors received a total refund of \$12,510.00 for the tax year 2018. Debtor received \$5,869.00 in a federal tax refund based on their income for 2018. Debtor received a state refund of \$6,641.00. The Trustee argues that continued tax refunds appear likely and asks that over \$2,000.00 be committed to the Plan.

Trustee also questions why the Debtor has failed to give a written account of how they spent

\$12,510.00 in tax refunds in one month. According to the Statement of Financial Affairs, no creditor was paid more than \$600.00 in the 90 days prior to the filing. Dckt. 1.

DISCUSSION

Trustee's objections are well-taken.

The Plan is not the Debtors' best effort. Debtors have not provided for the funds derived from tax refunds into the plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

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

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

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

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 June 5, 2019. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Patricia Margaret Nelson (“Debtor”), seeks confirmation of the Amended Plan. . Amended Plan, Dckt. 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has paid a total of \$1,700.00 through May 2019 to the Chapter 13 Trustee. Debtor has proposed to remit plan payments of \$1,700.00 starting June 2019 for 59 months to complete the Plan. This creates a total paid in of \$102,000.00.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 24, 2019. Dckt. 27. The Trustee opposes this Plan because it is not properly signed by Debtor and the Debtor’s attorney. Local Rule 9004-1(c) states that the name of the person signing the document shall be typed underneath the signature and Debtor failed to type his name under the signature line. The generic designations of “Debtor” and “Debtor’s Attorney” below the signature line should be replaced with actual names. Without the physical signatures of the Debtor or Debtor’s Counsel it is hard for other parties to know who actually signed the document.

DISCUSSION:

At the hearing Debtor and Debtor's Counsel addressed the Trustee's concerns regarding improper signatures -----

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

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Patricia Margaret Nelson ("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 June 5, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

THRU #8

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Counsel for Creditors, Chapter 13 Trustee, and Office of the United States Trustee on May 30, 2019. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 12 of New Residential Mortgage, LLC is sustained, and the claim is disallowed to the extent it asserts a deficiency balance for the June 2019 monthly payment.

Vanessa Kristine Orejana, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of New Residential Mortgage, LLC ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$327,255.61. Objector asserts that the arrearage amount listed is for February's mortgage payment which came due on February 1, 2019 but was not considered late until February 16, 2019. Since the payment was not considered past due until February 16, 2019 and Debtor's petition was filed on February 2, 2019, this is not a pre-petition arrear. Debtor made February's payment on February 8, 2019. Debtor's mortgage statement for March does not reflect any late fees.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("The Chapter 13 Trustee") filed a Response on June 6, 2019. Dckt. 29. The Chapter 13 Trustee notes that the Loan Payment History does not reflect a payment received in February 2019. The Chapter 13 Trustee also notes by looking at the Exhibit Debtor filed on May 30, 2019 in

support of the objection that included copies of Debtor's bank statements show external withdrawals in the amount of \$2,220.00 on February 8, 2019 (Dckt. 26) and another on \$2,230.00 on March 1, 2019 (Dckt. 26). The Chapter 13 Trustee confirms that the Creditor has relief via the Class 4 claims.

CREDITOR'S OBJECTION

Creditor filed a Response on July 2, 2019. Dckt. 37. Creditor notes that as of February 2, 2019 Debtor has not made and Creditor has not received the mortgage payment due on February 1, 2019. Creditor notes that Debtor is asking that Creditor apply the funds received post-petition to the pre-petition February 2019 mortgage payment. Creditor is amenable to such a request as long as the Court and the Chapter 13 Trustee don't object. Creditor asks that the objection to claim is denied and the Court instead provide Creditor the permission to apply the post-petition funds to the February 2019 mortgage payment and then amend its proof of claim.

DISCUSSION

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

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Debtor objects to the claim based on what seems to be a miscommunication on the deliverance of the payments. Creditor states it is willing to work with Debtor on a proposed plan to fix the issue by applying the payments to the February 2019 mortgage payment.

The Chapter 13 Plan in this case expressly provides for the payment of Creditor's secured claim as a Class 4 Claim. Under the terms of said proposed plan, filed on February 19, 2019, the Debtor was responsible for and the person to make the February 2019 and each monthly payment thereafter to Creditor.

It is undisputed that the February 2019 payment was timely made post-petition.

Based on the evidence before the court, the Objection is sustained and Creditor's claim is disallowed for the \$1,680.52 asserted in Proof of Claim No. 12-1.

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

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

The Objection to Claim of New Residential Mortgage, LLC (“Creditor”), filed in this case by Vanessa Kristine Orejana, Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 12 of Creditor is sustained and that portion of Proof of Claim No. 12-1 for an asserted pre-petition arrearage of \$1,680.52 is disallowed.

The February 2019 payment of \$1,680.52 was made to Creditor by Debtor pursuant to the terms of the then proposed (and now confirmed) Chapter 13 Plan providing for Creditor’s claim as a Class 4 Claim. Ch. 13 Plan ¶ 3.10, Dckt. 14.

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2019. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition). That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 7 of Clearpointe Duet Owners Association Co. is overruled.

Vanessa Kristine Orejana, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Clearpointe Duet Owners Association Co. (“Creditor”), Proof of Claim No. 7 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$16,880.41. Objector asserts that the claim includes 60-months of ongoing assessment at current rate of \$188.00 for a total of \$11,280.00 and therefore should not be included as it is simply a projection of future payments.

CHAPTER 13 TRUSTEE’S REPLY

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Reply indicating non-opposition on June 6, 2019. Dckt. 32. Trustee has reviewed the claim and agrees with the Debtor that the claim includes future payments not yet due. Further, Trustee notes that the Plan allows for Creditor as a Class 2 non-purchase money security interest, not as a Class 1 creditor, so no ongoing payments are authorized to be paid by the Trustee.

