

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 13, 2019 at 3:00 p.m.

1. [17-22333-E-13](#) **THOMAS WARREN** **MOTION TO COMPEL**
[LBG-616](#) **Lucas Garcia** **7-30-19 [101]**

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, Lorie Childe, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 30, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion is deemed to be a complaint, an adversary proceeding shall be commenced, and the motion filed therein as the complaint.

Debtor's counsel, Luke Garcia ("Movant") filed this Motion seeking to compel Lorie Childe ("Occupant") to turnover the Estate's real property commonly known as 11563 Quartz Drive #3, Auburn, California (the "Property"). Movant presented evidence the former caregiver for the debtor, Thomas Warren ("Debtor"), has remained in Debtor's Property and is preventing its sale. Declaration, Dckt. 105.

Movant argues this Motion is brought pursuant to 11 U.S.C. § 542, which allows a trustee or debtor to demand turnover of property.

Review of Motion

The Motion states the following grounds upon which the Bankruptcy Estate's right to possession of the Property is based:

- a. This Chapter 13 bankruptcy case was commenced on April 7, 2019. Motion ¶ 1, Dckt. 100.
- b. The Property is property of the Bankruptcy Estate in this bankruptcy case. *Id.*, ¶ 2.
- c. Former care giver for the Debtor, Lorie (or Lori) Childe, has occupied the Property in providing those care giver services. *Id.* ¶ 3, 6.
- d. A domestic dispute arose between Ms. Childe and Debtor, and the Debtor was then placed by Adult Protective Services to the care of Debtor's sister, Susan Rose. *Id.*, ¶ 7.
- e. Though the providing of care giving services has terminated, Lorie (or Lori) Childe has continued in possession of the Property, notwithstanding the Debtor, as the fiduciary of the Bankruptcy Estate, demanding that she vacate and turnover possession of the Property to the Bankruptcy Estate. *Id.*, ¶ 9.
- f. Counsel for the Debtor has also made demand on behalf of the Debtor to turnover possession of the Property of the Bankruptcy Estate, and Ms. Childe has refused. *Id.* ¶¶ 10, 11..
- g. Mike Snell, an authorized real estate agent for the Bankruptcy Estate has contacted Ms. Childe so that he can show it to potential buyers as part of a sale of the Property of the Bankruptcy Estate. *Id.* ¶¶ 12, 13.
- h. Ms. Childe does not make any payment for her continuing use of this Property. *Id.* ¶ 14.
- i. The Debtor, as the fiduciary of the Bankruptcy Estate and exercising the powers and rights of a bankruptcy trustee, seeks relief pursuant to 11 U.S.C. § 542 for the turnover of the Property, which is property of the Bankruptcy Estate. *Id.*, p. 3:19-23.

The Bankruptcy Code provides in 11 U.S.C. § 524(a) (emphasis added) that a person who is

in possession of property of the bankruptcy estate has the affirmative duty to turnover possession of obtain property of the bankruptcy estate to the trustee, which include a Chapter 13 debtor or Chapter 11 or 12 debtor in possession, as follows:

Section 542. Turnover of property to the estate

(a) Except as provided in subsection (c) or (d) of this section, **an entity**, other than a custodian, **in possession, custody, or control, during the case, of property** that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, **shall deliver to the trustee**, and account for, **such property** or the value of such property, unless such property is of inconsequential value or benefit to the estate. . . .

The term “entity” is defined in 11 U.S.C. § 101 (15) (emphasis added) as follows, “The term “**entity**” **includes person**, estate, trust, governmental unit, and United States trustee.

DISCUSSION

Movant is correct that a trustee or debtor may seek turnover of property of the Estate. 11 U.S.C. § 542. However, Federal Rule of Bankruptcy Procedure 7001(emphasis added) applies, stating:

An adversary proceeding is governed by the rules of this Part VII. **The following are adversary proceedings:**

(1) a **proceeding to recover** money or **property**, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;

...

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

The present request for relief has been filed as a motion, a contested matter (Fed. R. Bankr. P. 9014) and not an adversary proceeding. The court believes that this may have occurred by the court’s imprecise use of language when addressing with counsel for Debtor why the property of the Bankruptcy Estate was not in the possession and control of the Debtor. This was in response to counsel reporting that there were unlawful detainer proceedings winding their way through state court. The court’s comments were something to the effect of, “Counsel, is there some provision of the Bankruptcy Code by which a federal judge would address the rights of a trustee or debtor to obtain possession of property of the bankruptcy estate ‘through some motion.’” As one sees from Federal Rule of Bankruptcy Procedure 7001 adopted by the Supreme Court, the motion practice may be used by the trustee obtaining possession of property of the bankruptcy estate from the debtor, but that an adversary proceeding is to be commenced when obtaining possession from third-parties.

In light of the court’s imprecise use of language, the court deems the present Motion to be a complaint and orders that the Clerk of the Court open an adversary proceeding into which the “motion”

shall be filed as a complaint.

Because the court's imprecise use of language is causing Debtor's counsel some additional work, the court waives the fee for commencing the adversary proceeding.

Debtor's counsel shall file a first amended complaint, properly setting up an adversary proceeding caption and adding to the pleadings as he deems appropriate. Debtor shall file an administrative complaint, obtain the summons from the Clerk, and then serve them on Ms. Childe.

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 to Compel Abandonment filed by Thomas Edward Warren ("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 deemed to be a complaint.

The Clerk of the Court shall open an adversary proceeding for this complaint and file therein the "motion" which has been deemed to be a complaint.

IT IS FURTHER ORDERED that the court waives the filing fee for commencing this adversary proceeding.

IT IS FURTHER ORDERED that Debtor's counsel shall file a first amended complaint, properly setting up an adversary proceeding caption and adding to the pleadings as he deems appropriate. Debtor shall file an administrative complaint, obtain the summons from the Clerk, and then serve them on Ms. Childe.

