UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 30, 2019 at 2:00 p.m.

---

1. 19-23023-C-13 DPC-1 | **ALMA CHAVEZ-NUNEZ** **John Downing** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **7-2-19 [24]**

THRU #2

Final Ruling: No appearance at the July 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Counsel on July 2, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained, and the claimed exemptions for a 2002 Jeep Cherokee and 2004 Chevrolet Pickup under California Code of Civil Procedure § 704.730 is disallowed in its entirety, the business assets under California Code of Civil Procedure § 704.060 is disallowed to the extent the claimed exemption exceeds $8,725.00, and the paid earning exemption totaling $500.00 under California Code of Civil Procedure § 704.070 is disallowed to the extent the exemption exceeds $375.00.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Alma Chavez-Nunez's

("Debtor") claimed exemptions under California law because Debtor used the incorrect exemptions for the certain claimed property. Debtor's Schedule C claims as exempt under California Code of Civil Procedure § 704.730, the "homestead exemption," two vehicles, a 2002 Jeep Cherokee and 2004 Chevrolet Pickup, and "Let It Snow Accounts Receivables" which is not applicable to either of these types of property. California Code of Civil Procedure §704.730 is a "homestead exemption" and does not apply to vehicles or to the accounts receivables that Debtor tries to apply them to.

The Trustee objects to the claimed exemptions pursuant to California Code of Civil Procedure § 704.060 in the amount of $21,500.00 for a 1981 GMC Dump Truck 1992 Chevrolet Pickup Truck, 1994 Chevrolet Pickup Truck, 1994 Chevrolet Dump Truck, 1995 Chevrolet Dump Truck, 1996 Ford Pickup Truck, Miscellaneous Used Landscaping Equipment, Bobcat, and a Riding Snowblower. The Trustee alleges that the exemption amount for these items should be limited to $8,725.00 because Debtor has not identified that any of these business assets belong to her non-filing spouse's business, trade, or profession. California Code of Civil Procedure §704.060 allows for $8,725.00 in Debtor's "or" Spouse's trade, business, or profession and $17,450.00 in personal property used in Debtor's "and" Spouse's trade, business, or profession.

Lastly, the Trustee objects to the claimed exemption pursuant to California Code of Civil Procedure § 704.070 monies in a bank account in the amount of $500.00. Under this statue Debtor is only entitled to exempt 75% of the "paid earning" and as such the Trustee asserts the Debtor is only entitled to claim $375.00.

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*. Here the Trustee has met that burden as Debtor's vehicles and accounts receivable are not entitled to an exemption for a Debtor's homestead. Additionally, Debtor has exceeded the maximum exemption amounts for business assets and paid earnings.

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 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 Objection is sustained, and the claimed exemptions for a 2002 Jeep Cherokee and 2004 Chevrolet Pickup under California Code of Civil Procedure § 704.730 is disallowed in its entirety, the business assets under California Code of Civil Procedure § 704.060 is disallowed to the extent the claimed exemption exceeds $8,725.00, and the paid earning

exemption totaling $500.00 under California Code of Civil Procedure § 704.070 is disallowed to the extent the exemption exceeds $375.00.

2.	**19-23023-C-13** **DPC-2**	**ALMA CHAVEZ-NUNEZ** **John Downing**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-2-19 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Counsel on July 2, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the First Meeting of Creditors held on June 27, 2019.

B. Debtor is $16,800.00 delinquent in payments and has paid $0.00 into the plan so far.

C. Debtor did not initially file Schedules of Debts when this case was filed on May 11, 2019. Based on the Proof of Claims filed, the Priority Unsecured Debt totals $1,014,276.34 and the Unsecured Debt totals $5,602,202.86. As of April 1, 2019, the unsecured debt limit is $419,275.00

D. The Plan will take 310 months to complete which vastly exceeds the 60 months allowed.

DISCUSSION

Trustee's objections are well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The First Meeting of Creditors was held on June 27, 2019. Because Debtor failed to appear at this meeting, it has been continued to July 25, 2019 at 1:00 p.m.

Debtor is $16,800.00 delinquent in plan payments, which represents multiple months of the $8,000.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by 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). Debtor has paid a total of $0.00 into the plan and has an additional payment due on July 25, 2019 of $8,000.00. The Trustee also notes that Debtor has filed three prior bankruptcy cases that were all dismissed for non-payment.

Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $394,725 and noncontingent, liquidated, secured debts of less than $1,184,200." Debtor's Summary of Schedules indicates that Debtor was well within the limits of § 109(e) as of the petition date, and so, the court will not deny plan confirmation on this basis.

This is not the first recent dismissal of a Chapter 13 case for Debtor due to default and the issue of whether due to her debt load she qualified as a Chapter 13 Debtor. In Chapter 13 case 16-27511 Debtor, represented by the same counsel as in this case, had the case dismissed with the U.S. Trustee pressing the point that Debtor did not qualify for relief under Chapter 13 as provided in 11 U.S.C. § 109(e). In responding to the Motion to Dismiss in the prior case, Debtor did not even attempt to dispute the grounds based on her exceeding the debt limits. 16-27551; Civil Minutes, Dckt. 29 at 2.

With the prior Chapter 13 case having been dismissed on March 30, 2017, and the current case not filed until May 2019, a jaded view could be that Debtor and her professionals may have been lying in wait, hoping to slip in and slide this by the U.S. Trustee, Chapter 13 Trustee, and the court.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months, specifically in excess of 300 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. 18-23524-C-13 LBG-101 MARIO LOPEZ AND LEAH ALBERTO
Lucas Garcia

MOTION TO CONFIRM PLAN
5-28-19 [62]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Counsel, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 27, 2019. By the court's calculation, 64 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 Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtors, Mario Alberto Lopez and Leah Pineschi Alberto ("Debtors") seek confirmation of the Modified Plan because the Debtors' financial circumstances have changed and Debtors have had significant decreases in their monthly income. The Debtors assert that claims discharged in their Chapter 7 case have been filed and certain other claims filed late. Debtors argue that these claims should not be allowed and Debtors will file the necessary objections. Dckt. 64, Declaration. The Modified Plan provides that Debtor will pay $550.00 per month for 18 months, $750.00 per month for 18 months and $825.00 per month for 24 months. Dckt. 66, Modified Plan. 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 12, 2019. Dckt. 73. The Trustee's Oppositions is based on the following:

A. The Debtors Plan is not feasible because it exceeds the allowed 60 months pursuant to 11 U.S.C. § 1332(d), requiring 78 months to complete. Trustee notes that Debtors indicate that there are claims that are barred and that objections will be forthcoming. However, the proposed plan relies on Debtors prevailing on those objection and the Trustee notes, that as of

the time of its Opposition, no Objections to claims have been filed.

DISCUSSION

Debtors are in material default under the Plan because the Plan will complete in more than the permitted sixty months. The Plan relies on Objections to Claim that have not yet been filed. Debtors statements that Objection to Claim are forthcoming do not resolve the deficiencies. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Significantly, Debtor has taken no action to object to the asserted discharged claims which Debtor finds to be "objectionable." One is the proof of claim filed by Travis Credit Union and the other for American Honda Finance Corporation. It is most likely that the claims are based on written contracts which include attorney's fees provisions. Given that both entities appear to be financially solvent, if Debtor is correct and defenses exist to both claims, then such would not only be successful, but the losing creditors would have the privilege of paying the Debtor prevailing party attorney's fees.

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 the debtor, Mario Alberto Lopez and Leah Pineschi Alberto ("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.

4. 19-20825-C-13 PIOTR/CELESTIAL REYSNER MOTION TO CONFIRM PLAN
SLE-2 Steele Lanphier 5-30-19 [47]

APPEARANCE OF STEELE LANPHIER, ESQ., COUNSEL FOR DEBTOR REQUIRED FOR JULY 30, 2019 HEARING

NO TELEPHONIC APPEARANCE PERMITTED FOR SAID COUNSEL

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 30, 2019. By the court's calculation, 61 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 debtors, Piotr Gabriel Reysner and Celestial Olivia Reysner ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides that Debtor is current with $2,887.00 paid through May 2019 and then Plan payments shall be $945.00 per month from June 2019 until Plan completion in 60 months. General unsecured non-priority creditors shall receive no less than a zero percent return on filed and approved claims. Travis Credit Union shall be a Class 2 claim. State Bar of California shall be a Class 5 claim. General unsecured creditors shall be paid no less than 0% of their filed and approved claims. Amended Plan, Dckt. 52. 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 3, 2019.