CREDITORS OPPOSITION

Secured Creditor, Clearpointe Duet Owners Association, argues that the \$11,280.00 post-petition assessments should be provided for in the plan. Secured Creditor asserts that Debtor is not objecting to the payment of the pre-petition delinquency of \$5,6000.41 plus the 12% interest but just the inclusion of the \$11,280.00. Secured Creditor claims that recent developments in the case law treat post-petition homeowners association assessments as dischargeable debts under 11 U.S.C. § 1328(a) and therefore should be provided for in plan. *See Goudelock v. Sixty-01 Association of Apartment Owners*, 895 F.3d 633 (9th Cir. 2018), cert. denied, 2018 WL 5282395 (U.S. 2018). Secured Creditor, without specific citation or analysis, states that “some construe” the reasoning to only apply when the Debtor has surrendered the property. The court is left to ponder Secured Creditor is suggesting some courts or just some people have opined on the application of the *Goudelock* case. Secured Creditor flags for the court that Debtor has not surrendered the subject property.

The court also notes that Creditor has not complied with the Local Bankruptcy Rules by filing several documents as one. ^{FN.1.}

FOOTNOTE

FN.1. Creditor filed the Opposition, Declaration, Exhibits, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

DISCUSSION

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

Debtor objects to the Claim on the grounds that Creditor includes in the Claim sixty months of ongoing assessments at the current rate of \$188.00 for a total of \$11,280.00. This is a projection of future payments that will come due during the life of the plan and was not due at the time of the filing of the petition. Secured Creditor does not dispute the characterization of the \$11,280.00 payments as post-petition assessments but argues that the obligation should be provided for in the plan because they contend the debt is dischargeable under 11 U.S.C. 1328(a). Secured Creditor bases its argument on its interpretation of a recent Ninth Circuit case *Goudelock* which held that the debtor's pre-petition interest in the property contemplated post-petition HOA assessments, thereby characterizing those assessments as a pre-petition obligation.

Secured Creditor makes the unsupported contention that the *Goudelock* case, forming the sole basis for its argument, may only apply when the Debtor no longer possesses the property stating that "some construe" the holding to only extend to surrendered or foreclosed property. Dckt. 36, pg 2. Secured Creditor does not provide any legal authority for this contention.

Here, because Debtor is still in possession of the property, the importance of whether to apply *Goudelock* in cases where Debtor is still in possession of the property is paramount. Moreover, Secured Creditor does not provide any analysis on whether providing for the obligation as a pre-petition debt necessarily entitles the Secured Creditor to full payment of the obligation through the plan. Secured Creditor is also silent about *Goudelock* squares the language in 11 U.S.C. § 523(a)(16). Debtor did not file a Reply brief addressing the merits of Secured Creditor's legal argument.

Accordingly, the court has been asked to conduct its own research to determine how to apply the *Goudelock* case by identifying the "some" who have opined about whether such debts are treated as dischargeable when the subject property has not been surrendered or foreclosed upon. As well as, to determine how, if at all, the debt should be provided for in Debtor's plan.

Statutory Definition of Claim

The court begins with how Congress has chosen to define the term "claim" in bankruptcy cases.

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5).

Here, Creditor asserts the right to be paid the past-due obligations and the ongoing obligations as they mature. The claim is secured by Debtor's real property.

The Chapter 13 Plan provides for secured claims that mature (final payment due) after the term of the Plan, as is Creditor's secured claim:

C. Secured Claims

3.07. Class 1 **includes all delinquent secured claims that mature after the completion of this plan**, including those secured by Debtor's principal residence.

(a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the "arrearage dividend" shall pay the arrears in full.

(1) Unless otherwise specified below, interest will accrue at the rate of 0%.

(2) The arrearage dividend must be applied by the Class I creditor to the arrears. If this plan provides for interest on the arrears, the arrearage dividend shall be applied first to such interest, then to the arrears.

(b) **Maintaining payments. Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim** whether or not this plan is confirmed or a proof of claim is filed.

(1) Unless subpart (b)(1)(A) or (B) of this section is applicable, the amount of a post-petition monthly payment shall be the amount specified in this plan.

(A) If the amount specified in the plan is incorrect, the Class 1 creditor may demand the correct amount in its proof of claim. Unless and until an objection to such proof of claim is sustained, the trustee shall pay the payment amount demanded in the proof of claim.

(B) Whenever the post-petition monthly payment is adjusted in accordance with the underlying loan documentation, including changes resulting from an interest rate or escrow account adjustment, the Class 1 creditor shall give notice of the payment change pursuant to Fed. R. Bankr. P. 3002.1(b). Notice of the change shall not be given by including the change in a proof of claim. Unless and until an objection to a notice of payment change is sustained, the trustee shall pay the amount demanded in the notice of payment change.

Chapter 13 Plan, Sec. 3C., ¶ 3.07 (emphasis added).

Here, Creditor asserts its secured claim. The claim is for the past due and the future due obligation for Home Owners Association Due arising under the contract (CC&Rs) and statutes relating thereto. There is not a dispute as to the future fees being due, but it is asserted that are mere future

payments that are not yet due.

The term “claim” includes “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured [such as here, not yet due], disputed, undisputed, legal, equitable, secured, or unsecured” 11 U.S.C. § 101(5).

Creditor’s secured claim includes these amounts which shall come due during the plan, and actually thereafter. But those future amounts are not set and may be subject to adjustment.

It appears that the real issue being pressed is whether, in light of the pre-petition arrearage, whether the Debtor can cure the pre-petition arrearage through the plan and pay the currently monthly amounts outside the plan.

Debtor does not dispute this ongoing obligation based upon the pre-petition CC&R’s and related statutes that go with the ownership of the property of the bankruptcy estate.

Because of the pre-petition default, the existing arrearage cure amounts and the ongoing currently monthly payments (akin to post-petition mortgage payments) must be paid as part of the Class 1 Claim through the Chapter 13 Plan. Debtor cannot choose to divert the current monthly payment, in light of the pre-petition default, outside the Plan. If Debtor was not in default, Debtor could have provided for payment of the currently monthly HOA obligation as a Class 4 claim.

Because of the pre-petition claim, the inclusion of the five years of current post-petition payments that are coming due in the Claim is proper. The Objection is overruled. ^{FN. 2.}

FN. 2. Debtor might be concerned that having to make the current monthly payment through the Plan will cause the Debtor to have to pay an extraordinarily larger Chapter 13 trustee fees. At \$188 a month, the 7% Chapter 13 trustee’s fees would be \$13.16. Over 60 months this would total \$789.60, not an overly burdensome 60 month amount. This will slightly reduce the 28.11% dividend for creditors holding general unsecured claims.

