

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 17, 2019 at 2:00 p.m.

1. [19-23400](#)-C-13 IBRAHEYMA ALHARK MOTION TO CONFIRM PLAN
[SDH-2](#) Scott D. Hughes 8-7-19 [[31](#)]

Final Ruling: No appearance at the September 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2019. 35 days' notice is required. F ED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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, Ibraheyma Alhark ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 19, 2019. Dckt. 37. 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

September 17, 2019 at 2:00 p.m.

debtor, Ibraheyima Alhark ("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 August 7, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. [19-24307](#)-C-13 SUSAN DEAN
[DPC-1](#) Matthew J. DeCaminada

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
8-14-19 [[15](#)]

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor's Schedule I does not appear accurate. Debtor lists receiving \$1,500.00 from family support statements. This is not consistent with what Debtor admitted at the Meeting of Creditors held on August 8, 2019. Debtor stated that she receives \$3,200.00 but expects that amount to reduce to \$1,500.00 in December 2020.
- B. Debtor testified at the Meeting of Creditors that the repayment on her 401(k) loan, \$334.25 per month, will be paid off in 20 months. The Plan does not account for the decrease in expenses.
- C. Debtor's Plan lists American Honda Finance in Section 4.02 and on Schedule G. However, the expense is not listed on Debtor's Schedule J.

DISCUSSION

Trustee's objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedules are not consistent with the information included on Debtor's Plan or the testimony provided at the Meeting of Creditors. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

3. [17-21208](#)-C-13 LOUIS BROWN MOTION TO WAIVE FINANCIAL
[MET](#)-5 Mary Ellen Terranella MANAGEMENT COURSE REQUIREMENT,
CONTINUE CASE ADMINISTRATION,
SUBSTITUTE PARTY, AS TO DEBTOR
8-7-19 [[127](#)]

Final Ruling: No appearance at the September 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Substitute is granted.

Debtor's son, Lewis G. Brown, seeks an order approving the motion to substitute Debtor's son for the deceased Debtor, Louis F. Brown. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on February 27, 2017. On November 29, 2018, Debtor's Chapter 13 Plan was confirmed. Dckt. 98. On May 12 2019, Debtor Louis F. Brown passed away. Debtor's asserts that he is the lawful successor and representative of Debtor.

CHAPTER 13 TRUSTEE:

On August 29, 2019, the Chapter 13 Trustee filed a response indicating that he is not opposed to the court granting the requested relief. Dckt. 142.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded

in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

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

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

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

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

substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

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

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Lewis G. Brown has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Debtor's son, Lewis G. Brown, as the son of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Louis F. Brown. The court grants the Motion to Substitute Party.

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

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

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Lewis G. Brown is substituted as the successor-in-interest to Louis F. Brown and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

Final Ruling: No appearance at the September 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a) (9); LOCAL BANKR. R. 3015-1(d) (1). That requirement was met.

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, Armar Walker and Maricelan Walker ("Debtors"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 19, 2019. Dckt. 45. 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, Armar Walker and Maricelan Walker ("Debtors"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on August 13, 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 September 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2019. 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). That requirement is met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Shari Lambert ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 28, 2019. Dckt. 28. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on August 12, 2019, is

confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

THRU #7

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor did not appear at the First Meeting of Creditors held on August 8, 2019. The Trustee noted that Debtor's counsel advised the Trustee that Debtor experienced some medical issues and would not be able to attend the Meeting. The Meeting was continued to October 3, 2019.

DISCUSSION

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

confirmation. 11 U.S.C. § 1325(a)(1).

The Plan 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.

7. [19-24312](#)-C-13 DAVID RITCHIE
[JBA-1](#) Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY MARIANNE LANSPA
8-15-19 [[16](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2019. 14 days' notice is required. That requirement was met.

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.

Marianne Lanspa, ("Creditor"), opposes confirmation of the Plan on the basis that:

- A. Debtor did not appear at the Meeting of Creditors.
- B. Debtor's Plan does not properly provide for all of Debtor's disposable income. Creditor claims that Debtor proposes to deduct mortgage expenses while also surrendering the property through plan.
- C. Creditor, as Debtor's spouse who is presently in a divorce proceeding, questions Debtor's claim of household size of (2) on the petition.