Dckt. 58. The Trustee opposes confirmation based on the following:

A. Debtor has not filed all required tax returns.

B. The Plan will complete in 94 months.

C. Debtor schedules debts owed to the California State Bar as a priority debt without legal basis to do so.

D. Debtors have not provided verification of their Social Security numbers.

DEBTOR'S RESPONSE:

The Debtors response filed on July 23, 2019 states that the Trustee's Opposition warrants the filing of a new plan. Dckt 61.

DISCUSSION

The court construes the Debtors response as a concession to the Trustee's Opposition. Accordingly the Amended Plan is not confirmed.

Additionally, Debtor's quick capitulation to the defects, including trying to improperly provide for the State Bar obligations as a priority claim raise serious issues for Debtor, Counsel, and how this case, or any case, can be prosecuted. Debtor Piotr Reysner is a former attorney who practiced bankruptcy law in this court. His attorney in this case is a very experienced bankruptcy attorney. Both necessarily had to know that the treatment for the State Bar claims being imbedded in the proposed Plan was not permitted under the Bankruptcy Code. It appears that this may be in an attempt to dupe the court, creditors, Chapter 13 Trustee, and U.S. Trustee into allowing a plan that does not comply with the Bankruptcy Code to be confirmed.

The reason given in the Additional Provisions of the Amended Plan for the Debtor and Debtor's counsel overriding Congress and creating their own unique bankruptcy law provisions is:

> Debtor Piotr Reysner owes penalties and sanctions to the State Bar of California related to 2011 discipline proceedings. In order to be reinstated to the practice of law, Debtor Piotr must repay these sanctions, which are non-dischargable in Bankruptcy. Reinstatement to the practice of law dramatically increases Debtor Piotr's earning potential and any such increase in income would require greater contribution to the Plan. As such, repayment of this debt as priority is necessary for the benefit of the Bankruptcy Estate and for the benefit of Debtors' future financial needs.

Amended Plan, Additional Provision 7.01, ¶ 3.12(c). While coloring it as a way to "increase plan payments," the monthly plan payments of $945 would, after payment of ($247) for secured car payments and Chapter 13 Trustee fees of ($75), there would be only $623 for payment of the "priority claims."

With the State Bar needing to be paid ($30,000) before Mr. Reysner could seek to regain his law license and then ($1,551.17) for Franchise Tax Board priority claim and ($33,717.64) priority

Internal Revenue Service claim, the creditors with general unsecured claims (which are of the same priority as the State Bar) being "out of the money." Using the money to pay the State Bar out of priority only works to enhance the monies to Debtor, not the other creditors whose rights are being abused.

This raises serious questions of whether both of these debtors are filing and prosecuting this plan and case in good faith. Further, whether they can so prosecute any case or whether a dismissal with prejudice is warranted. These pleadings have been filed by counsel with the certifications arising under Federal Rule of Bankruptcy Procedure 9011 and his duties having been admitted to the Eastern District of California.

At the hearing, **xxxxxxxxxxxxxxx**

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, Piotr Gabriel Reysner and Celestial Olivia Reysner ("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.

5. 19-22933-C-13 DPC-1 | **MATTHEW RUBB** Steele Lanphier | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** 6-24-19 [18]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Counsel June 24, 2019. By the court's calculation, 36 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 and the Plan is confirmed.~~

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

> A. Debtor has failed to file all pre-petition tax returns for the four years preceding the filing of the petition. Debtor admitted at the First Meeting of Creditors held on June 20, 2019 that no federal tax return for 2017 had been filed.

DEBTOR'S RESPONSE:

The debtor, Matthew Rubb ("Debtor") filed a Reply to the Trustee's Opposition on July 8, 2019. Dckt. 22. Debtor states in his declaration that the 2017 tax return has been filed and is delivering a copy to the Trustee.

DISCUSSION

Absent a continued Opposition that the required 2017 tax return has not been filed, Debtor has addressed the Trustee's Opposition.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, and Matthew Rubb's ("Debtor") Chapter 13 Plan filed on May 16, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. 17-28343-C-13 SHAWN BARTLETT MOTION TO MODIFY PLAN
CLH-2 Cindy Lee Hill 6-24-19 [44]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 24, 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 debtor, Shawn Glenn Bartlett ("Debtor") seeks confirmation of the Modified Plan to include the supplemental Schedule I and J that includes previous household income, as well as projected expenses based on purchasing a new home and the aging of the family's children. Debtor filed a Motion to Borrow to purchase a new residence. In additional, he submitted his supplemental Schedule I and J projecting his new income and expenses after the purchase of the new residence in addition to the child support his wife receives for his stepchild, which he previously erroneously omitted. Declaration, Dckt. 46. The Modified Plan provides for the previously erroneous omission of the child support and increases the Plan payment to $1020.98 to make up for the difference. Modified Plan, Dckt. 48. 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 12, 2019. Dckt. 54. The Trustee's Opposition is based on the following:

A. The Plan does not list real property in Class 4 to correspond with expense for the mortgage on property commonly known as 6320 Westwood Dr. Rocklin, California. Debtor obtained court approval to incur debt to the purchase the real property on June 25, 2019.

Dckt. 50.

B. The Debtor substituted in new counsel on June 4, 2019. Debtor's new counsel has not submitted a fee application or estimate for likely attorney fees. An Order Granting Substitution of Attorney was filed on June 4, 2019. Dckt. 40. The attorney's fees under the confirmed Plan are $950.00 paid prior with $3,050.00 paid through the Plan and monthly payments of $130.00. The Trustee has disbursed $2,340.00 in attorney's fees to date with $710.00 remaining to be paid. Section 7.01 states that the substituting attorney shall file a fee application for her fees and shall be paid $225.00 per month after approval, plus $130.00 per month after the original attorney's fees are paid. The Trustee needs more information as to the new attorney's fees.

C. There is a discrepancy in the plan payment amounts reflected in the Plan and in Debtor's Declaration. The Trustee further notes that there appears to be mathematical error in the calculation of the payments. Sections 2.01 and 2.02 of the Plan propose a payment of $775.00 per month, plus an additional $245.00 from July 2019 until the end of the plan. Debtor's Declaration (Dckt. 46) states that the Plan payments will increase to $1,020.98 which agrees with Debtor's monthly net income. The Trustee wants clarification on the exact Plan payment amount, the difference is a $0.98. The Trustee does not oppose clarifying the plan payment in the order confirming.

DEBTOR'S RESPONSE:

Debtor's counsel responds that Debtor does not oppose listing the Creditor Energy One Lending in Class 4, counsel estimates fees between $3,000.00 and $4,000.00 for filing the motion to borrow and motion to amend the plan, and the Plan Payment should be $1,020.98. Debtor requests that the necessary clarification be included in the order confirming.

DISCUSSION

At 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 the debtor, Shawn Glenn Bartlett ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that Motion to Confirm the Modified Plan is granted, and Matthew Rubb's ("Debtor") Chapter 13 Plan filed on June 24, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for~~

~~approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

7. 18-27544-C-13 BLG-5 | **AMY LOAFEA** **Chad M. Johnson** | **MOTION TO VALUE COLLATERAL OF ECOMMISSION FINANCIAL SERVICES, INC** **6-26-19 [70]**

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 26, 2019. By the court's calculation, 34 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 Ecommission Financial Services, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,162.10.

The Motion to Value filed by Amy Loafea ("Debtor") to value the secured claim of Ecommission Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 72. Debtor is the owner of a commission from two real estate deals ("Property"). Debtor seeks to value the Property at a replacement value of $10,240.77 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).

Debtor provides the UCC 1 that was filed with the California Secretary of State on November 15, 2016 and the underlying Financial Services Agreements relating to Creditor's obligations. Dckt. 73, Exhibits C, D. There exits a perfected security interest filed by Commission Express for $4,078.67, perfected by a UCC 1 filed on October 3, 3016, prior to Creditors. Dckt. 73, Exhibit B, Proof of Claim No. 11. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $6,162.10, 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 Chapter 13 Trustee filed a Response on July 12, 2019 indicating he did not oppose the

relief. Dckt. 78.