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

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

The Objection to Claim of Clearpointe Duet Owners Association Co. (“Creditor”), filed in this case by Vanessa Kristine Orejana Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 7 of Creditor is overruled.

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, and Office of the United States Trustee on June 25, 2019. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Vallejo Cerros Homeowners Association (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$0.00.

The Motion to Value filed by the debtor, Deborah Candate (“Debtor”), to value the secured claim of Vallejo Cerros Homeowners Association (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 20. Debtor is the owner of the subject real property commonly known as 248 Kathy Ellen Drive, Vallejo, California (“Property”).

Debtor seeks to value the Property at a fair market value of \$210,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The 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).

DISCUSSION

The property is encumbered by a first deed of trust serviced by Fay Servicing, with a balance of approximately \$220,293.00. Schedule D, Dckt. 1. Creditor's home owners association lien secures a claim with a balance of approximately \$17,716.00. *Id.* Therefore, Creditor's claim secured by a junior lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by the debtor, Deborah Candate ("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 Vallejo Cerros Homeowners Association ("Creditor") secured by a home owners association lien recorded against the real property commonly known as 248 Kathy Ellen Drive, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, 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 \$210,000.00 and is encumbered by a senior lien securing a claim in the amount of \$220,923.00, which exceeds the value of the Property that is subject to Creditor's lien.

THRU #11

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 4, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is ~~overruled~~.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor has failed to file a Motion to Value and that the Debtor has failed to file a Spousal Waiver.

The court's review of the docket reveals that spousal wavier has been filed. Dckt. 23.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Harley Davidson Financial. Debtor has filed a Motion to Value the Secured Claim of Harley Davidson Financial. Dckt. 19.

DISCUSSION:

At the June 4, 2019, the hearing was continued to July 16, 2019 to allow for the resolution of

At the July 16, 2019 continued hearing, Debtor's Motion to Value was xxx

~~The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is confirmed.~~

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

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

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

~~**IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled, and the proposed Chapter 13 Plan filed on April 19, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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.

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, Office of the United States Trustee on June 18, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. **The Proof of Service, however, was submitted without a signature.**

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

The Motion to Value Collateral and Secured Claim of Harley-Davidson Credit Corp ("Creditor") is **xxxx.**

The Motion filed by the debtor, Rajender Sarin ("Debtor"), to value the secured claim of Harley-Davidson Credit Corp. ("Creditor") is accompanied by Debtor's (unsigned) declaration. Declaration, Dckt. 21. Debtor is the owner of a 2014 Harley-Davidson FLHXS Street Glide Special Motorcycle ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$10,000.00 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).

CHAPTER 13 TRUSTEE'S OBJECTION

On July 1, 2019, the Chapter 13 Trustee filed an objection to Debtor's Motion to Value, asserting that Debtor's motion was not properly served. Citing Federal Rules of Bankruptcy Procedure 7004, which requires service be made upon a street address, Trustee states that Creditor was served notice at PO Box 9013, Addison, Texas. The chapter 13 Trustee also notes that neither the declaration in support of Debtor's Motion, nor the proof of service were properly signed.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 22, 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 \$23,070.62. Proof of Claim, No. 5-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$10,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a).

As Trustee notes, Debtor's Counsel made several errors in providing service of the instant motion upon the interested party. At the hearing Debtor's Counsel addressed these concerns -----

~~The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

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

~~**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Harley-Davidson Credit Corp. ("Creditor") secured by an asset described as 2014 Harley-Davidson FLHXS Street Glide Special Motorcycle ("Vehicle"), is determined to be a secured claim in the amount of \$23,070.62, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$10,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 14, 2019. By the court’s calculation, 32 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the debtor, Bryon Gilbert’s (“Debtor”) Plan on the basis that the Plan does not provide for full payment of disputed claims. These debts include \$16,147.00 to Trinity County Tax and \$27,000.00 to PL&E. Debtor has not filed objections to either claim. Debtor’s Plan, calls for only \$24,000.00 in total payments.

DISCUSSION

Trustee’s objections are well-taken.

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). It Debtor’s Plan does not provide for payment for all required scheduled claims. Debtor has not filed an objection to either of the “disputed” claims. Consequently, full payment of the “disputed” claims, in addition to attorney’s fees, at the proposed rate of \$400.00 per month will exceed the 60 month period proposed under the Plan. Thus, the Plan may not be confirmed.

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

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

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

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

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

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

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 31, 2019. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Alaina Bosold (“Debtor”), seeks confirmation of the Second Amended Plan, which would be the first plan confirmed in this case.

The Amended Plan addresses objections raised against the previous plan. These include delinquent payments, inadequate payment of unsecured creditors, and unaccounted for expenses and prepetition income. The proposed Plan provides for monthly plan payments of \$3,0405.00 starting June 25, 2019, with \$8,255.00 paid into the Plan through May 31, 2019. Declaration, Dckt. 66. The Plan also provides for \$4,000.00 in fees to be paid through the Plan to Debtor’s newly hired Counsel, in addition to the \$1,500.00 already paid to Debtor’s previous attorney. Amended Plan, Dckt. 67. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 2, 2019. Dckt. 80. The Trustee opposed confirmation of the proposed Plan unless the following objections are addressed.:

- A. Debtor's 2018 Federal tax return may not have been filed
- B. Debtor may have failed to schedule business equipment related to the "PAPER DELIVERY" and "RETAIL STORE" businesses listed on Debtor's 2017 Federal tax return. The two businesses had \$771,424 and \$68,524 of gross sales, respectively. Trustee also notes that no Balance Sheet has been provided for the "PAPER DELIVERY" business, AB Home Distribution, LLC.
- C. Section 7.03 of the proposed Plan "technically" fails to provide for a May 25, 2019 payment. Trustee is not opposed to the order confirming the plan providing that Debtor's "payments shall be \$5,201.00 through May, 2019 and payments shall be \$3,405.00 starting June, 2019."