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 28, 2019. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Robin Jorgensen (“Debtor”) seeks confirmation of the Modified Plan to remove payments on her vehicle which is secured by her husband’s debt alone. Declaration, Dckt. 34. The Modified Plan provides for \$10,315.00 paid through June 2019, and payments of \$1,070.00 for the remainder of the plan term. Modified Plan, Dckt. 37. 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 24, 2019. Dckt. 39. Trustee opposes confirmation on the following grounds:

1. because the unsecured claims are greater than estimated in the Modified Plan, the proposed plan will take 88 months to complete.
2. Debtor filed supplemental schedules only as exhibits.

DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 88 months due to the unsecured claims totaling \$74,461.16, and not the \$46,954.00 anticipated Declaration, Dckt. 40. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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, Robin Jorgensen (“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.

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 17, 2019. By the court’s calculation, 57 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Manuel Saucedo-Gonzalez and Regina Saucedo (“Debtor”), seek confirmation of the Modified Plan to cure delinquent plan payments. The delinquency was caused by Debtor’s unexpected illness (resulting in hospitalization), which prevented her from working and interrupted monthly income. Declaration, Dckt. 45. The Modified Plan provides for \$3,267.00 to be paid in to the plan through March 4, 2019; \$4,000.00 on June, 2019; \$3,476.00 for the remaining 55 months of the plan; and for a 0 percent dividend to unsecured claims totaling \$655.61. Modified Plan, Dckt. 48. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OBJECTION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 15, 2019. Dckt. 58. The Trustee opposed confirmation of the Motion because Debtor is \$7,476.00 delinquent under the proposed plan. Trustee states that on July 2, 2019 Trustee received Debtor’s personal check for \$6,000.00, which Trustee returned. Exhibit 1, Dckt. 47. Trustee notes that an additional payment of \$3,467.00 comes due July 25, 2019.

JULY 30, 2019 HEARING

At the hearing the Trustee reported the delinquency was still outstanding, but agreed to a continuance in light of Debtor's apparent ability to make payments. Civil Minutes, Dckt. 66.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$7,476.00 delinquent in plan payments, which represents multiple months of the \$3,467.00 plan payment. Before the hearing, another plan payment will be due. Here, Debtor attempted to make a \$6,000.00 payments, which payment did not go through. Declaration, Dckt. 59. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 debtors, Manuel Saucedo-Gonzalez and Regina Saucedo ("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.

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, and Office of the United States Trustee on July 17, 2019. By the court’s calculation, 27 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney (“Applicant”) for Ken Leslie Subia Jr., the Chapter 13 debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period January 24, 2019, through the present date of this motion. The order of the court approving employment of Applicant was entered on March 9, 2017. Dckt. 18. Applicant requests fees in the amount of \$2,940.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an

examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

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

A. Were the services authorized?

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

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- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must 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 general case administration and drafting, reviewing, filing, and serving motions. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

- (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local

Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...
(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 15. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re*

Yermakov, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES 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 2.6 hours in this category. Applicant communicated with debtor, reviewed documents and filed a reply to a motion to dismiss.

Motion to Sell: Applicant spent 5.1 hours in this category. Applicant communicated with a broker and escrow officer and Trustee’s office, and prosecuted the appropriate motion.

Motion to Employ: Applicant spent 2.7 hours in this category. Applicant prosecuted a motion to employ a broker.

Motion for Compensation: Applicant spent 2.0 hours in this category. Applicant prosecuted this Motion for compensation.

Applicant argues services here were unanticipated because Debtor did not initially intend to sell his residence.

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:

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 July 2, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Robert James Rodni ("Debtor") seeks confirmation of the Modified Plan to cure payment delinquencies caused by unexpected expenses, and to provide for direct payment on the mortgage. Declaration, Dckt. 69. The Modified Plan provides for payments of \$2,201.12 for 18 months, 315 for 42 months, and an 8 percent dividend to unsecured claims totaling \$44,765.00. Modified Plan, Dckt. 71. 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 30, 2019. Dckt. 73. Trustee opposes confirmation on the following grounds:

1. The Plan calls for the claim of Wells Fargo Home Mortgage/Specialized Loan Servicing LLC to be paid as a Class 4. However, given the existence of pre- and post-petition arrearages, Trustee does not believe Debtor is capable

of making payments without supervision.

2. The proposed plan is not signed by Debtor's attorney.
3. Debtor indicates constant vehicle maintenance is necessary, but only increased the Vehicle expense \$150. Furthermore, Debtor states he incurred expenses related to the discharge of a firearm but has not listed those expenses.

DEBTOR'S DECLARATION

Debtor filed an additional Declaration on August 6, 2019. Dckt. 76. Debtor testifies that the repair done to his Vehicle was brake replacements which have been completed; that he anticipates no expenses from disarming a firearm; and making mortgage payments through the plan will make the payments more difficult due to added expense.

DISCUSSION

Debtor has filed his additional Declaration to explain the vehicle expenses and that there are no anticipated expenses from disarming a firearm. Dckt. 76.

Trustee argues that based on the case history, and the existence of pre- and post-petition arrearages on Debtor's mortgage, Debtor is not capable of making the monthly payments directly as a Class 4. Debtor argues he cannot make the payments with the added expense.

This argument can be made by every debtor - paying the trustee fees (approximately 7%) on the defaulted, delinquent mortgage payment and the current payment is an expense of the Debtor in seeking the extraordinary relief under the Bankruptcy Code. Debtor has a demonstrated history of choosing or having to pay other debts with his mortgage payment and just letting the mortgage payment "slide."