DISCUSSION

Creditor's objections are well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is

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

The Plan 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 Marianne Lanspa, ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

8. [19-23819](#)-C-13 LORENZO NARANJO
Pro Se

MOTION TO VALUE COLLATERAL OF
ALLY FINANCIAL
8-13-19 [[26](#)]

Final Ruling: No appearance at the September 17, 2019 hearing is required.

The Motion to Value is dismissed without prejudice.

Lorenzo Naranjo ("Debtor") having filed a "Withdrawal of Motion", which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 5, 2019, Dckt. 40; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Chapter 13 Trustee and Secured Creditor Portfolio Recovery Associates; the Ex Parte Motion is granted, the Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Value filed by Lorenzo Naranjo (" the Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 40, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the September 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2019. 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). That requirement is met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, John Monroe, Jr. ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 28, 2019. Dckt. 105. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, John Monroe, Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on August 12, 2019, is

confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

10. [19-24236](#)-C-13 SCOTT FRANKLIN
[DPC-1](#) Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-13-19 [[17](#)]

THRU #12

Final Ruling: No appearance at the September 17, 2019 hearing is required.

Debtor having amended his Schedule C exemptions, the Objection to Debtor's claim of Exemptions is overruled as moot.

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

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

The Objection having been presented to the court, the exemptions having been amended, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the Debtor having filed Amended Schedule C.

11. [19-24236](#)-C-13 SCOTT FRANKLIN
[DPC-2](#) Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
8-13-19 [[13](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor had not provided the Trustee with the required (60) days of employer payment advices.
- B. The Trustee is not certain Debtor can make the proposed payments given the disposable income listed as being \$100.00 on Debtor's Schedule J.
- C. The Trustee needs additional information to determine what interest Debtor may have in real property commonly known as 13950 Elderberry Court, Pine Grove, California.

DISCUSSION

Trustee's objections are well-taken. The court notes that since the

Trustee's Objection Debtor filed Amended Schedules and appears to have addressed the Trustee's concerns regarding the Schedules I and J. However, it is not clear whether the Debtor has provided sufficient information to the Trustee concerning the Debtor's pay advices and the potential interest in the real property identified above.

At the hearing ----

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

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

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

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

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

12. [19-24236](#)-C-13 SCOTT FRANKLIN
[NES-1](#) Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY TIAA, FSB
8-15-19 [[21](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2019. 14 days' notice is required. That requirement was met.

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.

TIAA FSB, the holder of a secured claim recorded against real property, ("Secured Creditor"), opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan does not provide for the pre-petition arrearage of \$19,036.75 reflected in its Proof of Claim No. 7-1.

DISCUSSION

Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$19,036.75 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b) (2) & (5), 1325(a) (5) (B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

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

The Objection to the Chapter 13 Plan filed by the TIAA FSB, the holder of a secured claim recorded against real property, ("Secured Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

13. [19-23842](#)-C-13 SERGIO AVILES
[MEV-1](#) Marc Voisenat

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
8-16-19 [[29](#)]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2019. 14 days' notice is required. That requirement was met.

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 Bank of America, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Sergio Vailes ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 31. Debtor is the owner of the subject real property commonly known as 5039 Springfield Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$250,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a) (1) An **allowed claim of a creditor** secured by a lien on

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 3-1 filed by Bank of America, N.A. appears to be the claim that may be the subject of the present Motion. The claim asserts a secured claim of \$12,518.02.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$270,254.16. Proof of Claim No. 2-1. Creditor's second deed of trust secures a claim with a balance of approximately \$12,518.00. Claim No. 3-1. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Sergio Vailes ("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 Bank of America, NA. ("Creditor") secured by a second in priority deed of trust

recorded against the real property commonly known as 5039 Springfield Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$250,000.00 and is encumbered by a senior lien securing a claim in the amount of \$270,254.16, which exceeds the value of the Property that is subject to Creditor's lien.

THRU #15

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

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

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

Insufficient Notice Provided. The docket does not reflect that a Proof of Service was filed in conjunction with the filing of the Motion. 14 days' notice is required.