DEBTOR'S RESPONSE:

On July 9, 2019, Debtor filed a Declaration stating that an extension to file the 2018 Federal Tax Return was requested and Debtor has until October 15, 2019 to file the federal return. Debtor will provide a copy of the return to the Trustee when it is filed. Debtor further states that the equipment related to the subject business was returned to Dennis Staller, a secured creditor, as listed in the amended petition. Dennis Staller and his wife filed Claims No. 14-1 and 17-1 in this proceeding. Debtor is also not opposed to the clarification requested by the Trustee being included in any Order confirming the Plan.

DISCUSSION

At the hearing the Trustee addressed whether there were any remaining outstanding objections to the plan.

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

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

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

~~_____The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Alaina Bosold ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 18, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Debtor’s Plan appears to unfairly discriminate against unsecured creditors by providing for full payment of the claim of Vicki Romo. The claim, secured by a 2013 BMW 328i, is listed by Debtor in Class 4, to be paid in full outside of the Plan. Debtor’s Schedule D shows the car to be worth \$3,200.00 less than the amount owed.

DISCUSSION

Trustee’s objections are well-taken. The Plan unfairly discriminates unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 0.00% to unsecured claims; however, Debtor proposes to pay the Class 4 secured debt in full for a vehicle that appears to be eligible for valuation under 11 U.S.C. § 506(a).

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), holding a secured claim] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 26, 2019. By the court’s calculation, **20 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Sell Property is ~~granted.~~

The Bankruptcy Code permits Jared Varney, Chapter 13 Debtor (“Movant”), to sell property under the proposed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 10713 Beclan Drive, Rancho Cordova, California (“Property”).

The proposed purchaser of the Property is Donald Logan Morris, III (“Buyer”), and the terms of the sale are:

- A. The all-cash sale offer is \$277,000.00 for the Property As Is, with escrow scheduled to close no more than 30 days after Movant’s acceptance of offer.
- B. All costs of sale, such as escrow fees, title insurance, and broker’s commissions, will be paid in full from the sale proceeds.
- C. Keller Williams is to receive commissions for cooperation in the sale fo

the property in the amount of \$8,310.00, or three percent of the sale price.

Debtor notes that upon obtaining a Preliminary Title Report on the Property, the Debtor learned of a secured judgment lien in favor of Commercial Trade, Inc. in the amount of \$4,213.26 recorded in the County of Fresno on December 9, 2014. (Creditor's mortgage recorded on October 31, 2012.) Debtor states that because Commercial Trade, Inc.'s secured debt was not known to the Debtor at the time of filing, this claim does not appear in the Debtor's Schedules, Statements, or Chapter 13 Plan.

The Motion seeks to sell the Property free and clear of the lien of JPMorgan Chase Bank, N.A. ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The Chapter 13 debtor may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established Creditor's interest is a lien and the proposed purchase price of \$277,000.00 is greater than the aggregate value of Creditor's lien on the Property.

TRUSTEE'S RESPONSE

On July 2, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a response to the Debtor's motion to sell. Trustee did not oppose the proposed sale terms, but noted the following:

- A. The Estimated Seller's Statement lists a lien payoff of \$7,215.00 to secured creditor Commercial Trade, Inc. (Dckt. 89 at p. 22).
- B. Trustee is uncertain whether to pay Commercial Trade, Inc.'s claim as part of an escrow check swap. On June 26, 2019, Debtor's Counsel filed a claim for \$4,969.36 on behalf of

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Commercial Trade, Inc. (Claim No. 6-1). This debt is not provided for in Debtor's Second Modified Plan. But Debtor's motion to sell states that "Any and all amounts secured by JPMorgan Chase Bank, N.A.'s Deed of Trust and Commercial Trade, Inc.'s judgment lien shall be paid in full through escrow . . ." (Dckt. 85, at p. 2:21-2)

- C. The Estimated Seller's Statement states that the balance of the sale is due to the seller. (Dckt. 89, at p. 22). But Debtor's motion to sell states that "Any funds realized from the sale, and claimed exempt by the Debtor, shall be sent to the Chapter 13 trustee directly from escrow . . ." (Dckt. 85, at p. 4:4-7).

DISCUSSION

At the hearing Debtor addressed why 20 days notice rather than the required 21 days notice does not prejudice any interested party----

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: ~~xxxxxxxxxxxxxxxxxx~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides for all creditors with liens and security interests encumbering the Property to be paid in full through the sale.

Movant has estimated that a three percent broker's commission from the sale of the Property will equal approximately \$8,310.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than three 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 Jared Varney, the Chapter 13 Debtor ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED that Jared Varney, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Donald Logan Morris, III ("Buyer"), the Property commonly known as 10713 Beclan Drive, Rancho Cordova, California ("Property"), on the following terms:~~

- ~~A. The Property shall be sold to Buyer for \$277,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 89, 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 to effectuate the sale.~~
- ~~C. The Property is sold free and clear of the lien of JPMorgan Chase Bank, N.A., Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(3), with the lien of such creditor attaching to the proceeds. The Chapter 13 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.~~
- ~~D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~E. 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.~~

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 June 8, 2019. By the court’s calculation, 38 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Ricardo Gonzales (“Debtor”), seeks confirmation of the First Amended Plan, which would be the first plan confirmed in this case.

The Amended Plan provides for monthly plan payments of \$125.00 for the remaining 35 months of the plan, with a total of \$125.00 paid through May, 2019. The Plan proposes that the claims of general unsecured creditors, totaling \$32,367.72, receive a zero percent dividend. Amended Plan, Dckt. 23. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 2, 2019. Dckt. 28. The Trustee opposed confirmation of the Plan on the following grounds:

- A. Debtor is currently delinquent under the proposed Plan. Trustee notes Debtor must pay \$25.00 by the date of the hearing to be current.
- B. Debtor does not appear to be able to make payments under the proposed Plan for the following reasons:

- i. At the 341 Hearing, Debtor admitted he is unsure if he will be able to make the Plan payments and complete the Plan.
- ii. Debtor's proposed plan reduced payments to \$125.00 from \$490.00 per month, and reduced the dividend to unsecured creditors to zero from 66.5 percent.
- iii. Debtor's Schedule I lists income totaling \$1,924.00, of which \$1,010.00 is derived from Debtor's social security. The remaining \$914.00 derived from his non-filing spouse's social security. To date, Debtor's non-filing spouse has not filed a declaration attesting to her willingness to contribute her social security income for the duration of the Plan. Moreover, at the First Meeting of Creditors, Debtor stated that he and his spouse are contemplating separation.
- iv. Debtor's amended Schedule I removes \$500.00 of income from family members without explanation.
- v. Debtor's amended Schedule J does not clearly indicate whether listed expenses pertain to both Debtor and his non-filing spouse, or whether Debtor's spouse has unidentified expenses.