It appears that the trustee's fees on the arrearage payment would be \$15 a month and for the current monthly payment \$134. Under the plan now before the court, Debtor strips down his plan payments to a mere \$315 a month for forty-two (42) months. Plan, Additional Provisions, Dckt. 71. This artificially stated necessary plan payment to restructure Debtor's delinquent obligation is one in which Debtor seeks to evade the cost of bankruptcy and shift to all other debtors in the Eastern District of California the costs of the Chapter 13 Trustee in administering Debtor's case. Possibly, Debtor is attempting to construct a negative economic incentive for the Chapter 13 Trustee, believing that the Trustee will look the other way since Debtor has made his case a "money losing proposition."

The above provision is not presented in good faith and demonstrates that the Debtor is not prosecuting this plan and case.

In looking at Supplemental Schedules I and J, Debtor states that he has monthly income, after taxes, of \$3,942. Dckt. 70 at 3. Debtor seeks to spend fifty percent (50%) of his monthly income just for the current mortgage payment. To do this, Supplemental Schedule J shows stripped down, unrealistic expenses which indicate that Debtor's plan is not feasible. *Id.* at 5.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

Additionally, Debtor has not addressed Trustee’s argument that the Second Modified Plan has not been signed by Debtor’s counsel.

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 Robert James Rodni (“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.

6. [19-22753-E-13](#) **WILLIE/GRACE CABALES** **MOTION TO CONFIRM PLAN**
[DEJ-1](#) **Eric Gravel** **6-21-19 [25]**

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

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 21, 2019. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtors, Willie and Grace Cabales (“Debtor”), seek confirmation of the Amended Plan. The Plan provides for monthly payments of \$306.00 with a 1 percent dividend to unsecured claims, totaling approximately \$62,884.00. Plan, Dckt. 27. 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 15, 2019. Dckt. 35. The Trustee opposed confirmation of the Amended Plan on the basis that Debtor’s Schedule H fails to include their daughter as a co-debtor for a lease to Toyota Financial Services, and Debtor’s Schedule I lists \$800.00 “Outside Support from Daughter” where no Declaration in support of this income has been provided.

DISCUSSION

On July 16, 2019, Debtor filed Amended Schedule H to reflect Debtor’s daughter being on the Toyota lease. Dckt. 38. Debtor also filed the Declaration of Sarah Cables (Debtor’s daughter) to provide evidentiary support as to her \$800.00 monthly contributions. Dckt. 39.

Trustee’s sole grounds for opposition have been addressed. 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 the debtors, Willie and Grace Cabales (“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 21, 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, on July 3, 2019. By the court’s calculation, 41 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 Americredit Financial Services, Inc. dba GM Financial (“Creditor”) is ~~XXXXXXXXXX~~.

The Motion filed by the debtors, David and Nicole Wills (“Debtor”), to value the secured claim of Americredit Financial Services, Inc. dba GM Financial (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 27. Debtor is the owner of a 2008 Mazda CX9 (“Vehicle”) with 151,000 miles. Dckt. 13 at p. 12. Debtor seeks to value the Vehicle at a replacement value of \$1,968 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).

CREDITOR’S OPPOSITION

On July 23, 2019, Creditor filed an Opposition to Debtor’s motion. Dckt. 34. Creditor argues the Vehicle should be valued at \$6,975.00. In support of Creditor’s Opposition, Creditor filed as Exhibit C a properly authenticated NADA report. Creditor also relies on its Proof of Claim, No. 3, filed on June 6, 2019.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response to Debtor’s motion on July 30, 2019. Trustee’s response summarized the pleadings filed in the case, including Debtor’s

Schedules, Declaration, and Creditor's Proof of Claim.

However, Trustee takes no position on the Motion.

DEBTOR'S REPLY

Debtor filed a Reply on August 5, 2019. Dckt. 43. Debtor asserts that in his prior dismissed case, Creditor stipulated to a value of \$4,695.77.

Debtor also filed a Supplemental Declaration of Debtor providing the following information about Debtor's Vehicle:

1. The driver door window motor is broken. You can only roll the window down a little bit and sometimes you cannot roll it back up. The door is creased and starting to rust next the fender. The driver door has dents.
2. The piece that holds driver's door to the car is broken. We believe the piece that is broken is called a door stay. When you open the door you have to hold it. You can close the door but if you open it the door will swing all the way open. The driver door has a dent in it from hitting the bumper when the door swings open.
3. The controllers for the driver door that is supposed to control all the windows and doors sometimes work. You can only roll down the driver passenger window and the passenger back windows. However, this does not always work.
4. The rear air conditioner does not work.
5. There is paint coming off the back part of the roof.
6. The leather seats are wearing down. They are starting to rip. The leather is supposed to be black but it is turning gray.
7. The carpet in the back seat on the floor is starting to tear apart.
8. The passenger door has something inside of it that has fallen apart. It has put little dents on the outside of the passenger door. The motor for the window has gone bad and does not work. The chrome is starting to peel of the handles and the door does not always lock.
9. There are scratches and dents on both sides of the vehicle. The hood has many dents. Possibly from grocery carts or people hitting the car with doors.
10. The front window needs replaced. A rock has hit it and there is a little hole.

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11. The front bumper on the driver side has broken clips. It is starting to pop off away from the vehicle. I have to push it back in because it looks like it is starting to pop out.
12. The medal piece that goes around the middle counsel, door handles, and other metal pieces have wear and tear. It used to be silver. All the medal pieces are wearing out.
13. The headlights are faded and need to be replaced.
14. The back hatch top is faded and needs to be replaced.
15. The horn stays on and will not stop. We have removed the fused.
16. The driver side mirror vibrates to the point you cannot use it. It needs to be replaced.
17. The chrome on all four rims is starting to peel off.

Declaration, Dckt. 44.