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 Amy Loafea ("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 Ecommission Financial Services, Inc. ("Creditor") secured by an asset described as a commission from two real estate deals ("Property") is determined to be a secured claim in the amount of $6,162.10, 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 $10,240.77 and is encumbered by a liens securing claims that exceeds the value of the asset.

8. 19-21449-C-13 JOHN WILSON MOTION TO CONFIRM PLAN
JKM-2 Jin Kim 6-18-19 [48]

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 18, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, John Wilson ("Debtor"), seeks confirmation of the Amended Plan to provide for the added Class 2A HOA claim and to decrease the dividend for unsecured creditors from 15% to 9%. Dckt. 51. The Amended Plan provides for plan payments of $4,338.00 for 60 months. Amended Plan, Dckt. 50. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE RESPONSE:

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on July 9, 2019. Dckt. 54. The Trustee does not state that he expressly opposes the Debtor's plan, however, the court notes that the response flags for the court that Debtor's Schedule J reductions have been reduced, and may not reflect a reasonable budget.

DISCUSSION:

At the hearing the Debtor responds to the courts concerns regarding the feasibility of Debtor's budget ----

~~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, John Wilson, III ("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 18, 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.~~

9. 18-26962-C-13 SLE-4 | **FRANCISCO SOLORIO** Steele Lanphier | **CONTINUED MOTION TO CONFIRM PLAN** 5-15-19 [56]

THRU #10

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

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

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

Francisco Javier Solorio ("Debtor") seeks confirmation of the Plan because Debtor intends to pay his mortgage through the Plan rather than directly. Dckt. 58 (Declaration). The Plan provides for general unsecured non-priority creditors to be paid no less than a zero percent dividend. Further, Debtor provides for repayment on his mortgage as a Class 1 debt. Dckt. 60 (Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 23, 2019. Dckt. 72. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Financial. Dckt. 77.

The Trustee also flags for the court that Debtor's Plan shows that US Bank Home Mortgage is now listed as a Class 1 Creditor. The Plan, however, still lists US Bank Home Mortgage in Class 4 with a $0.00 monthly contract installment payment. It is not clear why US Bank is listed in Class 1 and Class 4.

JUNE 25, 2019 HEARING

At the June 25, 2019 hearing, the court continued the hearing to 2:00 p.m. on July 30, 2019, to be heard alongside Debtor's Motion to Value. Dckt. 77.

DISCUSSION:

Debtor has filed a Motion to Value the Secured Claim of Ally Financial (Dckt. 77), to be heard on the same day as this hearing. The court has granted the Motion and valued the secured claim as requested by Debtor.

At the hearing —

~~The 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 Chapter 13 Plan filed by Francisco Javier Solorio ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Confirm the Plan is granted,and Debtor's Amended Chapter 13 Plan filed on May 15, 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.~~

10. 18-26962-C-13 SLE-6 | **FRANCISCO SOLORIO** **Steele Lanphier** | **MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL** **6-25-19 [77]**

Final Ruling: No appearance at the July 30, 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 25, 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). 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 Ally Financial ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $17,000.00.

The Motion filed by the debtor, Francisco Solorio ("Debtor"), to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 79. Debtor is the owner of a 2015 Dodge Charger R/T ("Vehicle"). The lien on the Vehicle's title secures a purchase-money loan incurred in September, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $24,300.00. *Id*. Debtor seeks to value the Vehicle at a replacement value of $17,000.00 as of the petition filing date.

DISCUSSION

As the Vehicle's owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's 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 $17,000.00, 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 the debtor, Francisco Solorio ("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 Ally Financial ("Creditor") secured by an asset described as a 2015 Dodge Charger R/T ("Vehicle") is determined to be a secured claim in the amount of $17,000.00, 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 $17,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

11. 19-22863-C-13 DPC-1 **IRINA KOLESNIKOVA** **Pro Se** **OBJECTION TO HOMESTEAD EXEMPTION 6-24-19 [24]**

THRU #12

Final Ruling: No appearance at the July 30, 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 (*pro se*) on June 24, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety

The Chapter 13 Trustee, David Cusick ("Trustee"), objects to the debtor, Irina Kolesnikova's ("Debtor"), claimed exemption under California law because there is not evidence to indicate Debtor is entitled to the amount of the homestead exemption claimed.

Debtor's Schedule C claims exemptions on real property located at 5746 Cada Circle, Carmichael, California under California Code of Civil Procedure § 704.730 for $250,000.00. Dckt. 13, Schedule C.

California Code of Civil Procedure § 704.730 states the following with respect to the amount of the homestead exemption:

> (3) **One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following**:
>
> (A) **A person 65 years of age or older.**

> (B) **A person physically or mentally disabled** who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.
>
> (C) **A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000)** or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale.

Trustee notes that because Debtor did not appear at the First Meeting of Creditors, Trustee cannot verify Debtor's age. Trustee further notes that Debtor's Schedule I shows monthly income of $3,487.00, and does not indicate Debtor is receiving disability or supplemental income payments. Schedules, Dckt. 13 at p. 28-29.

DISCUSSION

The Chapter 13 Trustee's Objection is sustained, and the claimed exemption is disallowed.

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Here, Debtor has not presented any evidence which demonstrates that the claimed exemption is proper, nor to rebut the evidence produced by the objecting party. Even if Debtor did produce such evidence, the claimed exemption exceeds that allowed under California Code of Civil Procedure § 704.730 by at least $75,000.00.

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 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 Objection is sustained, and the claimed homestead exemption under California Code of Civil Procedure § 704.730 is disallowed in its entirety.

12. 19-22863-C-13 IRINA KOLESNIKOVA
DPC-2 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-24-19 [20]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor on June 24, 2019. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor, Irina Kolesnikova ("Debtor"), did not appear at the First Meeting of Creditors held on June 20, 2019. The meeting has been continued to August 22, 2019 at 1:00 p.m.

B. Debtor filed her plan using the incorrect Chapter 13 Plan standard form.

C. Debtor's non-exempt equity totals $50.00 in cash and bank accounts, Debtor has exceeded the homestead exemption amount by at least $75,000.00 and is proposing a 0% dividend to unsecured creditors.

D. Debtor's proposed plan would take over 999 months to complete, according to Trustee's calculations.

E. Debtor's Schedule C shows $250,000.00 as an amount of the exemption claimed under California Code of Civil Procedure § 704.730 for the Debtor's residence.

F. Debtor's Schedule D fails to list Class 1 Creditor Fay Servicing.

G. Debtor did not identify any gross income on Form 122C-1. Dckt. 13. Debtor's Schedule J lists her net income as $1,050.00. *Id*. at p. 32. The proposed plan calls for monthly payments of $100.00. Plan, Dckt. 11 at p. 1.

H. Debtor did not provide all required documents to Trustee.

I. Debtor failed to provide Trustee with 60 days of employer payment advices received prior to the filing of the petition.

J. Debtor did not provide Trustee with a tax transcript of a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was completed, or a written statement no such documentation exists.

K. Debtor's Schedule B fails to list any retirement benefits from her job as an Accounting Specialist with the California Department of Housing.

L. Debtor has filed four prior Chapter 13 cases that have been dismissed and (Case Nos. 17-27612; 17-24189; 12-37102; 11-26205) and has no provided explanation as to why this case will succeed.

DISCUSSION

Trustee's objections are well-taken.

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

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.

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals $50.00 in cash and bank accounts, Debtor has exceeded the homestead exemption amount by at least $75,000.00 and is proposing a 0% dividend to unsecured

creditors. Moreover, the Plan proposes to $100.00 monthly payments, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $1,050.00.

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

Debtor has not filed a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment

The Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Fay Servicing's ("Creditor") matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6). 11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)).

Lastly, Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in more than 999 months due to insufficient monthly plan payments. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor filed a previous Chapter 13 petition on November 20, 2017, which was dismissed on February 26, 2018. Debtor's recent bankruptcy case has implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation.

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.

13. 19-24378-C-13 DPR-1 — DANIEL ARANA, David Ritzinger — MOTION TO IMPOSE AUTOMATIC STAY, 7-16-19 [14]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2019. By the court's calculation, 14 days' notice is required. That requirement was met.