The Motion to Approve Loan Modification was not 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 Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Richard West and Donia West ("Debtors") seeks court approval for Debtor to incur post-petition credit. Lakeview Loan Servicing, LLC ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$1,688.48 (as reflected in the proposed Plan) per month to \$1,696.26 per month. The court notes that Debtors state the lender is Celnar FSB, however, this appears to the loan servicer and not the lender as reflected in the attached Loan Modification Agreement. Dckt. 34, Exhibit A. The modification does not change the interest rate of 4.125% and will mature on August 1, 2059.

The Motion is supported by the Declaration of the Debtors. Dckt. 3. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

INSUFFICIENT NOTICE OF MOTION

Debtors did not provide a proof of service for this Motion.

Accordingly the court is unable to determine whether the required parties received the required fourteen day notice as required by Local Bankruptcy Rule 9014-1(f)(2). Therefore, the Motion is denied without prejudice.

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 Approve Loan Modification filed by Richard West and Donia West ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE

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

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

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

The Motion to Approve Loan Modification filed by Richard West and Donia West ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Richard West and Donia West ("Debtors") to amend the terms of the loan with Lakeview Loan Servicing, LLC ("Creditor"), which is secured by the real property commonly known as 155 Harvest Drive, Vacaville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 34).

15. [19-23746](#)-C-13 RICHARD/DONIA WEST
[NFS](#)-1 Chad M. Johnson

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY CENLAR
FSB
8-1-19 [[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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

FSB for Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor's plan does not provide for payment of the pre-petition arrearage of \$18,608.67 as reflected in Proof of Claim No. 8-1. Dckt. 25.

DISCUSSION

Creditor's objections are well-taken. Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$18,608.67 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b) (2) & (5), 1325(a) (5) (B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

The hearing held on August 27, 2019 was continued to September 17, 2019. At the continued 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 FSB for Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Insufficient Notice Provided. The pro se Debtor did not file Proof of Service. Dckt. 9.

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

The Motion to Extend the Automatic Stay is denied as moot.

Bradley Martin ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. While this appears to be Debtors third bankruptcy filed in this district since 2017, the prior to two proceeds were dismissed more than a year prior to the filing of the petition in the present case. Debtor's prior bankruptcy case (No. 18-20162) was dismissed on March 28, 2018, after Debtor did not file required documents. See Order, Bankr. E.D. Cal. No. 18-20162, Dckt. 13. Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay were not impacted after filing of the petition. Accordingly, there is no need for the Debtor to seek an extension of the automatic stay.

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

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

The Motion to Extend the Automatic Stay filed by Bradley Martin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of

counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot.

17. [19-24150](#)-C-13 BRYAN LEE
[JHW-1](#) Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY MERCEDES-BENZ FINANCIAL
SERVICES USA LLC
8-9-19 [[17](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is overruled.

Mercedes-Benze Financial Services USA, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan does not provide for the contract interest rate.

DEBTOR'S RESPONSE:

On August 29, 2019, the Debtor filed a response indicating that the parties have stipulated on a proposed interest rate of 6.5%. Dckt. 23, Exhibit A.

DISCUSSION

The court notes that the Chapter 13 Trustee did not sign the stipulation attached as an exhibit to Debtor's response. **At the hearing ----**

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

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

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

The Objection to the Chapter 13 Plan filed by Mercedes Benz Financial Services USA, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Matthew Lee's ("Debtor") Chapter 13 Plan filed on June 28, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

THRU #19

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtors' Plan relies on an unfiled motion to value relating to PNC Bank's secured claim against a 2016 Chevy Silverado.

DISCUSSION

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

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

19. [19-24051](#)-C-13 ERIC/ROSALIA FUEGA
[JHW-1](#) Jeffrey S. Ogilvie

OBJECTION TO CONFIRMATION OF
PLAN BY TD AUTO FINANCE LLC
7-17-19 [[15](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2019. 14 days' notice is required. That requirement was met.

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.

TD Auto Finance, LLC, a creditor holding a secured claim ("Secured Creditor"), opposes confirmation of the Plan on the basis that:

- A. Debtors' Plan does not provide for the appropriate interest rate for its secured claim. Claiming that Debtors have proposed a plan with a "shoestring" budget. The Creditor seeks and interest rate of 7.5%.

DISCUSSION

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.55%. Creditor's claim is secured by a 2016 Chevy Suburban LT. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the

formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.5%, plus a 1.25% risk adjustment, for a 6.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

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

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

20. [19-23556](#)-C-13 DEBORAH CANDATE
[APN-1](#) Mary Ellen Terranella

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY VALLEJO
CERROS HOMEOWNERS ASSOCIATION
7-25-19 [[30](#)]

THRU #22

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2019. 14 days' notice is required. That requirement was met.