APPLICABLE LAW

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

DISCUSSION

In Debtor's Reply, Debtor states, "this is a material disputed fact that only a evidentiary hearing can determine." It is unclear if this is an actual request for an evidentiary hearing.

At the hearing, **xxxxxxxxxxxxxxxx**.

The court sets the following schedule for an evidentiary hearing on the Motion to Value:

- A. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.
- B. On or before **xxxx, 201x**, the Parties shall each file with the court and

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serve on the other parties the list of witnesses they will present in their respective cases in chief (not including rebuttal witnesses).

- C. Movant, shall lodge with the court and serve their Testimony Statements and Exhibits on or before **xxxx, 201x**.
- D. Respondent, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **xxxx, 201x**.
- E. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before **xxxx, 201x**.
- F. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **xxxx, 201x**.
- G. The Evidentiary Hearing shall be conducted at **xx:xx x.m. on xxxx, 201x**.

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

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on 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.

The Objection is ~~XXXXXXXXXX~~.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the debtors, David Wills and Nicole Wills (“Debtor”), have not filed a motion to value collateral regarding the secured claim of Americredit Financial Services DBA GM Financial on a 2008 Mazda CX-9, therefore making the plan not feasible.

DEBTOR’S OPPOSITION

On July 16, 2019, Debtor filed Opposition to Trustee’s Objection. Dckt. 32. Debtor’s Opposition asserts that a Motion to Value Collateral on the Claim was filed on July 5, 2019.

JULY 30, 2019 HEARING

At the July 30, 2019 hearing the court continued the hearing to be heard alongside Debtor’s Motion To Value secured claim. Dckt. 41.

DISCUSSION

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Americredit Financial Services DBA GM Financial. A Motion to Value Collateral was filed on July 5, 2019. Dckt. 25.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

IT IS ORDERED that the Objection is **XXXXXXXXXX**.

9.	<u>19-23456-E-13</u> <u>DPC-1</u>	MICHAEL/KIMBERLY HUMPHREY Bruce Dwiggin	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-17-19 [17]
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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)©.

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 17, 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 -----
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The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the

basis that the Plan will complete in 96 months rather than the 60 months proposed based on the claims to be paid and amount of payments.

DISCUSSION

Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 96 months based on the proposed payments and claims in this case. Declaration, Dckt. 19. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney and Chapter 13 Trustee on July 15, 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.

Nationstar Mortgage LLC d/b/a Mr. Cooper (“Creditor”) opposes confirmation of the Plan on the basis that the proposed Plan does not provide for the full amount of Creditor’s claim arrearages. The debtors, Michael and Kimberly Humphrey (“Debtor”), proposed plan provides for arrearages of \$13,963.57, while Proof of Claim, No. 4 filed by Creditor states arrearages of \$22,034.67.

DISCUSSION

Creditor’s objections are well-taken. The plan is not confirmable because it fails to provide for Creditor’s arrearages, as stated in Proof of Claim, No. 4. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The arrearage stated in Creditor’s proof of claim controls, absent the court determining that the amount of the arrearage is different than asserted by Creditor, and the proposed Plan is not adequately funded to cure that arrearage.

Additionally, the court has sustained an Objection to Confirmation filed by the Chapter 13 Trustee set for hearing the same day as this 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 Nationstar Mortgage LLC d/b/a Mr. Cooper (“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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 26, 2019. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and the IRS’s claim is secured in the amount of \$15,562.37.

The Motion filed by the debtor, Jose Alfredo Ochoa (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 38. Creditor’s claim is secured by all of Debtor’s personal property, which is listed on Schedule B (Dckt. 12), in this case (“Property”).

In the Motion Debtor seeks to value the Property at a replacement value of \$15,562.37 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).

Though personally knowing the collateral, Debtor’s opinion testimony offers little beyond his stating a value and does not provide the court with information for the finder of fact to make the value determination. Debtor’s testimony as to value consists of:

2. Description of collateral: all equity in personal property since I do not own any fee interest in any real estate.

Declaration ¶ 2, Dekt. 38. Debtor chooses not to even identify the personal property that he is stating a value.

4. My opinion of the collateral's replacement value: \$15,562.37 on the petition Date.

Id., ¶ 4.

Creditor filed Proof of Claim No. 6 on August 6, 2019. The Proof of Claim asserts that \$142,345.24 is secured by the Property, that \$57,648.70 is a priority unsecured claim, and that \$5,371.51 is a general unsecured claim.

While stating that the secured claim has a value of \$142,345.24, Creditor does not provide the court with any evidence of, identify, or provide computation of value for the collateral.

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor has presented a minimal amount of evidence, but that minimal amount is sufficient to rebut a creditor writing in an unexplained dollar amount for a secured claim.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 6, the court determines the value of the secured claim to be \$15,562.37, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

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

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

The Motion to Value Collateral and Secured Claim filed by Jose Alfredo Ochoa, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Internal Revenue Service (“IRS” or “Creditor”) secured by an asset described as all Debtor’s personal property, which is listed on Schedule B (Dckt. 12), is determined to be a secured claim in the amount of \$15,562.37, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

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

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 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 -----

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

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

- A. The debtor, Jose Ochoa (“Debtor”), has not filed a motion to value a secured claim, which Debtor’s plan proposes to value the secured claim of the Internal Revenue Service at \$16,000.00.
- B. Debtor (1) admitted at the Meeting of Creditors to having a \$1,300.00 rental expense at the June 27, 2019; (2) admitted at the Meeting of Creditors to no longer having medical coverage listed on Schedule J as a \$2,225.00 expense; and (3) Schedule J lists a \$109.99 “Self employment [tax]...” expense, which may be inadequate given the \$30,000.88 of gross income attributed to Debtor’s business.

