

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

September 18, 2018, at 3:00 p.m.

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|----|--|-----------------------|--|
| 1. | <a href="#"><u>18-24308-E-13</u></a><br><a href="#"><u>DPC-1</u></a> | ADORA EVANS<br>Pro Se | <b>OBJECTION TO CONFIRMATION OF<br/>PLAN BY DAVID P. CUSICK</b><br>8-20-18 [ <a href="#"><u>16</u></a> ] |
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on August 20, 2018. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

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

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

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

- A. Debtor filed Official Form 113 when the current Chapter 13 plan form to be used is EDC 3-080.

- B. Debtor has failed to provide Trustee with their pay advices for the 60 days prior to filing their petition with the Trustee required by 11 U.S.C. § 521(a)(1)(B)(iv) and the Order RE: Chapter 13 Plan Payments, Adequate Protection Payments, and Employer Payment Advices. Dckt. 8.
- C. Debtor has failed to provide Trustee with Debtor's 2017 Tax Return or a statement that no such document exists, as required by 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).

The Chapter 13 Trustee's objections are well-taken.

Debtor's propose Plan (Dckt. 7) is based upon a plan form that is no longer permitted as of December 1, 2017. Debtor's failure to use the current plan form is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor also failed to provide either a tax transcript or a federal income tax return with attachments for the 2017 tax year. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Each failure constitutes independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

2. [16-22328-E-13](#)      **MARIA COLEMAN**  
[SS-6](#)                      **Scott Shumaker**

**MOTION TO MODIFY PLAN**  
**8-14-18 [105]**

**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.

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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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2018. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).FN.1.

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FN.1. The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Because the notice complies substantially with all requirements, the court will waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

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

Maria Coleman (“Debtor”) seeks confirmation of the Modified Plan because Debtor:

(1) Recently secured financing for a replacement vehicle pursuant to this court’s order issued on July 24, 2018, and reclassifying the claim secured by her 2011 Chevrolet Impala as a Class 3 surrender claim;

(2) Has had an increase in rent of \$240.00 per month, and

(3) Has had an increase in net income of approximately \$200.00 per month. Dckt. 108 (Declaration). FN.2.

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FN.2. Using the schedule forms for an exhibit does not constitute the filing of amended or supplemental schedules in the bankruptcy case. If such amended or supplemental schedules are appropriate or required, then they must be filed in the case as separate amended or supplemental schedules and appear as such on the docket.  
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The Modified Plan makes note of these changes on Debtor's income and expense exhibits, and then reclassifies Santander Consumer USA regarding a 2011 Chevrolet Impala from Class 2 to Class 3. Dckt. 109. The Modified Plan changes monthly plan payments from \$485.00 to \$300.00 through Plan completion. *Compare*, Dckt. 109 with Dckt. 67. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 30, 2018. Dckt. 111. Debtor opposes the Motion on the following grounds:

1. The Trustee asserts that because the Modified Plan reclassifies the claim held by Santander Consumer USA from Class 2 to Class 3, and Trustee has already disbursed \$5,668.75 that would not be authorized under the Modified Plan.
2. Additionally, the Trustee argues Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has filed income and expense information (using the schedule I and schedule J forms) I and J, however, the Trustee notes that the page 2 of Debtor's expenses is missing. Debtor does identify the reasons for some of her adjustments to the schedules, there are other adjustments made without explanation. The income information shows no change in gross income, but does list a different employer, no mileage reimbursement, no retirement plan contribution, and lower tax and insurance deductions, resulting in a \$334.00 increase in net income. Less the increase in Debtor's rent of \$240.00 and without knowing the contents of the second page of Debtor's Schedule J, there is \$134.00 in increased net income.
3. Trustee also states Debtor's Modified Plan proposes adding Consumer Portfolio Services as a Class 4 regarding the new vehicle, noting the Debtor actually received permission by Court Order to purchase a 2016 Kia Optima (Dckt. 104) but actually purchased a 2017 Chevrolet Impala under substantially the same terms due to the Kia having been sold. Trustee does not oppose the Motion on this ground.

## **DEBTOR'S REPLY**

Debtor filed a Reply to Trustee's Opposition on September 11, 2018. Dckt. 114. Debtor addresses the Trustee's opposing grounds as follows:

1. Debtor requests language be added to the Order Confirming authorizing the \$5,668.75 already paid to Santander Consumer USA.
2. Debtor's omission of the second page of his expense exhibit, page 2, was an omission in the filing only, with physical copies including both pages. Debtor has filed the full Supplemental Schedule J. Exhibit 1, Dckt. 115.
3. The Trustee, in his objections, apparently compares Debtor's current budget to her originally-filed budget from ½ years ago. Prior to the submission of the current budget, Debtor had just recently submitted her budget with her Motion to Incur Debt in July 2018. That budget reflected slightly less monthly income than Debtor actually makes and an almost equal increase in her rent. This was explained in her Declaration submitted with this Motion to Confirm. To clear up any confusion, accompanying this Reply is a copy of a recent paystub. The paystub shows an hourly rate of \$31.20 and shows payroll deductions, all of which are consistent with the income stated on the current Schedule I. As to the concerns regarding why Debtor failed to explain away changes in her budget, Debtor did generally state that she made some slight adjustments to her budget. Because the changes were relatively minor, Debtor did not go into great detail other than to explain the change in income and change in rent. A comparison of her previously-submitted budget (submitted with her Motion to Incur Debt) to her current budget, identifies the following changes:

Income Information (using schedule I form):

Net income increase from \$3,845 to \$4,060 (as explained in Debtor's declaration submitted with this Motion);

Expense Information (using schedule J form):

Line 1: increase in rent by \$240;

Line 9: increase in clothing budget from \$25 to \$50;

Line 13: decrease in entertainment expense from \$150 to \$100;

Line 17a: rounding down of car payment from \$361.32 to \$360.00 .

With the exception of about \$26 in net changes to her expenses, Debtor has already explained why her current budget differs from the one submitted to this Court in July. Debtor apologizes for not being more explicit and hopes that, given the minor sums involved, the Court will excuse this transgression.

## **DISCUSSION**

Debtor will address potential unauthorized payments through the Order Confirming and Debtor's purchase, pursuant to the Court's Order, of a similar vehicle was not grounds upon which Trustee opposed the Motion.

Regarding Trustee's final argument, Debtor has explained that omitting page 2 of the expense information (Exhibit A, Dckt. 107) was merely a clerical error and has since filed the complete listing of expenses. Exhibit 1, Dckt. 115. Furthermore, Debtor correctly points out that changes in income and expenses have not been so dramatic considering Debtor's most recent income and expense information (Dckt. 99) as opposed to the original Schedules filed in this case. Dckt. 1. While Debtor provides a pay advice as Exhibit 2 (Dckt. 115) to support the changes in income, Debtor does not attempt to authenticate the Exhibit and the court does not consider it.

Nonetheless, the court finds the amounts presented on Debtor's updated income and expense information adequate for this Motion. (This does not relieve Debtor of the obligation to file Supplemental Schedules I and J to document the changes in the bankruptcy case, as opposed to merely being an exhibit for a specific motion.)

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 Maria Coleman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm Modified Plan is granted, as amended to authorize \$5,668.75 already paid to Santander Consumer USA by the Chapter 13 Trustee, David Cusick. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, including the above amendments, which upon approval by the Trustee shall be lodged with the court.

3. [18-24231-E-13](#) **DAVID SNEED**  
[DPC-1](#) **George Burke**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK**  
8-21-18 [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).**

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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 21, 2018. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) opposes confirmation of the Plan on the basis that Debtor failed to appear and be examined at the First Meeting of Creditors held on August 16, 2018. The Meeting was continued to October 11, 2018.

The Chapter 13 Trustee’s objections are well-taken. Appearance at the Meeting of Creditors is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 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 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 David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



4. [17-20736-E-13](#)      **MICHAEL/KIMBERLY**  
[MRL-1](#)                      **MACHADO**  
                                    **Mikalah Liviakis**

**MOTION TO MODIFY PLAN**  
**8-14-18 [23]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2018. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

Michael Frank Machado and Kimberly Gail Machado (“Debtors”) seek confirmation of the Modified Plan without providing an explanation. *See* Dckts. 23, 25. The Modified Plan calls for monthly payments of \$350.00 per month for 17 months and \$250.00 per month for 19 months. Dckt. 23. The Confirmed Plan provided for \$350.00 for 15 months, \$250.00 for 19 months, and \$3,000.00 for 2 months (funded through Debtor’s tax refunds). Dckt. 5. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S RESPONSE**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on August 27, 2018. Dckt. 33. Trustee notes that Debtor has not provided an explanation for the proposed Modified Plan, but that Debtor’s 2017 adjusted gross income was \$26,054.00 less than the Debtor’s 2015 federal tax return which supported the tax refunds called for under the Confirmed Plan. Trustee argues that, despite shortcomings in Debtor’s Motion, the Modified Plan computes mathematically.

## SUPPLEMENTAL SCHEDULES I AND J

Debtor filed Supplemental Schedules I and J on August 14, 2018. Dckt. 27. No explanation is provided as to changed expenses or income, or why the Modified Plan is necessary.

Reviewing Debtor's Original (Dckt. 1) and Supplemental Schedules I (Dckt. 27), it appears Debtor has retired. Debtor's Supplemental Schedule I reflects a reduction of \$500.00 from business income and a new income of \$1,700.00 from Social Security. FN.1.