DEBTOR'S RESPONSE:

On July 9, 2019, Debtor's Counsel responded to the Trustee's Objections stating that the \$25.00 will be paid and requesting additional time to provide the Trustee with additional information to support the stated household income.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$25.00 delinquent in plan payments, which represents less than one month of the \$125.00 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). Nearly half of Debtor's listed monthly income is derived from social security payments to his non-filing spouse. To complicate matters, Debtor has stated that he and his spouse are considering a separation. This calls into question whether his spouse's income will be available to Debtor for the duration of his Plan. Without income from his non-filing spouse, Debtor's ability make the proposed monthly payments is substantially compromised. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 24, 2019. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$1,541.12, for sixty months, with no less than a 100% dividend to unsecured claims. Amended Plan, Dckt. 63. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 24, 2019. Dckt. 67. Debtors are in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 125 months due to the Plan proposal to pay 100% of unsecured claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Additionally, the Trustee raises the point that the signatures on Debtors Chapter 13 Plan do not comply with LBR 9004-1(c)(1)(D).

DISCUSSION:

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 125 months due to the proposed 100% dividend. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Jason Peter Rupchock and Tiffanie Ann Rupchock (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2019. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

The Motion to Incur Debt 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 Incur Debt is denied.

The debtors, Richard and Linda Strom (“Debtor”), seek permission incur debt on an auto loan to purchase a “utility vehicle for transportation to work, hospital appointments and other miscellaneous family needs.” Motion to Incur Debt, Dckt. 106. Approved by New Roads Auto Loans, the total loan amount is \$13,600.00 with maximum monthly payments of \$320.00, over 6 year period at a 18.90 percent fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

CHAPTER 13 TRUSTEE’S OPPOSITION

On June 14, 2019 the Chapter 13 Trustee, David Cusick (“Trustee”), filed an opposition to Debtor’s Motion. Dckt. 110. The Trustee opposed confirmation of the Motion on the following grounds:

- A. Debtor's failed to file a copy of the sales contract or a letter from New Roads Auto Loans.
- B. Trustee is uncertain whether the 18.90 percent interest rate is reasonable, or whether Debtor sought out other lenders offering potentially more favorable interest rates.
- C. Debtor's Counsel failed to cite any authority for the relief requested in Debtor's motion

Trustee also notes that Debtor had previously scheduled a \$350.00 transportation expense, and now only schedules a \$150.00 transportation expense.

DISCUSSION

Debtor does not address the reasonableness of incurring debt to purchase a vehicle of unknown value or quality while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor owns a 1998 Dodge caravan with 175,618 miles, which they assert is unreliable and has become a financial burden to maintain. While using the loan to purchase a new vehicle may be prudent under certain circumstances, it does not appear that the current offer qualifies as such.

Here, the transaction does not appear to be in the best interest of Debtor. The loan calls for a substantial interest charge—18.90 percent. Moreover, it is unclear to the court how in good faith Debtor could propose to take out a loan at such an exorbitant rate of interest when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a “reward” for filing bankruptcy is to purchase a new car and attempt to borrow money at a 18.90 percent interest rate.

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 Incur Debt filed by the debtors, Richard and Linda Strom (“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, and Debtor is not authorized to incur debt.

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2019. 28 days’ notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is **xxxxx, and Creditor’s secured claim is determined to have a value of **\$xxxx.xx**.**

The Motion filed by Patrick Moore (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of property identified and listed on schedule A/B and D. Dckt. 1. The subject property (the “Property”) is listed as follows:

Asset	Value	Debt	Net Equity
2012 Ford Escape	\$5,000.00	\$7,368.17	\$0.00
Household Goods	\$1,000.00	\$0.00	\$1,000.00
Electronics	\$300.00	\$0.00	\$300.00
Books and Pictures	\$100.00	\$0.00	\$100.00
Sports Equipment	\$200.00	\$0.00	\$200.00

Wearing Apparel	\$300.00	\$0.00	\$300.00
Cash	\$10.00	\$0.00	\$10.00
Account 2699	\$419.51	\$0.00	\$419.51
Account 4789	\$0.00	\$0.00	\$0.00
401k Account	\$18,153.45	\$0.00	\$0.00

Debtor seeks to value the Property at a replacement value of \$2,429.51 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION:

Creditor has not filed a Proof of Claim in this case and the deadline for governmental units to file a claim is December 10, 2019. Dckt. 15.

The court notes that Debtor claims a \$5,000.00 exemption in the 2012 Ford Escape and did not address in his Motion why the IRS’ lien does not attach to the exempt value of the vehicle.

Additionally, the court notes that the Ninth Circuit’s determination in *United States v. Snyder* exclude from the estate, the Debtor’s interest in the 401k Account. 343 F.3d 1171, 1179 (9th Cir. 2003). The Ninth Circuit determined that the subject pension plan was excluded from the estate under 11 U.S.C. § 541(c)(2) which meant that the value of the pension plan was not included in the IRS’ secured claim calculation. Section 506(a) specifically limits the property to which a secured claim is base “to property in which the estate has an interest” which would necessarily exclude from the 11 U.S.C. § 506(a) calculation the value of the Debtor’s 401k Account.

However, the court notes that the court in *Snyder* states that while the interest in the debtor’s pension plan was excluded form the estate “precludes the IRS from attaining secured status in the bankruptcy proceeding, the IRS's liens against Snyder's interest are not extinguished or otherwise affected. The liens continue to exist, but outside of bankruptcy.” *Id.* 343 F.3d at 1179. Accordingly, the courts ruling does not constitute a determination of the extent of the IRS’ lien in property, specifically the 401k Account, that does not constitute property of the estate pursuant to 11 U.S.C. § 541(c)(2).