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 and the plan is not confirmed.

Vallejo Cerros Homeowners Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor disputes Debtor's classification as a Class 2 Creditor in the Plan. Creditor asserts that its claim is fully secured. The court notes there is an unresolved Motion to Value set for hearing on September 17, 2019.
- B. Creditor states that Debtor's Plan does not properly provide for pre-petition Covenants, Conditions, and Restrictions related to monthly Homeowner Associations dues.
- C. Debtor's plan does not provide for interest on the pre-petition

arrears.

- D. Debtor's plan should provide for attorney's fees and costs incurred by the Creditor in the filing of this Objection.

DISCUSSION

The court notes that Creditor and the Debtor are presently litigating a Motion to Value set for hearing on September 17, 2019. The resolution of the Motion is directly related several of the Objections raised by Creditor. Accordingly the court will continue this hearing to September 17, 2019.

On September 12, 2019, the Creditor and the Debtor filed a Stipulation indicating Debtor's intent to withdraw the Motion to Value. Accordingly, the proposed Plan is not feasible as it relied on prevailing on that 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 Objection to the Chapter 13 Plan filed by Vallejo Cerros Homeowners Association ("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 plan is not confirmed.

21. [19-23556](#)-C-13 DEBORAH CANDATE
[DPC-1](#) Mary Ellen Terranella

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-23-19 [[26](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2019. 14 days' notice is required. That requirement was met.

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 and the Plan is not confirmed.

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

- A. Debtor's plan relies on a Motion to Avoid Lien of Vallejo Cerros Homeowners' Association.

DISCUSSION

Trustee's objections are well-taken. Debtor's Plan relies on avoiding the lien of Vallejo Cerros Homeowners' Association. The court notes that the Motion is presently set for hearing on September 17, 2019 at 2:00 p.m. The court continues this matter to allow for the resolution of the Motion to Avoid Lien.

On September 12, 2019, the parties filed a Stipulation indicating

Debtor's intent to withdraw the Motion to Value. Accordingly, the proposed Plan is not feasible as it relied on prevailing on that 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 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 plan is not confirmed.

22. [19-23556](#)-C-13 DEBORAH CANDATE
[MET-2](#) Mary Ellen Terranella

CONTINUED MOTION TO VALUE
COLLATERAL OF VALLEJO CERROS
HOMEOWNERS ASSOCIATION
6-25-19 [[18](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 25, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral is denied as moot due to the Stipulation filed on September 12, 2019. Dckt. 48.

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

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

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

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

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

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

At the July 16, 2017 hearing the Motion was continued for further briefing.

CREDITOR'S LATE FILED OPPOSITION:

On September 6, 2019, three-days after the court deadline of Opposition, Creditor Vallejo Cerros Homeowners Association filed an Opposition. Dckt. 42. Creditor's Opposition is supported by the Declaration of Richard Straub who states that he is a licensed real estate appraiser and has valued the subject Property at \$280,000.00. Dckt. 43, Declaration, Dckt. 44, Exhibit C, Appraisal.

STIPULATION:

On September 12, 2019, the Debtor and the Secured Creditor filed a Stipulation indicating that the parties agree that the fair market value of the Property is greater than the loan secured by the First Deed of Trust. Accordingly, both parties agree that the matter should be withdrawn.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied as moot due to the Stipulation filed on September 12, 2019. Dckt. 48.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtors' Plan relies on an unfiled motion to value relating to First Investors Financial Services' secured claim against a 2010 Subaru Outback.
- B. Debtor's Plan lists American Credit Acceptance's claim against a 2011 GMC Yukon in Class 2B to be valued. However, the purchase contract indicates that the vehicle was purchased on March 19, 2018, within 910 days of the bankruptcy proceeding and not eligible for valuation.

DISCUSSION

Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of First Investor

Financial Services. Debtor has failed to file a Motion to Value the Secured Claim of the creditor. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, Debtor's Plan relies on a Motion to Value the Secured Claim of American Credit Acceptance which is not a claim that can be valued. Debtor cannot file a Motion to Value the Secured Claim of the creditor. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

THRU #25

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 14 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.