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FN.1. In reviewing the Original Schedule I, the court has discovered what appears to be an error. The Statement of Business Income and Expenses provides that Debtor's 12-month gross income from his business prior to filing was \$1,000.00. Dckt. 1 at p. 38, line 1. The Statement then shows a monthly expense of \$500.00 for feed/fertilizer/spray. *Id.* at line 9. The estimated net-income from the business is actually negative \$500.00. *Id.* at line 23.

Debtor's negative monthly business income should have been included as a monthly expense, and not an income on Schedule I. *See* Dckt. 1, at p. 37, line 8a. It is also possible Debtor meant to list a monthly income of \$1,000.00, which would result in a net of \$500.00.

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Concerning is Debtor's unexplained increase in expenses which seem to rise to meet the increased income and result in a change in net income of only \$1.00 despite an increase of \$1,200 in income. The following expenses have been increased:

Rent	From \$1,545 to \$1,631
Home maintenance, repair, and upkeep expenses	From \$100 to \$120
Utilities	From \$200 to \$262
Food and housekeeping supplies	From \$400 to \$660
Clothing, laundry, and dry cleaning	From \$50 to \$150
Personal care products and services	From \$100 to \$200
Medical and dental expenses	From \$150 to \$240
Transportation	From \$320 to \$380
Entertainment, etc	From \$195 to \$200
Health insurance	From \$0 to \$311
Vehicle insurance	From \$148 to \$150
Pet food and care	From \$75 to \$150

Given the extraordinary coincidence of increased expenses meeting increased income (the court notes and is not forgetting the difference in net income of \$1.00, and ponders its significance) and the lack of any explanation from the Debtor, the court is not persuaded Debtor has provided Debtor's best efforts. 11 U.S.C. § 1325(b)(1). The court also has serious doubts as to whether the Modified Plan has been proposed in good faith. 11 U.S.C. § 1325(a)(3).

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 Frank Machado and Kimberly Gail Machado (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

5.

[18-20243-E-13](#)  
[MRL-4](#)

**JOHN HATZIS**  
**Mikalah Liviakis**

**MOTION TO COMPROMISE  
C O N T R O V E R S Y / A P P R O V E  
SETTLEMENT AGREEMENT  
WITH FEDEX GROUND  
PACKAGE SYSTEM, INC.  
8-14-18 [\[46\]](#)**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2018. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

**The Motion for Approval of Compromise is granted.**

John Chris Hatzis, Chapter 13 Debtor, (“Movant” or “Debtor”) requests that the court approve a compromise and settle competing claims and defenses with Debtor’s former employer FedEx Ground Package System, Inc. (“Settlor”). The claims and disputes to be resolved by the proposed settlement are claims relating to Debtor’s civil suit against Settlor for employment related claims (“Debtor’s Claims”). As an ancillary issue, Elena Paraskevas-Thadani, Esq. of EPT Legal, a law firm in New York, notified Debtor and Settlor’s attorney that EPT Legal was asserting an attorney charging lien, contenting it is entitled to the sum of \$45,000.00 “to pay the legal fees and costs owing to EPTL. . .” based on work performed for the Debtor in the Civil Suit, prior to the termination of that professional relationship by the Debtor for good cause based on Ms. Paraskevas-Thadani’s material breach of the Engagement Agreement, and her refusal to appear in the case or do any of the work required to prosecute the lawsuit (the “Disputed Lien”).

The Settlement Agreement has been sealed by Order of this court. Dckt. 51. However, Movant alleges generally that the Agreement provides: (I) the Debtor will receive a settlement amount that is more

than sufficient to satisfy his payment obligations under the Plan and the Disputed Lien Amount (as hereinafter defined) and (ii) the Debtor agreed to sever his employment with FedEx Ground.

As to the Disputed Lien, Movant states unless the court directs the parties to do differently, Debtor's attorney Matthew Ruggles of the Ruggles Law Firm has agreed, subject to Bankruptcy Court approval, to withhold the Disputed Lien amount from the Settlement Agreement proceeds that would have been paid to Debtor in the Ruggles Law Firm IOLTA Trust Account at Wells Fargo Bank until final resolution of the fee dispute related to the Disputed Lien.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### **Probability of Success**

Movant argues this factor is met because Debtor's employment claim is largely based on Settlor's decision not to promote him. Movant asserts demonstrating discrimination in the promotion context is difficult, at best, because it requires the plaintiff to prove his qualifications and experience were superior to each and every candidate, a tedious and time-consuming process that involves demonstrating objective discrimination with many subjective factors (i.e. education, work experience, etc.). Movant also states that FedEx has put on a vigorous defense and no favorable outcome is certain.

Movant's arguments are well-taken. For the reasons stated by Movant, it appears that an employment claim based on failure to promote an employee is a fact-intensive, and difficult to prove claim. The probability of success seems at best neutral, and weighs in favor of approving settlement.