JULY 30, 2019 HEARING

At the July 30, 2019 hearing the court continued the hearing to be conducted with the Debtor's Motion to value secured claim of the IRS. Civil Minutes, Dckt. 41.

DISCUSSION

Trustee's objections are well-taken.

Debtor's expenses have been shown to differ from what was stated on Schedule J. Debtor is no longer paying for health insurance, but likely has unlisted expenses for moving costs and self employment taxes. Declaration, Dckt. 33. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. 11 U.S.C. § 1325(a)(6).

Furthermore, the plan relies on a motion to value secured claim of the IRS. A review of the docket shows that motion has been granted, the court valuing the secured ~~claim at \$15,562.37. With the secured claim having been determined in that amount, the plan is feasible. 11 U.S.C. § 1325(a)(6).~~

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

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled and the proposed Chapter 13 Plan is confirmed. Counsel for the 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.

Related Matter #14

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2019. By the court’s calculation, 70 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Latanya Lavette Grey (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for the Debtor to pay a monthly sum of \$640.00 for nine months, a 100 percent dividend to unsecured claims, and a lump sum payment to Exeter Finance LLC as a Class 4. 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 15, 2019. Dckt. 65. Trustee opposes confirmation on the following grounds:

1. Debtor is delinquent \$640.00 in plan payments.
2. Debtor’s plan relies on a worker’s compensation claim settlement, which Trustee asserts is unsupported.
3. Debtor’s plan may not be feasible because it relies on a claim objection; on a direct payment

to Exeter Finance LLC not shown as an expense on Schedule J; and because Debtor lists as an expense \$400.00 being paid for the support of Debtor's 17 year old son.

DISCUSSION

Debtor is \$640.00 delinquent in plan payments, which represents one month of the \$640.00 plan payment. Debtor has paid a total of \$2,000.00. 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).

Trustee also espouses several concerns over the feasibility of the plan. Debtor's plan relies on a lump sum payment to Exeter Finance LLC in the final month of the plan, funded by a settlement of Debtor's claims. Trustee asserts this settlement has not been demonstrated to be enough to cover the lump sum.

Trustee also notes the plan relies on an objection to claim, and the Debtor includes an expense for her son. A review of the docket shows the court has sustained Debtor's objection and disallowed the claim of Lobel Financial Corp. in its entirety. Additionally, despite contributions to her son Debtor proposes a 100 percent plan.

Based on delinquency in plan payments, the Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Latanya Lavette Grey ("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.

14. [19-20671-E-13](#) LATANYA GREY
[MET-4](#) Mary Ellen Terranella

**OBJECTION TO CLAIM OF LOBEL
FINANCIAL CORP., CLAIM NUMBER
5-1
6-4-19 [42]**

Final Ruling: No appearance at the August 13, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 4 2019. By the court’s calculation, 70 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

The Objection to Proof of Claim Number 5 of Lobel Financial Corp. is sustained, and the claim is disallowed in its entirety.

Latanya Lavette Grey, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Lobel Financial Corp. (“Creditor”), Proof of Claim No. 5 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$12,741.16. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is April 16, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 10.

DISCUSSION

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

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

The deadline for filing a proof of claim in this matter was April 16, 2019. Dckt. 10. Creditor's Proof of Claim was filed on May 13, 2019. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Lobel Financial Corp. ("Creditor") filed in this case by Latanya Lavette Grey, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 5 of Lobel Financial Corp. is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014

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 18, 2019. By the court’s calculation, 26 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Rebecca Quentmeyer, Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 133 Pine Street, Colfax, California (“Property”).

The proposed purchaser of the Property is Conrad M. Busath, and the terms of the sale are:

- A. Purchase price of \$325,000.00.
- B. Buyer has 5 days after acceptance to release all physical inspection and disclosure contingencies.

CHAPTER 13 TRUSTEE’S RESPONSE

On July 23, 2019 the Chapter 13 Trustee, David Cusick, filed a response. Dckt. 26. Trustee notes that Debtor did not provide an Estimated Settlement Statement, and has not obtained an order

authorizing employment of any broker.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate, which does not appear to have more than a contingent interest in the Property. Therefore, the Motion is granted.

As noted by Trustee, no broker has been employed. However, Debtor did not request approval of any commission. Any fees can be sought by subsequent motion.

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

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

The Motion to Sell Property filed by Rebecca Quentmeyer, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Rebecca Quentmeyer, Chapter 13 Debtor, is authorized to sell the Property commonly known as 133 Pine Street, Colfax, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$325,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 23, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by

this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

16. [19-20026-E-13](#) **THOMAS IVERS** **MOTION TO EMPLOY KRISTY**
[LBG-2](#) **Lucas Garcia** **HERNANDEZ AS REALTOR(S)**
7-25-19 [82]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 25, 2019. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Employ is XXXXXXXXXX.

The debtor, Thomas James Ivers (“Debtor”) seeks to employ Kristy Hernandez (“Broker”)

pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to list, market and negotiate the sale of Debtor's property commonly known as 8610 Pershing Avenue, Fair Oaks, California ("Property").

Kristy Hernandez, a real estate agent and broker with Hernandez Law and Realty, testifies that she has substantial experience in the market and sale of real estate in the greater areas where Debtor's Property is located. Declaration, Dckt. 84. Hernandez testifies further she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Scope of Employment

Debtor in this case, who has demonstrated an inability to prosecute a plan or prosecute a sale of the real property in which he asserts a substantial homestead exemption of \$175,000, now seeks to hire a real estate broker to merely "assist the Debtor" in the Debtor selling the property.

The Plan that Debtor and Debtor's counsel sought to propose was that Debtor would sit in the house for eleven months and somehow the property would be sold. When facing objections to that plan, Debtor and his counsel then argued for a plan that would force the immediate sale of the property - a fire sale, not a thoughtful, commercially reasonable sale. Civil Minutes, Dckt. 80.