The Motion to Value Collateral and Secured Claim of FCI Lender Services, Inc. ("Creditor") is **xxxx.**

PROCEDURAL HISTORY

The court granted Debtors' Motion to Value Collateral and Secured Claim on April 27, 2019. Order, Dckt. 30. The creditor, Partners For Payment Relief DE III, LLC, the lender for which Creditor acts as a loan servicer (collectively "Creditor"), filed its Motion to Vacate the Court's Order on April 29, 2019. Lender asked the court to reconsider its decision to grant Debtors' Motion to Value because it mis-calendared the opposition deadline for Debtors' Motion to Value. Dckt. 31 at p. 2:27-29. The court granted the Motion for Reconsideration on May 21, 2019, vacated is April 27 Order, and set a hearing on Debtors' Motion to Value for 2:00 p.m. on June 25, 2019. Parties filed additional briefs to address the merits of Debtors' Motion to Value.

DEBTOR'S INITIAL MOTION:

Initially on March 26, 2019, Leonid Banar and Lyudila Banar ("Debtors") filed their Motion to value the secured claim of FCI Lender Services, Inc. ("Creditor"). The Motion was accompanied by Debtor's amended declaration. Debtors are the owners of the subject real property commonly known as 8219 Villaview Drive, Citrus Heights, California ("Property").

CREDITOR'S OPPOSITION

On May 31, 2019, Creditor filed its Opposition to Debtors' Motion to Value Collateral. Dckt. 43. Creditor dispute Debtors' valuation of the subject Property. Where Debtors allege that the Property is worth \$255,000.00, Creditor asserts that the Property is actually worth \$282,500.00, providing \$27,500.00 of equity over the senior lien holder for Creditor's lien to attach. Declaration, Dckt. 44 at Exhibit 3. In addition, Creditor raises objection to Debtors' proposed valuation. Creditor argues that Debtors are employed, respectively, as a Cobbler and a Housekeeper, and have no real estate experience upon which to base their proposed valuation. Creditor asked the court to deny Debtors' Motion to Value, or order a final hearing on the matter to allow Creditor to perform its own valuation on the Property.

In support of Creditor's stated valuation, the Creditor submits a Broker's Price Opinion ("BPO") dated April 10, 2019 valuing the property at \$282,500.00. Creditor attempts to authenticate the BPO providing a sworn statement from Creditor's employee that the attached BPO is the report that the company ordered. However, no sworn statements are provided to authenticate the truth of the contents of the BPO.

DEBTOR'S RESPONSE

On June 7, 2019, Debtors filed their Response to Creditor's Opposition to Debtor's Motion to Value Collateral. Dckt. 49. Debtors' Counsel responded that because Debtors' have superior personal knowledge of the Property, Debtors' opinion of the Property's value is more reliable than Creditor's Broker's opinion.

Debtors' Counsel also takes issue with the BPO presented as evidence in support of Creditor's valuation, noting no declaration was filed by its author, and no information is provided as to the qualifications of its author. Additionally, Debtors' Counsel points out multiple defects with the Property that would ostensibly have an adverse effect on its valuation. The defects include abnormal wear and tear caused by Debtors' eight children, non-permitted alterations to the Property, and needed repairs to the Property's roof and water pipes. According to a contractor's estimate submitted as evidence by Debtors' Counsel, repairing the roof and water pipes alone would cost at least \$20,195.00. Dckt. 51 at Exhibit A. The expense of remedying these defects, argue Debtors' Counsel, would exceed the \$24,237.29 of equity Lender claims based on its proposed valuation of the Property.

NO PROOF OF CLAIM FILED

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

DISCUSSION

The parties offer conflicting evidence as to the value of the Property. Debtors seek to value the Property at a fair market value of \$255,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The hearing is continued to allow the parties opportunity to conduct discovery.

DEBTORS' STATUS REPORT:

On August 6, 2019, Debtor filed a Status Report. Dckt. 65. The Report states that:

1. Creditor sent an appraiser to Debtor's home on August 3, 2019.
2. Debtors retained Steve C. Baker who conducted and in home inspection and produced a report.
3. Debtor's counsel e-mailed Creditor to obtain a status report swap.