At the hearing -----

Upon review of the evidence, the court determines the value of the secured claim f the IRS to be \$**xxxx.xx**, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

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

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

The Motion to Value Collateral and Secured Claim filed by Patrick Moore (“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 the Internal Revenue Service (“IRS” or “Creditor”) secured by an assets of the estate described in Debtor’s Schedules A/B and D (“Property”) is determined to be a secured claim in the amount of **xxxx**, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan. The ruling does not is a determination of any lien of the IRS in any property that is not property of the bankruptcy estate pursuant to 11 U.S.C. § 541(c)(2).

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 June 25, 2019. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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The Motion is XXXXX.

On June 25, 2019, Creditor Bosco Credit, LLC filed a Motion seeking a continuance of the Evidentiary Hearing on Debtor’s Motion to Value currently set for July 30, 2019. Dckt. 101. The evidentiary hearing was set during the June 4, 2019 hearing. *Id.* The court notes that Creditor does not appear to be seeking an extension of the July 10, 2019 deadline to deliver evidence, as required under Rule 9017-1, to the courtroom deputy.

Creditor asserts, as its sole basis for seeking an extension, that a necessary evidentiary witness Gina D’Elia, a bankruptcy department manager for Franklin Credit Management Corp., is unavailable to testify on July 30, 2019. The court requests that Creditor be prepared to address why Ms. D’Elia is the only employee competent to provide testimony on July 30, 2019. Specifically, address what type of testimony, over and above the authentication of the Franklin Credit Management Corp.’s business records, Creditor expects Ms. D’Elia to provide. The court requests further specifics regarding

Ms. D'Elia's conflict and dates which the witness is available to testify.

At the hearing -----

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 Continue the July 30, 2019 Evidentiary hearing filed by Bosco Credit, LLC ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Continue is **xxxx**

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 15, 2019. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Ramona Garcia (“Debtor”), seeks confirmation of the Amended Plan. Dckt. 44 (Declaration). The Amended Plan proposes adequate protection payments during Debtor’s home loan modification application process, and provides for opportunity for Debtor to modify her Plan or convert her case to Chapter 7 in the event the bank denies the loan modification. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 10, 2019. Dckt. 57. Trustee objects to the Amended Plan because Debtor’s Counsel failed to use the recognized and adopted language associated with the “Ensminger Provisions”, specifically: Naming the Creditor, Secured Claim Treatment, Adequate Protection Treatment, Loan Modification, Denial of Loan Modification, Events of Default and Modification of the Automatic Stay.

Additionally, the Trustee notes that if Debtor’s loan modification is denied, the Plan will take over 104 months to complete.

JUNE 25, 2019 HEARING

At the June 25, 2019 hearing the Court continued the hearing to July 16, 2019 at 2:00 P.M.

DEBTOR'S AMENDED PLAN

Debtor submitted an Amended Plan (Dckt. 64) containing the "Ensminger Provisions" as commonly used by consumer counsel and generally supported by the creditors.

CHAPTER 13 TRUSTEE'S AMENDED RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Amended Response on July 9, 2019. Dckt. 67. Trustee no longer opposes the confirmation of the amended Plan, except Debtor did not make any payment in June 2019 where \$1,590.00 was due.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$1,590.00 delinquent in plan payments, which represents one month of the \$1,590.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6)

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2019. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtors, Jim Frank Torres and Nawal Sari Torres (“Debtor”) seek confirmation of the Modified Plan because Debtor recently lost income related to adoption assistance in the amount of \$694.00. Declaration, Dckt. 69. The Modified Plan provides for monthly payments of \$200.00 per month for Months 1-5, \$176.00 per month for Months 6-36, and \$1,528.00 per month for months 37-60. Furthermore, the claim of First Tennessee Bank, N.A. would be reclassified as a Class 1 claim with payments of \$0.00 for months 1-36 and \$773.58 towards the on-going mortgage payment and \$243.55 towards the arrears payment per month for months 37-60. Modified Plan, Dckt. 67. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 1, 2019. Dckt. 77. The Trustee opposes the plan based on the following:

1. The Trustee questions whether the Plan is the Debtors’ best effort. Trustee states that on line 4 page 13 of Exhibit B, (Dckt. 70.) Debtor lists the ownership expenses of thier residence at \$1,802.81. The most recent Notice of Mortgage Payment Change filed 01/10/19

was for \$1,574.03 and indicated it was effective 03/01/19. It appears that Debtors overstated this expense by \$228.78.

2. The Debtors do not cite 11 U.S.C. § 1329 as a legal basis to amend as required under Local Bankruptcy Rule 9014-1(d).

3. The Trustee asserts that Debtors did not sign their Declaration under Penalty of Perjury.

DEBTOR'S RESPONSE TO CHAPTER 13 TRUSTEE'S OPPOSITION

The Debtor filed a Response to Trustee's Opposition on July 9, 2019. Dckt. 81. In Debtor's response they acknowledge this discrepancy and request that the plan payments for months 37-60 be increased to \$1,528.00 through an Order confirming the modified plan. Debtors state they are bringing their motion under pursuant to 11 U.S.C. § 1329. Debtors provided an additional Declaration to address any deficiencies in their original declaration.

DISCUSSION

At the hearing the Trustee addresses whether the Debtor as addressed the Trustee's Objections to Confirmation. Absent a continued Opposition to confirmation, 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 Jim Frank Torres and Nawal Sari Torres ("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 June 10, 2019, is confirmed, with the exception that the Monthly Plan Payments for months 37-60 are increased from \$1,300.00 to \$1,528.00. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 3007-1 Objection to Claim—Hearing Required.

Insufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 31, 2019. **Debtor has not properly served the IRS as required under Local Rule 2002-1(c).**

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 6 of Internal Revenue Service is overruled, and the claim is allowed in its entirety.

Kassi Lynn Martinez, Chapter 13 Debtor, ("Debtor") Objects to the claim of the Internal Revenue Service ("Creditor"), Proof of Claim No. 6. Debtor alleges that the IRS filed Proof of Claim 6-1 asserting a priority claim in the amount of \$23,763.85.

Debtor asserts that the Claim Debtor states to have been filed as a priority claim should be allowed as a priority claim, with the amount reduced to \$22,157.85. Objection ¶ 5, Dckt. 31.