As discussed in those Civil Minutes,

In the seventy (70) days since the May hearing, the Debtor has failed to take any action to have a special representative appointed. Though on several occasions counsel for the Debtor has dropped the name Kristy Hernandez, a known bankruptcy attorney who has appeared many times in this court and reported by Debtor's counsel to be a real estate agent, no effort has been made to have Ms. Hernandez appointed as a special purpose representative or real estate professional.

...

Thus, the apparent somblance of Debtor and Debtor's Counsel is putting at risk the Debtor's \$175,000 homestead exemption equity, as opposed to losing value for the estate for which fiduciaries of the estate would have liability.

Debtor has demonstrated that he is not pursuing a plan in this case, at

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least not the current plan or some amended version of this plan.

Civil Minutes, *Id.* at 5, 6.

The present Motion does not seek to have Ms. Hernandez appointed as the special purpose personal representative pursuant to Federal Rule of Bankruptcy Procedure 1016 given the demonstrated “incompetency” of Debtor to have marketed and sell real property in which he has at least \$175,000 of value.

Though turning over the property and its sale to a special purpose representative, the present Motion is an illusory motion, whereby Debtor only hires a real estate broker, who has no ability to market, negotiate, contract, obtain court authorization, and generate the monies from the sale. Rather, the broker merely works for, and is subject to, the Debtor who has demonstrated that he is incompetent to do such tasks.

Debtor and counsel have carefully drafted the present Motion to not give the authority and power to sell the property to a special purposes representative, but have clearly regulated that person to working for the incompetent (as far as marketing and selling the property), stating in the Motion:

“The applicant requires the services of a real estate broker **to aid him . . .**”

Motion, ¶ 2; Dckt. 82(emphasis added).

“Applicant contacted KRISTY HERNANDEZ (hereinafter “Proposed Realtor”), to list, market and negotiate a sale of the Property.”

Id., ¶ 3. Carefully, and obviously, excluded from the powers is that to sell the property and obtain court authorization for such a sale.

“Applicant through counsel has met and conferred with creditor counsel who also support the employment of Proposed Realtor.”

Id., ¶ 4.

In her Declaration, Ms. Hernandez clearly acknowledges that she is “merely” the real estate broker for Debtor (who has the demonstrated inability to sell the property) and merely provide the Debtor, as the person controlling the sale, of opinions as to what Debtor should do.

Debtor’s Proposal For and Recognition that Personal Representative was Required

As discussed previously, Debtor recognized and proposed in response to creditor’s opposition to a prior plan that “Debtor will pay nothing but then in month seven money will appear” and Debtor’s inability to fund a plan or take any steps to market the property. In the Debtor’s Status Report filed on June 4, 2019, Debtor’s expressly states:

I, Lucas Garcia, attorney for Thomas James Ivers, the Debtor herein, am

providing the following status conference statement pursuant to the court order made on May 7, 2019 in this court.

The court requested an update regarding progress on the determination and **appointment of a special representative to assist in the sale of the debtors home** and upon the ability of the parties to craft mutually agreeable terms for confirming this or a future amended plan of the Chapter 13 debtor. Counsel is happy to report that the **debtor has agreed to the appointment of the special representative**. At present we have not been able to confer with creditors counsels regarding who that individual should be but the debtor understands that it must be a mutually agreeable individual.

A conference call has been set for 2PM on Thursday, June 6th with representatives from both creditors to discuss selecting an agreeable individual. **Opposing counsels Nichole Glowin, representing Provident Funding and Robert Zahradka representing Citibank have both agreed to attend that conference call. At that time we hope to have at least have 3 or 4 options for the special representative.**

...

We will either be presenting that individual on June 11th, 2019 at the continued hearing or respectfully asking for a continuance to effectuate the hiring and approving of that individual in this court (if an individual has been found to be mutually agreeable and willing to undertake the task).

Status Report, Dckt. 73(emphasis added).

Back in March 2019, prior to stating that a personal representative would be immediately appointed to prosecute the sale of property which Debtor demonstrated he was incapable of doing, Debtor sought to confirm an amended plan. Debtor there clearly understood the difference between a real estate broker and a personal representative (the latter needed in light of the creditors' opposition to the "\$100 a month, pay only the attorney, and after six months somehow Debtor will sell the property" plan) stating:

3. A Chapter 13 Plan was originally filed on January 3, 2019. A true and correct copy of the First Amended Plan was most recently filed on March 26, 2019.

a. The Plan was amended because the **debtor had to get a new real estate agent and therefore needed additional time to complete the sale. That agent has now been secured**, see attached exhibit of the signed Residential Listing Agreement. **A motion to employ said Real Estate Agent is forthcoming** to this court and may be filed in such a way as occur on the same date as this hearing.

b. In addition, the secured creditor objections were well taken and additional provisions to revert the property to Class 3 and allow for the creditors to proceed in foreclosure were added. **Additionally, a springing term was added for the ex parte appointment of a special**

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representative to effectuate a sale if the debtor is unable to bring the property under contract by end of September 2019.

c. Furthermore, terms were added to the plan to require amended claims be prior to the sale motion approval to ensure that the secured creditors claim their correct amount of pre and post petition arrears and allowable fees.

d. The creditors will be paid in full and paid more than is foreseeable from a forced sale of the home through foreclosure. There is ample security in the believed value of the property to adequately protect the creditors interests even without an immediate monthly payment. The willingness of the debtor to waive or reduce homestead exemption to the degree necessary to ensure full payment should also be noted.

Motion, Dckt. 40 at 2-3 (emphasis added).