Debtor's counsel states that at the time of the Status Report filing, no response has been received from Creditor.

At the August 13, 2019 hearing the matter was continued again.

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 Leonid Banar and Lyudila Banar ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value Collateral and Secured Claim of FCI Lender Services, Inc. ("Creditor") is **XXXX**.

25. [19-21860](#)-C-13 LEONID/LYUDMILA BANAR
[RDW-2](#) Mark Shmorgon

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
PARTNERS FOR PAYMENT RELIEF DE
III, LLC
5-9-19 [[37](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 47 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 to Confirmation of Plan is xxxx.

Partners For Payment Relief DE III, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor does not provide for Creditor's claim and Debtor has failed to provide evidence that Creditor is completely unsecured.
- B. Creditor alleges that Debtor will not be able to afford the Plan. Debtor's Schedules show disposable income of \$150.00 and a monthly plan payment of \$150.00. Confirmation of the Plan would be impossible in the event Creditor's claim is included in the plan.

DISCUSSION

Creditor asserts a claim of \$97,106.81 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$98,406.73 and indicates that it is secured by a second deed of trust on Debtor's residence. The Plan

provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a \$0.00 monthly dividend on account of the claim.

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

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of FCI Lender Services, Inc. Debtor has filed a Motion to Value the Secured Claim of FCI Lender Services, Inc. Dckt. 8. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

JUNE 4, 2019 HEARING

At the June 4, 2019 hearing the Objection to Confirmation of Plan was continued to June 25, 2019 to permit the Debtor's Motion to Value Creditor's Claim to resolve.

The court further continues the hearing as Debtor and Creditor are conducting discovery as to the value of Creditor's collateral.

DEBTORS' STATUS REPORT:

On August 6, 2019, Debtor filed a Status Report. Dckt. 63. The Report states that Plan Confirmation was continued to allow resolution of the pending Motion to Value (Dckt. 30). Debtor notes that:

1. Creditor sent an appraiser to Debtor's home on August 3, 2019.
2. Debtors retained Steve C. Baker who conducted an in home inspection and produced a report.
3. Debtor's counsel e-mailed Creditor to obtain a status report swap.

Debtor's counsel states that at the time of the Status Report filing, no response has been received from Creditor and the Motion to Value has not been resolved.

At the hearing -----

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

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

The Objection to the Chapter 13 Plan filed Partners For Payment Relief DE III, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the hearing on the Objection to Confirmation of Plan is **XXXX**.

Final Ruling: No appearance at the September 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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, Stacey Coutts ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 19, 2019. Dckt. 21. 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, Stacey Coutts ("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 August 12, 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.

27. [18-25065](#)-C-13 MICHAEL LUCERO AND MARIA MOTION TO MODIFY PLAN
[BLG-2](#) MARTINEZ 8-12-19 [[52](#)]
Chad M. Johnson

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2019. 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). That requirement was met.

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, Michael Lucero and Maria Martinez ("Debtors") seek confirmation of the Modified Plan to make up for missed payments. Declaration, Dckt. 54. The Modified Plan provides for increased plan payments for in months 12 and 13 of \$2,88.00 and payments of \$3,228.00 for months 14-60. Modified Plan, Dckt. 57. 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 August 28, 2019. Dckt. 63. The Trustee argues that Debtors are delinquent \$2,888.00 under the terms of the proposed plan and the principal balance reflected in Section 7 for Consumer Portfolio Services as of month 11 is not correct it should be \$12,108.86.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$2,888.00 delinquent in

plan payments, which represents about one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

At the hearing Debtors address whether they have cured the delinquency and whether they agree to correct the principal balance of Consumer Portfolio Services in Section 7 of the Plan ----

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 Michael Lucero and Maria Martinez ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that 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.

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 14, 2019. However, the Secured Creditor Ally Financial was not listed on the Proof of Service.

The Motion to Value Collateral and Secured Claim has not been properly 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 Ally Financial ("Creditor") is denied without prejudice.

The Motion filed by Joshua Bartucca and Michele Bartucca ("Debtors") to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 16. Debtor is the owner of a 2016 Jeep Cherokee ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$16,594.00 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). Debtors state, without giving the date of the purchase, that they secured the loan more than 910 days before the case was filed.

CHAPTER 13 TRUSTEE:

The Chapter 13 Trustee filed a Response indicating that he did not oppose the requested relief. Dckt. 18.