CHAPTER 13 TRUSTEE RESPONSE:

The Trustee Responded to the Debtor's Objection to the IRS Claim on June 6, 2019. Dckt. 39. The Trustee flags for the court that service on the IRS was not proper.

The Trustee questions the relief requested by the Debtor. The IRS' Claim reflects a total claim of \$23,763.85 of which \$8,008.85 is listed as secured, \$3,326.85 is listed as priority, and \$12,428.15 is listed as unsecured. It appears that Debtor's Objection seeks to have \$22,157.85, an excessive amount, treated as a priority claim.

The Trustee in responding the Debtor's Objection based on the timeliness of the IRS claim

states that the IRS Claim was file on May 28, 2019 and the that the deadline for government agencies to file a claim was June 12, 2019.

DISCUSSION

Improperly attached to the Objection are fourteen pages of additional documents, rather than filed as separate declarations and exhibits. L.B.R. 9004-1, 9014-1.

The court begins with Proof of Claim No. 6-1 filed by the Internal Revenue Service in this case. The Claim asserted by the Internal Revenue Service is:

\$23,763.85, which is comprised of:

Secured.....	\$ 8,008.85
Priority Unsecured.....	\$ 3,326.85
General Unsecured.....	\$12,428.15

While there is a secured component to the Claim, the total secured and priority as asserted by Internal Revenue Service is \$11,327.70. Debtor, in her Objection, advocates to pay the Internal Revenue Service double that amount with a “gifted” priority claim of \$22,157.85.

No basis has been given for Debtor gifting a \$22,157.85 priority claim to the Internal Revenue Service.

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

The court finds that service on the IRS is improper. Further, the court is not clear on the basis for the relief sought by the Debtor and finds Debtor’s Motion to be legally unsupported.

To the extent that Debtor is basing the objection on the timeliness of the IRS Claim, the court determines such an argument is deficient. The IRS’ claim was filed 15 days prior to the relevant governmental claim deadline.

Based on the evidence before the court, Creditor’s claim is allowed in its entirety. The Objection to the Proof of Claim 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 Claim of the Internal Revenue Service (“Creditor”)

filed in this case by Kassi Lynn Martinez, Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 6 of the Internal Revenue Service is overruled, and the claim is allowed in its entirety.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on June 18, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that no plan payment is provided for, Debtor does not clearly provide for two creditors in either Schedule J or the Plan, and Debtor has claimed 100% of the property as exempt on Schedule C without citing to statutes for those exemptions.

DISCUSSION

Trustee’s objections are well-taken. 11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has not proposed a plan payment and has not proposed any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Debtor’s Schedule D estimates the amount of Secured Creditor, Specialized Loan Servicing, claim as \$200,000.00 and indicates that it is unsecured pending the outcome of separate litigation. The Plan does not provide for treatment of this claim, and (because Debtor asserts that it is subject to a

claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a \$0.00 monthly dividend on account of the claim.

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Debtor's Plan does not provide for any payment and the unsecured claims would receive less than they would in a hypothetical Chapter 7 case. 11 U.S.C. §1307(c)(4).

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

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

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

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

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2019. **By the court's calculation, 34 days' notice was provided. 35 days' notice is required.** FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is denied.

As stated, supra, 35 days' notice was required and only 34 days' notice was provided. The Motion to Confirm the Modified Plan 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 Modified Chapter 13 Plan filed by Jared Matthew Varney ("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.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING
IF MOVANT PROVIDES SUFFICIENT NOTICE**

The Motion to Sell Property is granted.

The Bankruptcy Code permits Scott C. Shaw, Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1595 Bever Lane, Paradise, California (“Property”).

The proposed purchaser of the Property is Art Orteza and Daisy Orteza, and the terms of the sale are:

- A. The purchase price for the property is \$36,000.00
- B. Escrow is to close as soon as possible after Court approval.
- C. The real estate commission is to be paid through escrow.
- D. Debtor intends to use the proceeds of the sale to purchase a new home and will file a motion to approve new mortgage loan when the time comes.

THE CHAPTER 13 TRUSTEE’S RESPONSE:

On June 14, 2019, the Chapter 13 Trustee Responded to Debtor’s Motion to Sell. Dckt. 42. The Trustee noted that he does not specifically oppose the terms of the sale but flags for the court and the Debtor that the Motion is silent about how the Trustee or Debtor’s Counsel are to hold the proceeds from the sale. The Trustee also flagged that the Debtor has claimed a Homestead Exemption in the subject property and homestead exemption in the proceeds terminates if the funds are not reinvested in another homestead within 6 months and that Debtor is obligated to inform the Trustee of any future address change.

DEBTOR’S REPLY:

Debtor Replied to the Trustee’s Response on June 14, 2019. Dckt. 42. Debtor’s Counsel states that Debtor is aware of his obligation to inform the Trustee of any address changes and the 6 month limitation to reinvest the proceeds in another homestead property. The response is silent as to the Trustee’s concern regarding how the proceeds of the sale should be held.

DISCUSSION

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: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has [not] pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is [not] 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 Sell Property filed by Scott C. Shaw, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Scott C. Shaw, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Art Orteza and Daisy Orteza or nominee (“Buyer”), the Property commonly known as 1595 Bever Lane, paradise, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$36,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 38, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. 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.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not

waived for cause.

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 Claimed Exemptions 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 is sustained, and the claimed exemptions for 2009 Titan Horse trailer under California Code of Civil Procedure § 704.010 are disallowed in their entirety.

Final Ruling: No appearance at the July 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Engs Commercial Finance Co. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$60,000.00.

The Motion filed by Mateo Galvan and Eva Galvan ("Debtor") to value the secured claim of Engs Commercial Finance Co. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 13. Debtor is the owner of a 2013 Peterbilt ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$60,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

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

to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

The lien on the Vehicle's title secures a purchase-money loan incurred on June 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 \$65,000.00. Exhibit B. Dckt. 14. 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 \$60,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Mateo Galvan and Eva Galvan ("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 Engs Commercial Finance Co. ("Creditor") secured by an asset described as 2013 Peterbilt ("Vehicle") is determined to be a secured claim in the amount of \$60,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$60,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the July 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Counsel, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 13, 2019. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Vacate 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 Vacate is granted, and the order Discharge Order (Dckt. 19) is vacated.