As of March 26, 2019, Debtor and Debtor's counsel stated that a real estate broker had been engaged and a motion (which is commonly filed *ex parte* and the order immediately issued) filed forthwith. Debtor and Debtor's counsel were incapable of, or as part of a plan or scheme delayed, filing a simple motion to employ the real estate broker. Such is not indicative of a debtor, or counsel, prosecuting a case in good faith.

With respect to Debtor's and Debtor's counsel's affirmative statements made under penalty of perjury and representations made subject to Federal Rule of Bankruptcy Procedure 9011 certifications that a copy of the agreement of a real estate broker has been signed – no such Agreement to Employ Real Estate Broker has been filed. *See* Dckt. 40 ¶ 3; Dckt. 42; and Dckt. 43 ¶ 16.

Though representing a motion to employ was “forthcoming,” no motion was filed on March 27, nor on March 28, nor.....on any day up to July 24, 2019 - a period of one hundred and twenty (120) days. On July 25, 2019, after expressly stating that a special purpose representative would be appointed to address the incompetency of Debtor in being able to sell the property, Debtor and counsel dropped a noticed motion - adding to (and ensuring) the gross delay – to merely hire a real estate broker, renege on their repeated representations that Debtor and counsel were “diligently” pursuing the appointment of the personal representative for the sale of the property.

The court, while seeing Debtor's inability to act and Debtor's and counsel's failure to follow through on promises, was not inclined to allow the creditors to foreclose and wipe out the Debtor's \$175,000 exempt equity in the property. Debtor and Debtor's counsel have accepted the court's indulgence and perceived loss caused by incompetency, but have used it to abuse creditors (at least in the short run) and the federal judicial process.

~~—————Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Kristy Hernandez as Broker for the Chapter 13 Estate. Approval of any commission or fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of~~

~~final allowance of fees for the professional.~~

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

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

~~The Motion to Employ filed by Thomas James Ivers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Kristy Hernandez as Broker for Debtor.~~

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

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

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

FINAL RULINGS

17. [19-23483-E-13](#) CHARLENE JONES **OBJECTION TO DISCHARGE BY**
[DPC-1](#) Julius Cherry **DAVID P. CUSICK**
7-3-19 [13]

Final Ruling: No appearance at the August 13, 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 Attorney on July 3, 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 Charlene Lynette Jones’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 October 11, 2015. Case No. 15-27946. Debtor received a discharge on February 29, 2016. Case No. 15-27946, Dckt.19.

The instant case was filed under Chapter 13 on May 31, 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 February 29, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 15-27946, Dckt. 19. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

The Objection is sustained. Upon successful completion of the instant case (Case No. 19-23483), 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. 19-23483, the case shall be closed without the entry of a discharge.

18. [19-20912-E-13](#) **MARK/MARCIA CLARK** **MOTION TO CONFIRM PLAN**
[PGM-3](#) **Peter Macaluso** **7-1-19 [45]**

Final Ruling: No appearance at the August 13, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 1, 2019. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Mark Dewayne Clark and Marcia Jenine Clark (“Debtor”), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on July 15, 2019. Dckt. 51. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Chapter 13 Plan filed on July 1, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 13, 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, Creditor, and Office of the United States Trustee on July 9, 2019. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Heritage Community Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$9,750.00 .

The Motion filed by Sanjani Singh and Vikash Singh (“Debtor”) to value the secured claim of Heritage Community Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 40. Debtor is the owner of a 2015 Nissan Quest 70000 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$9,750.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim

Creditor filed Proof of Claim, No. 10 (“Claim”) on July 10, 2019. The Claim is asserted to be secured in the amount of \$13,107.00 and unsecured in the amount of \$8,648.42.

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Though personally knowing the collateral, Debtor's opinion testimony offers little beyond his stating a value and does not provide the court with information for the finder of fact to make the value determination. Debtor's Declaration states "We believe and assert that the reasonable, fair market value of the ASSET is \$9,750.00." Dec., Dckt. 40, at ¶ 4(emphasis in original).

Creditor filed Proof of Claim, No. 10 ("Claim") on July 10, 2019. The Claim is asserted to be secured in the amount of \$13,107.00 and unsecured in the amount of \$8,648.42.

While stating that the secured claim has a value of \$13,107.00, Creditor does not provide the court with any evidence of, identify, or offer a computation of value for the collateral.

The lien on the Vehicle's title secures a purchase-money loan incurred on December 16, 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 \$21,755.42. Proof of Claim, No. 10. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$9,750.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Sanjani Singh and Vikash Singh ("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 Heritage Community Credit Union ("Creditor") secured by an asset described as 2015 Nissan Quest 70000 ("Vehicle") is determined to be a secured claim in the amount of \$9,750.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,750.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

20. [19-23036-E-13](#) SANJANI/VIKASH SINGH **OBJECTION TO DISCHARGE BY**
[DPC-1](#) Gary Fraley **DAVID P. CUSICK**
7-1-19 [32]

Final Ruling: No appearance at the August 13, 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 attorney on July 1, 2019. By the court’s calculation, 43 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 Sanjani Singh and Vikash Singh’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 Declaration of Non-Opposition on July 8, 2019. Dckt. 36.

Debtor filed a Chapter 7 bankruptcy case on June 8, 2018. Case No. 18-23610. Debtor received a discharge on October 1, 2018. Case No. 18-23610, Dckt. 20.

The instant case was filed under Chapter 13 on May 13, 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 June 8, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 18-23610, Dckt. 20. 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. 19-23036), 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. 19-23036, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the August 13, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 3, 2019. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Melody Simpson ("Debtor") has provided evidence in support of confirmation. No opposition to the Motion has been filed by creditors.

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Amended Non-Opposition on July 15, 2019 indicating no opposition to confirmation so long as the order confirming the plan clarifies the June 25, 2019 payment amount. Dckt. 29.