INSUFFICIENT NOTICE OF MOTION

Debtors' Proof of Service filed with this Motion does not indicate that the Creditor, Ally Financial was served. Accordingly the court is unable to determine whether the required parties received the required twenty-eight day notice as required by Local Bankruptcy Rule 9014-1(f) (1). Therefore, the

Motion is denied without prejudice.

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 Value filed by Joshua Bartucca and Michele Bartucca ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$26,188.00. Dckt. 1, Schedule D. 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 \$16,594.00, 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 Joshua Bartucca and Michele Bartucca ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Financial ("Creditor") secured by an asset described as 2016 Jeep Cherokee ("Vehicle") is determined to be a secured claim in the amount of \$16,594.00, 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 \$16,594.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the September 10, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Approve Trial Loan Modification is granted.

The Motion to Approve Trial Loan Modification filed by Reina Montes ("Debtor") seeks court approval for Debtor to incur post-petition credit. Selene Financing ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a trial loan modification that will change Debtor's mortgage payment to \$1,118.73 per month. The modification will capitalize the pre-petition arrears at an interest rate of 4.25%.

The Motion is supported by the Declaration of Reina Montes. Dckt. 137. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

The Trustee's Objection was resolved on September 9, 2019 after Debtor filed as an exhibit the full trial loan modification document. Dckt. 153.

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

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

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

The Motion to Approve Loan Modification filed by Reina Montes ("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 court authorizes Reina Montes to amend the terms of the loan with Selene Financing ("Creditor"), which is secured by the real property commonly known as 7754 McBride Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit B in support of the Motion (Dckt. 153).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 36 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, Aileen Ambrosio ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for (60) monthly payments of \$4,131.05 and a 2% dividend to the general unsecured claims. Amended Plan, Dckt. 43. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CALIFORNIA FRANCHISE TAX BOARD OPPOSITION

The California Franchise Tax Board ("Creditor") holding both secured and priority claims filed an Opposition on August 29, 2019. Dckt. 55.

The Creditor asserts that it has a priority claim of \$6,632.33 which is not provided for in the plan. Creditor notes that Section 7 of the plan proposes to pay both the Creditor and IRS' priority claims outside of the Chapter 13 Plan. Creditor does not consent to this treatment of its claim and states that the proposed plan does not comply with 11 U.S.C. § 1322(a) (2).

Additionally, Creditor questions whether Debtor is providing for all disposable income to be paid into the plan. Creditor states that Debtor's Form 122C-2 reflects \$2,276.39 of disposable income, and that amount is not made available for payment of the unsecured creditors over the duration of the plan.

Additionally, it appears Debtor lists 3 dependents in determining deductions from her income, but does not list dependants on her Schedule J.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 3, 2019. Dckt. 58. The Opposition is based on:

A. Debtor provides for the direct payment of priority debts to the IRS and the California Franchise Tax Board.

B. Debtor proposes to pay priority claims outside of the plan without consent.

C. The Trustee questions amendments made to Schedules I and J because they were not filed in conjunction with a declaration explaining the changes. Debtor removed dependents and ongoing payments to the priority creditors from the Schedule J.

D. Debtor is delinquent \$999.10 in plan payments.

E. Debtor's plan may not be the best effort as the plan proposes a 2% dividend to unsecured creditors. The Trustee notes is substantially less than Debtor appears able to provide.

F. Debtor's plan appears to delay paying taxes over the life of the plan.

G. The Trustee is not certain how much Debtor's Attorney has been paid prior to the filing of the plan. And based on the information provided asserts that only \$1,500.00 should be paid through the plan.

DISCUSSION

Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6). Debtor filed Amended Schedules I and J removing dependent and tax expenses without any explanation. Absent explanation from Debtor as to how the proposed increase in income and drastic decrease in expenses will be achieved, the court does not believe that Debtor's projection is in good faith (especially because it appears to have been made in response to Trustee's and Creditor's Objection to Confirmation). That is reason to deny confirmation. See 11 U.S.C. § 1325(a)(3).

Debtor is \$999.10 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Creditor and the Trustee assert that the Franchise Tax Board and IRS have priority claims. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2) because Debtor does not provide for them through the plan.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Aileen Ambrosio ("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.