Cynthia Renne Uden (“Debtor”) filed the instant case a proceeding under Chapter 7 on May 26, 2016. Dckt. 1. On August 29, 2016 a Automatic Order Discharging Debtor entered. Dckt. 19. Debtor’s filed Chapter 7 petition lists, among others, Wade F. Gadberry and Allen R. Frumkin as creditors pertaining to attorney fees.

On December 7, 2018, Creditor Allan Frumkin requested that the court reopen the bankruptcy proceeding to permit Creditor to file an Adversary Proceeding relating to an unscheduled liability for attorneys fees. The Adversary Proceeding was initiated (Case No. 19-2003) and the parties have purportedly engaged in discovery. While Gadberry commenced post-petition action in Superior Court of California, County of Placer (Case No. SCV0041714).

Debtor claims that as a result of her deposition in the adversary proceeding it became apparent that obligations asserted by Creditors constitute both pre-petition and post-petition debts that could have been remedied by a Chapter 13 case.

On May 28, 2019, Debtor requested that the court convert the case to one under Chapter 13

which was subsequently granted on June 6, 2019. Dckts. 34 and 43.

On June 13, 2019, Debtor filed this instant Motion to Vacate, asking for revocation of the discharge because of “excusable neglect” as two creditors have both pre-petition and post-petition claims that would have been remedied by a Chapter 13 but for the conflict between Debtor’s Chapter 7 counsel, creditor Gadberry and the proper analysis of the Frumkin claim.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also*

Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Debtor filed in good-faith believing that her “fresh start” from her Chapter 7 filing would include all creditors, including both Gadberry and Frumkin. Debtor filed the instant Motion in order to obtain such a fresh start and resolve the outstanding claims.

Therefore, in light of the foregoing, the Motion is granted, and the Discharge Order (Dckt. 19) is vacated.

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 Vacate filed by Cynthia Renne Uden (“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 Discharge Order (Dckt. 19) is vacated.

Final Ruling: No appearance at the July 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee and Office of the United States Trustee on May 22, 2019. By the court’s calculation, 55 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

The Objection to Proof of Claim Number 1-1 of Clvery SPV I, LLC is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Debtor, Russel Somervill (“Objector”), requests that the court disallow the claim of the creditor Calvery SPV I, LLC (“Creditor”), Proof of Claim No. 1-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$8,255.75. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was June 30, 2009 The date of last payment on the Statement of Account Information attached to the Proof of Claim states January 30, 2009.

DISCUSSION

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

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

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

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

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

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 1-1 lists the charge off date as June 30, 2009. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after January 30, 2009. Thus, the four-year statute of limitations expired on January 30, 2013.

This bankruptcy case was filed on December 12, 2017— nearly five years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

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

sustained.

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

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

The Objection to Claim of the creditor, Calvery SPV I, LLC (“Creditor”), filed in this case by the Chapter 13 Debtor, Russel Somervill (“Objector”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 1-1 of Calvery SPV I, LLC sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the July 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2019. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Henry Sereal and JoAnn Sereal (“Debtor”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on June 24, 2019. Dckt. 26. 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 the debtor, Henry Sereal and JoAnn Sereal (“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 June 7, 2019, is confirmed. Debtor’s Counsel shall prepare

an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the July 16, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion— No Hearing Required as parties have filed a joint stipulation.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2019. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Schools Financial Credit Union (“Creditor”) is granted and Creditor’s secured claim is determined to have a value of \$28,750.00.

The Motion filed by Megan Elizabeth Elliott (“Debtor”) to value the secured claim of Schools Financial Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 11. Debtor is the owner of a 2015 Ford Edge (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$23,250.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on July 1, 2019. Dckt. 24.

CREDITOR’S OPPOSITION

Creditor filed an Opposition on July 2, 2019. Dckt. 26. Creditor disputes the amount of the claim. Creditor is of the position that the claim should be treated as a 910 claim. Further, Creditor argues that the total amount of the claim is \$40,198.62 with the secured portion of the claim totaling \$33,488.99. Creditor asserts that in a prior case with this Debtor, at the time of its dismissal, the unpaid principal on the secured claim was \$27,210.00, with an unsecured claim of \$8,049.39. Because the prior case was dismissed, Creditor argues that Debtor owes the unpaid principal balance on the secured claim, including the accrued unpaid interest and unpaid late charges, in addition to the balance of the unsecured portion of the claim. Therefore, Creditor argues that the claim should be for the amount of \$33,488.99,

in accordance with the 910 day rule.

STIPULATION :

On July 9, 2019, the parties filed a joint stipulation requesting that the Vehicle be valued at \$28,750.00 and that the secured portion of the Creditor's claim is \$28,750.00. Dckt. 29.

DISCUSSION

The court, in response to the parties joint Stipulation, is prepared to determine that Creditor's secured claim is in the amount of \$28,750.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Megan Elizabeth Elliott ("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 Schools Financial Credit Union ("Creditor") secured by an asset described as 2015 Ford Edge ("Vehicle") is determined to be a secured claim in the amount of \$28,750.00, 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 \$28,750.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the July 16, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on June 11, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is granted.

Joint Debtor, Cecilia Magana, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Robert Lee Belloni. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016 and 7025.

Debtor filed for relief under Chapter 13 on March 10, 2014. On November 14, 2016, Debtor's Chapter 13 Plan was confirmed. Dckt. 64. On May 10, 2019, Debtor Robert Lee Belloni passed away. Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on June 7, 2019. Dckt. 74. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

CHAPTER 13 TRUSTEE RESPONSE:

On July 1, 2019 the Chapter 13 Trustee stated he did not oppose the requested relief. Dckt.

86. The Trustee also notes that Plan completed with the payment received on March 4, 2019 and the Trustee's Final Report was filed on June 28, 2019.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by

Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Cecilia Magana has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 74. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Cecilia Magana, as the spouse of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Robert Lee Belloni. The court grants the Motion to Substitute Party.

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

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

The Motion for Substitute After Death 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 Cecilia Magana is substituted as the successor-in-interest to Robert Lee Belloni and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.