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

The Motion to Impose the Automatic Stay is denied.

The Debtor, Daniel Arana ("Debtor"), seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 17-24936 and 19-20477) were dismissed on September 5, 2018, and June 3, 2019, respectively. *See* Order, Bankr. E.D. Cal. No. 17-24936, Dckt. 33, September 5, 2019; Order, Bankr. E.D. Cal. No. 19-20477, Dckt. 35, June 3, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because he did not modify the terms his home mortgage with LoanCare Servicing Center, which he is now attempting to do. Debtor further acknowledges that if the modification is not

approved, he will sell his residence within 9 months of filing and pay a 100% dividend to creditors from the proceeds. Debtor claims to have $125,000.00 of equity in his residence, which he estimates to be worth approximately $415,000.00.

Debtor also notes that the instant case differs from his previously dismissed cases because he now receives $1,403.71 of monthly income in disability benefits from the Veterans Administration, in addition to an unspecified amount of income generated by his non-filing spouse from her independent business. Debtor's plan proposes monthly payments of $2,065.08. Plan, Dckt. 19.

Debtor states in his declaration that foreclosure of his home could jeopardize the ability of unsecured creditors to receive 100% of their claims, as proposed under Debtor's new plan. According to Debtor, the fact his family home could be sold if the loan modification is not approved is evidence that this Chapter 13 plan was filed in good faith. Declaration, Dckt. 16. Debtor also argues the fact the plan proposes to pay 100% of unsecured claims demonstrates that the plan will likely be confirmed and was filed in good faith.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
>
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

In determining if good faith exists, the court considers the totality of the circumstances. *In re*

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

A. Why was the previous plan filed?

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

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

DISCUSSION

Debtor's prior cases were dismissed after Debtor failed to make plan payments(Nos. 17-24936 and 19-20477). While Debtor now has a reliable source of income in the form of disability benefits, Debtor provides no evidence of the amount of income purportedly generated by his non-filing spouse. Moreover, Debtor's non-filing spouse offers no declaration affirming her ability or willingness to contribute her income to cover the difference between Debtor's disability income and the proposed plan payment.

Also, in looking at Schedules I and J, Debtor states under penalty of perjury that the non-debtor spouse has $3,376.00 in net profits from her business monthly. Dckt. 10 at 21. That is $40,512 a year. On Schedule J there is a monthly expense of ($330) for al of debtor's state income tax, federal income tax, self-employment tax, and other self-employed payments required.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

The Motion is not granted, and the automatic stay is not imposed for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Impose the Automatic Stay filed by Daniel Arana ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

14. 19-23183-C-13 DPC-1 JESSY/KLARISSA ESIO Eric Schwab

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-3-19 [36]

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 July 3, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan given evidence of a possible fraudulent transfer on the basis that:

A. According to the debtors, Jessy and Klarissa Esio's ("Debtor"), Statement of Financial Affairs, Mr. Esio transferred real property located at 7459 50th Avenue, Sacramento, CA (the "Property") to Marie Lim on February 20, 2018 for $220,000.00. Trustee notes Debtor's Statement of Financial Affairs did not disclose Debtor's relationship with Ms. Lim. Dckt. 20 at p. 35.

B. On February 22, 2019, a Quit Claim Deed was filed with the Sacramento County Recorder with a Grantor of Jessy Esio to Marie Lim.

C. On May 9, 2019, Grant Deed was filed with the Sacramento County Recorder with a Grantor of Jessy Esio/Jessy C Esio to Marie Lim.

D. According to information listed on zillow.com, realtor.com, and redfin.com, the Property was sold in May 2019 for $230,000.00

E. According to Debtor's Statement of Financial Affairs, Debtor still holds the Property for Ms. Lim. Dckt. 20 at p. 36.

DISCUSSION

Trustee's objections are well-taken.

Given the possibility that Debtor's transfer of the Property occurred within two years of the date of filing, the transaction may be avoided pursuant to 11 U.S.C. §548(a)(1).

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

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

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

15. 19-23291-C-13 DPC-1 CHRISTIAN/KOREENIA LAZO Werner Ogsaen

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
7-1-19 [17]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Debtors and Debtors' Attorney on July 1, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor Koreenia Lea Lazo did not to appear at the First Meeting of Creditors and the Plan does not reflect Debtors Best Effort as the Debtor's income is unclear. Debtors Schedule I reflect net income as $4,365.14, however, paystubs from January through April 2019 reflect net monthly pay as $5,640.40, a difference of $1,275.26. It also appears Debtor overstates deductions for Insurance on Schedule I (Line 5e) in the amount of $1,529.48 when it appears from the paystubs that Debtor's employer provides for a portion of the insurance in the amount of $1,293.00.

DISCUSSION

Joint Debtor Koreenia Lea Lazo did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. The court notes that the Continued Meeting of Creditors was held on July 25, 2019 at 1:00 P.M., and Trustee's Report indicates Debtor did not appear appeared. Attempting to confirm a plan while failing to appear and be questioned by Trustee

and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

On Debtor's Schedule I Mr. Lazo's net income is listed as $4,365.14. According to Debtor's monthly pay stubs for pay periods from January through April 2019 his monthly net pay is $5,640.60. The difference in the net pay is $1,275.26. Also, Debtor lists the deductions for insurance in the amount of $1,529.48. Debtors pay stubs show his employer providing a portion of his insurance in the amount of $1,293.00. The amount remaining of $236.48 appears to be Debtor's actual out-of-pocket monthly expense for insurance.

At the hearing ----

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

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

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

16. 19-23095-C-13 DPC-1 ANNA RATH Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-3-19 [21]

THRU #17

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 July 3, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor did not appear at the First Meeting of Creditors held on June 27, 2019. The Meeting was continued to August 29, 2019.

B. Debtor is delinquent $836.84. Debtor has paid $0.00 into the plan. Debtor will have another payment of $836.84 due before the date of the hearing.

C. Debtor's plan (Dckt. 14) is on an outdated form.

D. Debtor did not provide Trustee with tax transcript or a copy of the Federal Income Tax Return.

E. Debtor did not provide Trustee with 60 days of employer payment advices received prior to filling of the petition.

F. It doe not appear that Debtor cannot make payments under the plan. The Statement of Financial Affairs in incomplete.

DISCUSSION

Trustee's objections are well-taken.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The Continued Meeting of Creditors is scheduled to be held on August 29, 2019.

Debtor is $836.84 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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.

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor did not to provide the tax transcript. This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has not provided all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Schedule J lists debtor's net income as $344.00 while the Plan proposes payments of $836.84 per month. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

17. 19-23095-C-13 EAT-1 ANNA RATH Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
7-3-19 [29]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on July 3, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Creditor is in the process of filing a Proof of Claim with an approximate mortgage arrears totaled $4,317.44 and postpetition mortgage payment is $1,079.36.

B. Debtor's plan does not provide for payment of any claims, including Creditor's.

C. Debtor appears to overstate their income. Creditor argues Debtor does not list a deduction for Federal or State taxes from Debtor's income nor a social security deduction.

D. Debtor appears to understate their expenses. Debtor lists monthly mortgage

payments as $587.50 instead of $1,079.36.

E. The Plan provides for a monthly payment of $836.84. However, Debtor lists their monthly net income as $344.00.

DISCUSSION

Creditor has not yet filed a claim in this case. However, in their Motion, Creditor asserts a claim of $199,599.00. Debtor's Schedule D estimates the amount of Creditor's claim as $134,137.00 and indicates that it is secured by a first deed of trust on Debtor's residence. The Plan does not provide for treatment of this claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief

from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

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

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor appears to overstate their income by not listing a deduction for Federal or State taxes nor a deduction for social security. Further, Debtor appears to understate their expenses. Debtor's Schedule J lists the monthly mortgage payment as $587.50 while Creditor claims it to be $1,079.36. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's Schedule J, filed on May 29, 2019, lists a $344.00 monthly net income, while the Plan provides for a $836.84 monthly payment. Taken together, they suggest that the Plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

18. 19-23199-C-13 DPC-1 JUDY WARREN Peter Macaluso

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
6-19-19 [18]

THRU #19

Final Ruling: No appearance at the July 30, 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 (*pro se*, at time of filing) on June 19, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

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

Debtor filed a Chapter 7 bankruptcy case on November 29, 2017. Case No. 17-27778. Debtor received a discharge on March 27, 2018. Case No. 17-27778, Dckt. 27. The instant case was filed under Chapter 13 on May 20, 2019.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on March 27, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 17-27778, Dckt. 27. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case

No. 19-23199), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-23199, the case shall be closed without the entry of a discharge.