The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed. The court's m

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, Melody Simpson (“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 July 3, 2019, is confirmed, with \$23,984.00 paid into the plan through June 25, 2019. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, inclusive of language to clarify what is paid June 25, 2019, 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.

22. [18-26952-E-13](#)
[SLE-4](#)

ANTHONY/CANDIE SANDOVAL
Steele Lanphier

MOTION TO CONFIRM PLAN
6-14-19 [48]

Final Ruling: No appearance at the August 13, 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 14, 2019. By the court’s calculation, 60 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Anthony and Candie Sandoval (“Debtor”), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on July 17, 2019. Dckt. 59. 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 debtors, Anthony and Candie Sandoval (“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 14, 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.

23. [12-23875-E-13](#) **CAIPING LI** **MOTION TO AVOID LIEN OF LEGAL**
[PGM-1](#) **Peter Macaluso** **SOLUTIONS CORPORATION**
7-8-19 [47]

Final Ruling: No appearance at the August 13, 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, Creditor, parties requesting special notice, and Office of the United States Trustee on July 8, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Legal Solutions Corporation (“Creditor”) against property of the debtor, Caiping Li (“Debtor”) commonly known as 9797 Waterfowl Drive, Elk Grove, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$9,555.53. Exhibit A, Dckt. 49. An abstract of judgment was recorded with Sacramento County on February 15, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$287,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$223,175.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$63,825.00 on Schedule C. *Id.*

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Caiping Li ("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 judgment lien of Legal Solutions Corporation, California Superior Court for El Dorado County Case No. PCL20101286, recorded on February 15, 2011, Book 20110215 and Page 0615, with the Sacramento County Recorder, against the real property commonly known as 9797 Waterfowl Drive, Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the August 13, 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, Creditor, parties requesting special notice, and Office of the United States Trustee on July 8, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. (“Creditor”) against property of the debtor, Caiping Li (“Debtor”) commonly known as 9797 Waterfowl Drive, Elk Grove, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,345.02. Exhibit A, Dckt. 56. An abstract of judgment was recorded with Sacramento County on September 9, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$287,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$223,175.00 as of the commencement of this case are stated on Debtor’s Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$63,825.00 on Schedule C. *Id.*

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Caiping Li ("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 judgment lien of Citibank (South Dakota), N.A., California Superior Court for Sacramento County Case No. 34-2010-00091276, recorded on September 9, 2011, Book 20110909 and Page 0980, with the Sacramento County Recorder, against the real property commonly known as 9797 Waterfowl Drive, Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the August 13, 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, Creditor, parties requesting special notice, and Office of the United States Trustee on July 8, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. (“Creditor”) against property of the debtor, Caiping Li (“Debtor”) commonly known as 9797 Waterfowl Drive, Elk Grove, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,054.83. Exhibit A, Dckt. 68. An abstract of judgment was recorded with Sacramento County on September 20, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$287,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$223,175.00 as of the commencement of this case are stated on Debtor’s Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$63,825.00 on Schedule C. *Id.*

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided

subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Caiping Li (“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 judgment lien of Citibank (South Dakota), N.A., California Superior Court for Sacramento County Case No. 34-2010-00092830, recorded on September 20, 2011, Book 20110920 and Page 0885, with the Sacramento County Recorder, against the real property commonly known as 9797 Waterfowl Drive, Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the August 8, 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, Creditor, parties requesting special notice, and Office of the United States Trustee on July 8, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. (“Creditor”) against property of the debtor, Caiping Li (“Debtor”) commonly known as 9797 Waterfowl Drive, Elk Grove, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,382.94. Exhibit A, Dckt. 62. An abstract of judgment was recorded with Sacramento County on October 7, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$287,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$223,175.00 as of the commencement of this case are stated on Debtor’s Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$63,825.00 on Schedule C. *Id.*

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided

subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Caiping Li (“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 judgment lien of Citibank (South Dakota), N.A., California Superior Court for Sacramento County Case No. 34-2010-00087881, recorded on October 7, 2011, Book 20111007 and Page 0486, with the Sacramento County Recorder, against the real property commonly known as 9797 Waterfowl Drive, Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the August 13, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 3, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of creditors, Jeff Garcia, c/o Webb Law Group, APC. and Fidelis Marketing, Inc. ("Creditor"), against property of the debtor, Lindsay Cannaday ("Debtor"), commonly known as 1141 Southbridge Cir, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$55,442.24. Exhibit A, Dckt. 22. An abstract of judgment was recorded with Placer County on October 18, 2017, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$548,000.00 as of the petition date. Dckt. 1, at p. 11. The unavoidable consensual liens that total \$539,657.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1, at p. 21. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$8,344.00 on Amended Schedule C. Dckt. 17.

CHAPTER 13 TRUSTEE'S RESPONSE

On July 24, 2019 the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response to the Motion. Dckt. 28. Trustee notes that Debtor states in his declaration “My opinion as to the value of the property is based upon my personal knowledge of the Fair Market Values of other homes in this neighborhood, and the general condition and amenities of our real property . . . ,” and adds that if the value of the Property is higher then the lien should not be entirely avoided.

DEBTOR’S REPLY

Debtor filed a Reply on August 8, 2019, arguing it is universally accepted that a Debtor may testify as to their real property’s value. Dckt. 30.

DISCUSSION

To the extent that Debtor testifies as to his personal knowledge of the Property, the court interprets it to be a mere explanation of Debtor’s opinion of value.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Lindsay Cannaday (“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 judgment lien of Jeff Garcia, c/o Webb Law Group, APC. and Fidelis Marketing, Inc., California Superior Court for Sacramento County Case No. 34-2015-00174141, recorded on October 18, 2017, Document No. 2017-0081056-00, with the Placer County Recorder, against the real property commonly known as 1141 Southbridge Circle, Lincoln, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.