19. 19-23199-C-13 JUDY WARREN
DPC-2 Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-3-19 [23]

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

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

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,* at time of filing of the Objection on July 3, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent $1,619.00. Debtor has paid $0.00 into the plan. Debtor will have another payment of $1,619.00 due before the date of the hearing.

B. Debtor has not provided the Trustee with tax transcript or a copy of the Federal Income Tax Return.

C. Debtor has not provided the Trustee with 60 days of employer payment advices received prior to filling of the petition.

D. Debtor cannot make payments under the plan. The Statement of Financial Affairs in incomplete.

DISCUSSION

Trustee's objections are well-taken.

Debtor is $1,619.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has not provided the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has not provided all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor does not appear able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor lists Santander and Check N Go in Class 1. Trustee argues that Santander should be listed in Class 2 and Check N Go in Class 7. Further, Debtor's monthly income is listed as $345.00. Debtor lists their mortgage payment as $798.85 and car payment as $502.00. Trustee argues Debtor's income is $1,645.85. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

20. 18-26679-C-13 VARITIMI PEREIRA
DPC-2 Peter Macaluso

CONTINUED MOTION TO DISMISS CASE
4-23-19 [37]

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 23, 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 is granted and the case is converted to one under Chapter 7.

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

1. the debtor has not filed an amended plan since the court sustained the Trustee's Objection to Confirmation on March 5, 2019.

DEBTOR'S RESPONSE

Debtor filed a Response on May 14, 2019. Dckt. 41. Debtor states an amended plan will be filed prior to the hearing date.

May 29, 2019 HEARING

A hearing on the Motion to Dismiss was held on May 29, 2019. At the hearing, the Motion to Dismiss was continued to 2:00 p.m. on July 2, 2019.

DISCUSSION

The court notes that Debtor filed and served an Amended Plan and Motion to Confirm on May 24, 2019. Dckts. 44; 47. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtors. Dckts. 44; 46. The Motion may not comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), as the Motion does not state what changes are present in the Amended Plan. The Declaration similarly, does not address how the deficiencies in the initial Plan have been cured through the Amended Plan in order to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Under the terms of the proposed Amended Plan the Debtor is to fund the Plan with $11,880.00 for the first six months of the plan, which averages $1,980.00 a month, and then for the remaining sixty-four months of the plan make monthly plan payments of $7,550.00. Amended Plan, Additional Provision Section 7; Dckt. 47 at 7.

Under the proposed Amended Plan, the following is provided for the payment of claims:

Class 1 Secured Claims Plan ¶ 3.07(c)	Amount of Claim	Monthly Payment
Wells Fargo Post-Petition Arrearage	($5,550.00)	$101.85
Wells Fargo Pre-Petition Arrearage	($23,617.70)	$450.00
Wells Fargo Current Post-Petition Installments		$5,138.70
Class 2 Secured Claims Plan ¶ 3.08		
Krestas	($50,000.00)	$0.00
Class 3 Secured Claims - Surrender, Plan ¶ 3.09		None
Class 4 Secured Claims - Direct Pay by Debtor, Plan ¶ 3.10.		
McIntosh		$500.00
Class 5 Priority Unsecured Claims, Plan ¶ 3.12	($62,461.95)	$1,041.04 (over 60 months)
Class 6 Special Treatment Unsecured Claims, Plan ¶ 3.13		None
Class 7 General Unsecured Claims, Plan ¶ 3.14	($368,427.67)	$0.00 (0% dividend)

Debtor provides a Declaration in support of confirmation. In that Declaration, Debtor states under penalty of perjury that beginning May 25, 2019, Debtor will be making monthly plan payments of $7,550.00. Dec. ¶ 3, Dckt. 46. No testimony is provided as to how Debtor has $7,550.00 a month of projected disposable income to fund a plan.

Debtor's Income and "Business" Information

Debtor previously stated under penalty of perjury of having $13,000.00 a month in net income from operation of Debtor's business. Schedule I, Dckt. 1 at 39-40. On Schedule I Debtor lists his employer as Golden Omega, LLC. On Schedule A/B Debtor does not list owning any interest in Golden Omega, LLC. *Id.* at 11-17. Debtor does list an $8,000.00 receivable due him from Golden Omega, LLC. Schedule A/B Question 38, *Id.* at 16.

In response to Question 19 that asks Debtor to state whether he has any:

> 19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture;

Debtor states under penalty of perjury "No." *Id.* at 14.

On the Bankruptcy Petition Debtor states under penalty of perjury that Debtor is a "sole proprietor" of a business named "Golden Omega, LLC." *Id.* at 4. However, a limited liability company, like a partnership or corporation, is not a "sole proprietorship." [FN. 1]

FN. 1. https://www.sos.ca.gov/business-programs/business-entities/starting-business/types/#sole, listing this type of business entity as separate from Corporation, Limited Liability Company, Limited Partnership, and Limited Liability Partnership; *Ball v. Steadfast-BLK*, 196 Cal.App. 4th 694, 699 (2011).

When at the Secretary of State website, the court ran the name "Golden Omega, LLC" in the limited liability company search engine to see if Debtor's assertion that it was just a "sole proprietorship" was correct. The Secretary of State reported that there was no "Golden Omega, LLC" entity registered to do business in California. The court then broadened the search parameters to not require an exact name match and the Secretary of State reports that there is an limited liability company registered with the name "Goldenomega, a Limited Liability Company. https://businesssearch.sos.ca.gov/CBS/Detail.

The Secretary of state identifies Varitimi Pereira at the agent for service of process and the LLC has one manager - that being Varitimi Pereira. See December 7, 2018 filing.

Debtor states under penalty of perjury on Schedule A/B that Debtor has no office equipment, furnishings, and supplies used in his business. Question 39, *Id.* at 16.

In response to Question 27 on the Statement of Financial Affairs Debtor states under penalty of perjury that Debtor is a member of a limited liability company, and not a sole proprietorship. *Id.* at 51.

In another twist, on an attachment to Debtor's Form 122C-2 Calculation of Disposable Income, Debtor states, for his purported sole proprietorship Golden Omega, LLC, that he get "50% profits" for which there are no expenses. If it is a "sole" proprietorship, then the "sole" proprietor should get 100% of the profits. Dckt. 1 at 64.

Debtor's Expense Information

However, on Schedule J Debtor stated having ($11,019.00) in reasonable and necessary expenses, yielding only $1,981.00 in monthly net income to fund a Chapter 13 plan. *Id.* at 4-42.

Looking at Schedule J, in the ($11,019.00) is ($6,513.12) in the home mortgage expense, which appears to include taxes and insurance. *Id.* at 41.

If this mortgage expense is backed out, then Debtor would show having $8,494.12 a month in net income to fund a plan, more than Debtor now proposes.

Absence of Tax Payments

Under penalty of perjury Debtor states that on $142,560 ($11,880 a month x 12 months a year) in annual net income, Debtor does not have to pay:

Any Federal Income Taxes

Any State Income Taxes

Any Self-Employment Taxes (if a "sole proprietorship")

Any Social Security Taxes

Any Unemployment Taxes (if a "sole proprietorship")

See Schedules I and J, Dckt. 1, and Debtor's Declaration, Dckt. 46, for which there is no provision for payment of the above taxes by Debtor.

Other Expenses

In looking at Schedule J, Debtor who has some other questionable expenses. First, Debtor states that his food and housekeeping expenses are only ($300) a month. Schedule J, Dckt. 1 at 42. Assuming modest housekeeping expenses of only ($75) a month for a home with a ($6,513.12) monthly mortgage for the $1,000,000 value property, that leaves Debtor only ($225) a month for food - which for a 31 day month is ($2.42) per meal per day. Not a reasonable sounding food budget for sixty months.

In comparison to the ($300) a month food and housekeeping supplies expense, under penalty of perjury Debtor states that:

Electricity and heating gas expense is ($479.88) a month

and

Water, sewer, garbage expense is ($500.00) a month.

Thus, it costs ($6,000.00) a year to just heat the residence and run the lights of the $1,000,000 residence, but only ($2,700) a year to feed the person paying for the heat and juice.

Debtor, who has no dependant and spouse, lists having a monthly life insurance expense of ($1,172.00), which totals $13,064 a year for this Debtor who can only squeeze out a 0.00% dividend for creditors holding general unsecured claims in this Bankruptcy Case.

On Schedule A/B the only life insurance policy listed is a term policy having a value of $1.00. Dckt. 1 at 15.

A review of Schedule J, Debtor lists her mortgage to be $6,513.12 a month. On the Notice of Mortgage Payment Change filed on March 12, 2019, Wells Fargo Bank, N.A. states that the total payment (P, I, T, I) is "only" $5,138.70. This payment increased by $212. Thus, the amount stated on Schedule J sure appears to be inaccurate and grossly overstated.

Debtor states on Schedule J that she is paying $1,172 a month for life insurance. That equals $14,064 a year in life insurance premiums. On Schedule A/B Debtor states that the life is "Term life insurance fidelity & guarantee [sic]" which is stated to have a value of only $1.00. This raises a serious issue as to where the $14,064 is actually going and whether payments are being made for somebody else.

Debtor also states that she is only taking 50% of the profits from her business. That leaves handing where the other 50% of the profits have been going, the transferee of those profits, and the possibility of the recovery of fraudulent conveyances of those 50% of the profits.

Original Plan Filed in this Case

In the original Chapter 13 Plan in this case Debtor listed Wells Fargo Home Mortgage as having a Class 4 Claim. This required Debtor to certify (subject to Fed. R. Bankr. P. 9011) that there was no pre-petition defaults on the obligation to Wells Fargo Home Mortgage. Plan ¶ 3.10, Dckt. 2 at 4.

As now admitted by Debtor in connection with the Amended Plan and Proof of Claim No. 10, there is a substantial pre-petition arrearage that renders the prior certification in proposing the original Plan was false.

In both the original plan and the Amended Plan, Debtor lists a “Craig McIntosh” as receiving a $500.00 a month payment directly from the Debtor. Amended Plan, ¶ 3.10, Dckt. 47. A review of the Claims Register for this case discloses that no proof of claim has been filed by a “Craig McIntosh.” Only Wells Fargo Bank, N.A. has filed a proof of claim for a secured claim which could be a Class 4 Claim.

RULING

While the Debtor has filed a document titled “Amended Plan” and a motion to confirm, the

financial information provided by Debtor does not reflect a debtor who is prosecuting a Chapter 13 case in good faith. It does not reflect a debtor who is seeking relief as permitted under the Bankruptcy Code.

Debtor did file Supplemental Schedules I and J on May 28, 2019. Dckt. 49. Debtor has not attempted to file other amended schedules or statement of financial affairs to address the sole proprietorship-limited liability copy "who owns the business" and "who gets the income" morass in this case.

On Schedule J Debtor states he is "Employed" by Golden Omega, LLC, but he is not paid wages. He continues to state that he has monthly net income of $11,550.14 from operating a business - not being an employee of an entity.

On Supplemental Schedule J Debtor states that he has reasonable and necessary monthly expenses of **$7,550.26, which Debtor asserts are reasonable and necessary monthly expenses (which does not include mortgage/rent/property taxes/insurance) for his family unit of one person.**

Again, Amended Schedule J filed under penalty of perjury by Debtor and subject to the Federal Rule of Bankruptcy Procedure 9011 certification by Debtor and Debtor's counsel, continue to state that Debtor pays no state income taxes, no federal income taxes, no Social Security contributions, and no self-employment taxes (if Debtor is not an employee) for her $138,601.68 in annual net monthly income from her employment/business.

Given that the court has expressly raised this point in prior hearings, one would expect the Debtor and Debtor's counsel, in filing financial information and pursuing confirmation of a Chapter 13 plan in good faith, to address the absence of any income taxes, Social Security contributions, and self-employment taxes being paid by Debtor. None is provided in Debtor's declaration in support of confirmation. Dckt. 46. None is provided in the Supplemental Schedules.

In a Reply to the Trustee's Opposition to Motion to Confirm, Debtor's counsel now reports that "Communication between Debtor and Counsel has broken down." Reply ¶ 1, Dckt. 56. It is further reported that Debtor is seeking new counsel.

Debtor and counsel have used this bankruptcy case to "hang out" without a confirmed plan for eight months. Debtor has persisted in presenting facially defective (false) financial information. To stay in this bankruptcy case Debtor would be burdened by her prior inaccurate statements under penalty of perjury.

Consideration of Conversion as Proper Relief to be Granted

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)). For Chapter 13 cases, the Bankruptcy Code Provides:

§ 1307. Conversion or dismissal

(c) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, **the court may convert** a case under this chapter to a case under chapter 7 of this title, **or may dismiss a case** under this chapter, **whichever is in the best interests of creditors and the estate**, for cause, including–

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees and charges required under chapter 123 of title 28;

(3) failure to file a plan timely under section 1321 of this title;

(4) failure to commence making timely payments under section 1326 of this title;

(5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

(6) material default by the debtor with respect to a term of a confirmed plan;

(7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;

(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or

(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c).

Cause clearly exists to grant relief pursuant to 11 U.S.C. § 1307(b). There has been

continuing unreasonable delay that is prejudicial to creditors. Debtor has failed to confirm a plan in this case and has been unable to prosecute a confirmation of a plan in this case. Debtor's financial information under penalty of perjury is internally inconsistent and facially inaccurate (such as not having to pay any income or Social Security taxes). As discussed below, Debtor's purported mortgage expense stated on Schedule J and upon which she purports to compute her plan payment is grossly overstated.

The question arises as to whether the case should properly be dismissed or the case converted to Chapter 7 so that the assets of the estate may be administered by a Chapter 7 trustee rather than being abandoned back to the Debtor.

In discussing the best interests of creditors factor provided for in 11 U.S.C. § 1307(b), Collier on Bankruptcy explains:

> The Code does not define the phrase "best interests of creditors and the estate." Presumably, the parties will be the best judge of their own best interests, and if all of the parties agree on one course of action, the court should accommodate their desire. On the other hand, the test is not one of majority rule. If the parties disagree on conversion, dismissal or appointment of trustee or examiner, the court should evaluate and choose the alternative that would be most advantageous to the parties and the estate as a whole. In doing so, the court may consider such factors as (1) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal, (2) whether there would be a loss of rights granted in the case if it were dismissed rather than converted, (3) whether the debtor would simply file a further case upon dismissal, (4) the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors, (5) in assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise, (6) whether any remaining issues would be better resolved outside the bankruptcy forum, (7) whether the estate consists of a "single asset," (8) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests, (9) whether a plan has been confirmed and whether any property remains in the estate to be administered and (10) whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns. In addition, the court should make its decision with due regard to the effect of dismissal under section 349

7 COLLIER ON BANKRUPTCY P 1112.04 (16TH 2019), discussing the "best interests of creditors" standard in connection with identical language used for dismissal or conversion of a Chapter 11 case.

Here, Debtor has been living in bankruptcy for eight months, protected from creditors. On Schedule A/B, Debtor states under penalty of perjury having an interest in her $1.1MM residence property ("Property") in which she lives, with it being co-owned with at least one other person. Debtor claims a 50% interest in the property. As discussed below, George Krestas has appeared in this case and has identified himself as the co-owner, asserting that he has a 60% interest in the Property. On Schedule C Debtor claims a $75,000 homestead exemption in the property.

On Schedule D Debtor lists the following claims secured by her interest in the real property, which the court has compared to the proofs of claim ("POC") filed in this case:

- Craig McIntosh having a $60,000 secured claim (No POC filed)

- California Franchise Tax Board having a $6,340 secured claim

  POC 6-1 Filed Only as Unsecured Priority in the amount of $1,637.16

- IRS having a $24,621 secured claim

  Amended POC 2-2 Filed Only as Unsecured Claim, with Priority Claim in the amount of $58,640.13 and General Unsecured in the amount of $79,621.60

- Wells Fargo Bank, N.A. having a $651,000 Secured Claim

  POC 10-1 filed as a Secured Claim in the amount of $663,044.60, with the collateral identified as the Property (in which Debtor asserts a 50% interest)

The bankruptcy case now being almost a year old and given Debtor's "creatively" in providing financial information under penalty of perjury , it is likely that the value of the Property is greater. Operating off an assumption that the Property would actually sell for $1,150,000, the value to the bankruptcy estate of the Property is computed as follows:

FMV……. $1,150,000
Costs of Sale (Est. 8%)…….($ 92,000)
Well Fargo Bank, N.A.....……..($ 660,000)

Net Value to be divided between Debtor and co-owner……..$398,000

The $398,000 would be divided between the bankruptcy estate and the co-owner as follows:

Bankruptcy Estate		Co-Owner Proceeds	
	$199,000		$199,000
McIntosh Scheduled Debt	($60,000)		
Homestead Exemption	($75,000)		
Net For Bkcy Estate	$64,000	Net for Co-Owner Co-Owner	$199,000

In reviewing the court's file, the court notes a pleading from George Krestas. Dckt. 24. The grounds asserted in the letter include the following:

A. He is a 78 year old man living without any family or relatives close by.

B. Twenty years ago Debtor asked Mr. Krestas to give her a loan to help Debtor to buy a house, which is the Property. This loan was documented in writing.

C. Mr. Krestas states that he invested in the Property and is the co-owner.

D. Debtor pulled $50,000 in equity from a refinance to improve the property, but diverted the money to other purposes.

E. Debtor improperly changed the ownership of the property to 50-50 with Mr. Krestas from the 60-40, with Mr. Krestas owing the 60%.

F. Debtor refinanced the property a second time, keeping all of the $25,000 in additional monies gained by the refinance.

G. Mr. Krestas asserts that Debtor forged his signature.

H. Mr. Krestas did not take any action on the above because Debtor was the only person "looking after him."

I. Mr. Krestas viewed the Property and his interest therein as a good retirement investment.

J. In 2010 Debtor convinced Mr. Krestas to loan an additional $50,000 that the Debtor was using to buy commercial property that would generate rental income.

K. After obtaining the $50,000, Debtor did not purchase the commercial property but used the $50,000 for her personal expenses.

L. Debtor made sporadic, small payment on the loans.

M. Mr. Krestas hired an attorney, but after incurring $50,000 in legal fees, his attorney was repeated "outsmarted" by Debtor's attorney, with Debtor's strategy including the current bankruptcy case filing.

N. Mr. Krestas requests that the Property in which he asserts a 60% interest be sold, and he is willing to take only 50% of the proceeds. This will still allow him to recover his original $120,000 in vestment in the Property and recover some of his monies loaned to the Debtor.

On June 12, 2019, Mr. Krestas sent another letter to the court. Dckt. 54. In it he restates much of what was said in the earlier document filed with the court. On June 12, 2019, the Hon. Christopher M. Klein, the judge to whom this case is assigned, issued an order appointing Estella Pino as counsel for Mr. Krestas. Dckt. 54 at 3.

The court did not complete the necessary second part of the analysis in ruling on the motion -

was conversion or dismissal in the best interests of the bankruptcy estate and creditors. Such analysis is necessary. It appears that strong grounds exist for conversion of this case to protect the rights and interests of the bankruptcy estate (which may include avoidable preferences). Additionally, it appears that a strong argument can be made that it is in the best interests of creditors, those holding secured and unsecured claims, to have this case converted to Chapter 7, the non-exempt value of property of the estate liquidated and creditors paid. Mr. Krestas had manifested an intention to work with the fiduciary of the bankruptcy estate to not only recover on his claim, but do so in a manner that is advantageous to the bankruptcy estate.

Therefore, the court continued the hearing to afford the parties the opportunity to file supplemental pleadings on the best interests of the estate and creditors element for the relief to be granted.

SUPPLEMENTAL BRIEFING FILED:

Chapter 13 Trustee Supplemental Motion in Support of Conversion:

The Chapter 13 Trustee filed a Supplement to its Motion in Support of Conversion on July 9, 2019. Dckt. 62. The Trustee notes that Debtor has engaged in unreasonable delay during the course of this Chapter 13 Case, having been filed on October 24, 2018 and not having presented a confirmable Plan. The Trustee states that while there is definitely cause to dismiss the case, there is also ample cause to convert the to one under Chapter 7.

In support of conversion the Trustee notes that Debtor has non-exempt equity, there appear to be significant avoidable transfers, the co-owner of valuable real property appears willing to sell the asset, and there is a real possibility unsecured creditors would be paid in a Chapter 7. Further, the Trustee notes that Debtor has repeatedly filed budgets that are not credible.

Debtor's Supplemental Response:

Debtor filed and Opposition to Conversion on July 15, 2019. Dckt. 68. Debtor states that she obtained new counsel and new counsel, at the time of filing, at had not yet fully reviewed the case. Debtor states her intention is to refile the case and reach an agreement with Creditor, George Krestas, the co-owner of Debtor's residence. Debtor request additional time, until August 27, 2019 to present argument in opposition to conversion.

Creditor George V. Krestas' Response in Support of Conversion:

Creditor George V. Krestas filed a Statement of Position and Joinder on July 15, 2019, in support of the Chapter 13 Trustee's arguments in favor of conversion. Dckt. 70. Creditor supports the Trustee's reasons for conversion and highlights the argument that there are avoidable transfers that could be pursued in a Chapter 7.

Specifically, Creditor notes that there may be an avoidable transfer to Craig McIntosh. Creditor obtained a Deed of Trust, attached as Exhibit A (Dckt. 71) dated October 17, 2017, which has some peculiarities, including the fact that Deed requests that Deed of Trust be returned to the Debtor instead of the creditor, purportedly benefitting Debtor's attorney at the time (Craig McIntosh), and the

document generated by Debtor's entity Goldenomega, LLC. It also may be connected with the debt asserted in Claim 1-2, arising from a stipulated judgement entered into on November 13, 2017 where Debtor was represented by Craig McIntosh. There may also be an avoidable transfer in the approximate amount of $30,000.00 to Debtor's daughter.

RULING:

On July 16, 2019, a Substitution was filed, seeking to have Steven Reynolds, a recognized bankruptcy attorney in this District, substitute in the place of Peter Macaluso, another recognized bankruptcy attorney in this District. Dckt. 74.

Debtor has had, and does now have, experienced bankruptcy counsel, she appears to have been operating in her own version of bankruptcy laws, without regard to the Bankruptcy Code. Limited liability companies are actually sole proprietorships, but she does not disclose that. This is information that she knows and would have to communicate to her attorney. This is information that she knows and would see is incorrect when reviewing Schedules before filing them. It appears that maintaining a fiction that a limited liability company existed and that the assets were not part of the bankruptcy estate and the finances were outside of initial disclosure could be construed as an intentional deception.

Debtor and Mr. Krestas have been litigating for years, with Mr. Krestas asserting that it has been the Debtor who has engaged in delay and derailing the litigation to determine their respective interests in the real property. Further, that only when trial in the state court finally appeared to be occurring was the current case filed to derail that trial and have this Chapter 13 case that has not been prosecuted.

While Debtor now has her new counsel argue that the limited liability company has been "recently converted" to a sole proprietorship, such is inconsistent with the information provided by the California Secretary of State.

In her declaration, it appears that Debtor is attempting to place blame on her former counsel for not communicating business information to the Chapter 13 Trustee. Declaration ¶ 1, Dckt. 69. Again, it appears that Debtor's view of what she wants the law to be does not comport with the applicable law.

As Mr. Krestas counsel argues, the court's conclusions in connection with this Motion at he prior hearing was that the financial information provided by Debtor, including not having to pay any income or self-employment taxes to be internally inconsistent though being made under penalty of perjury. This is all information that the Debtor knows, that the Debtor provides, and that the Debtor reviews before making such statements under penalty of perjury to the court and parties in interest. It is not a lack of transmitting of information by former counsel.

Mr. Krestas also highlights the Trustee's assertion that there may well be avoidable payments made by Debtor to Craig McIntosh. Mr. McIntosh has served as attorney purported for the Debtor, as wells as for the limited liability company that Debtor now says was recently converted into a sole proprietorship.

A copy of the McIntosh deed of trust is provided by Mr. Krestas. Exhibit A, Dckt. 71.

Interestingly, the trustor granting an interest in the property is Varitimi Pereira, as Trustee of the Varitimi Pereira Living Trust. On Schedule A/B Debtor does not list any interests in any trusts. In fact, in response to Question 25 Debtor states under penalty of perjury that he has "No" interests in any trusts. Dckt. 1 at 15. On Schedule A/B Debtor states that she, and not a trust, owns the real property in which Mr. Krestas asserts his interest. *Id.* at 11.

The deed of trust identifies Varitimi Pereira, as Trustee, the borrower and that Mr. McIntosh may make advances to Varitimi Pereira, as Trustee. It does not appear that the deed of trust secures any obligation of Varitimi Pereira personally or that of any limited liability companies.

This Motion to Dismiss was filed on April 23, 2019. Now, three months later, Debtor, the Chapter 13 Trustee, and parties in interest have been provided more than an adequate opportunity to address these issues. Debtor has been afforded the opportunity to prosecute a plan.

Significantly, Debtor has had more than a sufficient opportunity to address the long standing dispute with Mr. Krestas. She has the opportunity to address his interest and how to provide for it. She has not taken advantage of that opportunity.

It is clearly in the best interests of the bankruptcy estate and creditors to convert this case to one under Chapter 7. An independent fiduciary for the Bankruptcy Estate can properly navigate these rights, interests, and disputes to properly recover what the Bankruptcy Estate is entitled to. If, as Debtor now states that the limited liability company has been transformed into a sole proprietorship, she can turn over the business to the Trustee. If it can be properly operated while in the Bankruptcy Estate, the Debtor and her counsel can work that out with the Trustee. However, if such a transformation has not occurred under state law, the Trustee can take control of the member interests and review the conduct of the fiduciaries of the limited liability company.

If the Debtor and her counsel believe that an agreement can be quickly reached with Mr. Krestas and that they will stand shoulder to shoulder to have this case reconverted to Chapter 13, they can so diligently act even though the case is converted to Chapter 7. If such good faith plan exists, the Chapter 7 trustee would be likely to join them, recognizing the significantly better result for the Bankruptcy Estate, creditors, and Debtor.

Cause exists to convert this case to one under Chapter 7.

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 is granted and the case is converted to one under Chapter 7.

FINAL RULINGS

21. 19-22941-C-13 MONICA MACK
DPC-1 Grace Johnson

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
6-19-19 [17]

Final Ruling: No appearance at the July 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's counsel on June 19, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

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

Debtor filed a Chapter 7 bankruptcy case on March 1, 2017. Case No. 17-21347. Debtor received a discharge on July 10, 2017. Case No. 17-21347, Dckt. 19. The instant case was filed under Chapter 13 on May 7, 2019 after Debtor subsequently moved to sever the previous case.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Objector argues that Debtor is not eligible to receive a discharge in this case as they received a discharged under 11 U.S.C. § 727 in a case filed under Chapter 7, which is less than four years preceding the date of the filing of the instant case. Case No. 17-21347, Dckt. 19. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-22941), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-22941, the case shall be closed without the entry of a discharge.

22. 19-23242-C-13 JAMES/ALICIA ANGELES
DPC-1 Peter Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-2-19 [13]

Final Ruling: No appearance at the July 30, 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2019. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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 denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, the debtors, James Angeles and Alicia Angeles ("Debtors"), filed a Amended Plan and corresponding Motion to Confirm on August 13, 2019. Dckts. 23, 26. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, James Angeles and Alicia Angeles ("Debtors"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied as moot, and the proposed

Chapter 13 Plan is not confirmed.

23. 19-23746-C-13 RICHARD/DONIA WEST
BLG-1 Chad M. Johnson

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
6-26-19 [15]

Final Ruling: No appearance at the July 30, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2019. By the court's calculation, 34 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 Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $20,000.00.

The Motion filed by the debtors, Richard and Donia West ("Debtor"), to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 17. Debtor is the owner of a 2014 Jeep Grand Cherokee Limited ("Vehicle"). The lien on the Vehicle's title secures a purchase-money loan incurred in September, 2016, which is more than 910 days prior to filing of the petition, securing a debt owed to Creditor with a balance of approximately $24,024.00. *Id.* Debtor seeks to value the Vehicle at a replacement value of $20,000.00 as of the petition filing date.

DISCUSSION

As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's 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 $20,000.00, 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 the debtors, Richard and Donia West ("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 Travis Credit Union ("Creditor") secured by an asset described as 2014 Jeep Grand Cherokee Limited ("Vehicle") is determined to be a secured claim in the amount of $20,000.00, 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 $20,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

24. 18-24079-C-13 VALAREE ST. MARY
MJD-5 Matthew DeCaminada

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW OFFICE, P.C. FOR MATTHEW J. DECAMINADA, DEBTORS ATTORNEY(S) 6-13-19 [109]

Final Ruling: No appearance at the July 30, 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, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Matthew DeCaminada, the Attorney ("Applicant") for Valaree Jade St. Mary, Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 28, 2019, through June 13, 2019. The order of the court approving employment of Applicant was entered on March 15, 2019. Dckt. 86. Applicant requests fees in the amount of $3,102.50 and costs in the amount of $0.00.

APPLICABLE LAW

Reasonable Fees

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

the services, by asking:

> A. Were the services authorized?
>
> B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
>
> C. Are the services documented adequately?
>
> D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
>
> E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include meetings with the Debtor to discuss the current case and the effects of substituting as counsel of record. Counsel reviewed documents filed by the Debtor's former counsel, prepared a new petition with amendments after meeting with the Debtor, reviewed with the Debtor to sign and file amendments, prepared and filed two substitutions of attorney, prepared, filed, and served the objection to claim of LVNV Funding, LLC., prepared, filed and served the first amended Chapter 13 plan and motion to confirm that plan, prepared for hearings on previous motions filed and the trustee's motion to dismiss, prepared an order confirming plan, and prepared the instant application for fees. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 13.10 hours in this category. Applicant prepared Debtor to have new counsel come in and then took over the case from previous counsel. Applicant prepared, filed, and served multiple different motions and was present at hearings for the debtor. Applicant specifically spent 4.50 hours on general case management, 2.00 hours on the Objection to Claim of LVNV Funding, LLC, 4.90 hours on the Motion to Confirm First Amended Chapter 13 Plan and 1.70 on this present application.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Matthew DeCaminada	13.10	$275.00	$3,102.50
Total Fees for Period of Application			$3,102.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $0.00 pursuant to this application. Applicant is not seeking to recover any costs.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,102.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Applicant is not seeking any costs.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $3,102.50
Costs and Expenses $0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Matthew DeCaminada, the Attorney ("Applicant") for Valaree Jade St. Mary, Debtor in Possession ("Client"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Matthew DeCaminada is allowed the following fees and expenses as a professional of the Estate:
>
> Matthew DeCaminada , Professional employed by Debtor in Possession
>
> Fees in the amount of $3,102.50
> Expenses in the amount of $0.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

25. 17-26891-C-13 RAUL/SHERI ROMERO **MOTION TO MODIFY PLAN**
TLA-1 Thomas Amberg **6-11-19 [40]**

Final Ruling: No appearance at the July 30, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2019. By the court's calculation, 49 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Raul Delacruz Romero and Sheri Lyn Romero ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 15, 2019. Dckt. 51. 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 the debtor, Raul Delacruz Romero and Sheri Lyn Romero ("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 11, 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 Trustee will submit the proposed order to the court.

26. 19-22495-C-13 CARTHEL BORING
DPC-1 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-18-19 [21]

Final Ruling: No appearance at the July 30, 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 (*pro se*) on June 18, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is overruled, and the exemptions are disallowed in their entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Carthel Dennis Boring's ("Debtor") claimed exemptions under California law because Debtor has claimed exemptions under 11 U.S.C. § 522(b)(2), applicable only when there is an issue of domicile in more than one locale. The Debtor's petition reflects one residence in Butte County and does not indicate any other domicile, making this claim of exemption inapplicable.

The Trustee further objects to Debtor's claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140 does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c);

In re Davis, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

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 property under California Code of Civil Procedure § 703.140(b)(1)-(5) are disallowed in their entirety.