## **Difficulties in Collection**

Movant's arguments for this factor are: (I) there is no guaranty that the Debtor and its creditors will receive any recovery from the Civil Suit, (ii) the Debtor will not recover an award of damages, if any, without years of protracted and costly litigation and (iii) any ultimate judgment will be reduced significantly by legal fees and costs, thereby resulting in a recovery that is likely far less than what the Debtor is receiving under the Settlement Agreement.

Movant misunderstands this factor, which asks whether there is potential difficulty in collection assuming a successful claim. However, Movant's arguments are not all without merit; if FedEx pursues appeals of claims, that could be loosely interpreted as a difficulty in collection. Notwithstanding that, it does not appear likely that a sophisticated nation-wide company such as FedEx would pose a difficulty when it comes to collecting on the judgement. This factor is against approving settlement.

## **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues for this factor that the Claims involve extremely specific factual issues regarding the Debtor's former employment, which has, and would continue to require protracted litigation, including depositions of numerous witnesses spread throughout the country – some in Washington, and many others in Pittsburgh, Pennsylvania. Consequently, counsel would have been required to travel on multiple cross-country excursions on order to depose all of the relevant witnesses, which increases the complexity of the litigation as compared to other single-plaintiff lawsuits. The settlement allows the Debtor to comply with his Plan obligations and avoid expending additional fees and costs with no certainty of ultimate success on the Claims.

Movant's arguments here are well-taken. The litigation appears very fact-intensive, and would require significant discovery and likely the retention of expert witnesses. Were FedEx to appeal issues in the case, the cost and delay would increase exponentially. This fact cuts strongly towards approving settlement.

## **Paramount Interest of Creditors**

Movant argues for this factor is in the paramount interest of the creditors as all of the unsecured creditors that have timely filed claims in Debtor's Chapter 13 case will be paid in full and paid much faster than the 60 month time frame permitted by Debtor's Plan.

Movant's arguments here are also well-taken. Immediate settlement would, according to Debtor's Declaration (Dckt. 49, ¶ 8), complete the Plan and provide for all timely filed claims. This factor also favor settlement.

## **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because immediate resolution allows Debtor to complete the Plan expeditiously, avoiding litigation which appears will be costly and protracted. The Motion 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 Compromise filed by John Chris Hatzis, (“Movant”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and FedEx Ground Package System, Inc. (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as explained in the Motion (Dckt. 46).

6. [18-21644-E-13](#) ANGELO/LISA OLIVA  
[AVN-2](#) Anh Nguyen

MOTION TO CONFIRM PLAN  
8-2-18 [43]

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2018. By the court’s calculation, 47 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.**

Angelo Aroldo Stefano Oliva and Lisa Renee Oliva (“Debtor”) seek confirmation of the Amended Plan because Debtor increased its compensation received from its home healthcare business Timeless Homecare, Inc., by \$2,000.00 monthly. Dckt. 45. The Amended Plan proposes a monthly payment of \$5,184.50 for 6 months and \$6,640.00 for 54 months, as well as committing potential funds from Debtor’s wrongful termination claim (\$76,025.00 non-exempt). Dckt. 38. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on August 28, 2018. Dckt. 50.

The Chapter 13 Trustee asserts that Debtor is \$10,396.00 delinquent in plan payments, which represents multiple months of the \$5,184.50 plan payment. Another Plan Payment will come due before this hearing. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for



relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Trustee also notes he is not opposed to providing Debtor's counsel be paid pursuant to Local Bankruptcy Rule 2016(c), rather than counsel seeking fees by motion.

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 Angelo Aroldo Stefano Oliva and Lisa Renee Oliva ("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.

7. [18-24149-E-13](#) **DESHAUNNA PAYNE**  
[APN-1](#) **Mary Ellen Terranella**

**OBJECTION TO CONFIRMATION OF  
PLAN BY GLOBAL LENDING  
SERVICES, LLC  
7-30-18 [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).**  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 30, 2018. By the court’s calculation, 50 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 .**

Global Lending Services, LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor objects to the \$10,450.00 valuation allocated to its secured collateral under Debtor’s proposed Plan. Debtor entered an Agreement with Dodge Chrysler Jeep of Vacaville (which was then assigned to Creditor the same day) on July 5, 2016 for a 2014 Dodge Avenger VIN ending in #9990 (the “Vehicle”). Debtor agreed and became obligated to pay the sum of \$14,845.72, with interest accruing at the contract rate of 27.95% per annum, for the financed purchase of the subject property. Because Debtor filed this case less than 910 days from the purchase of the Vehicle, Debtor

cannot value the secured claim. Creditor asserts that the amount owed is therefore the \$15,125.92 owed at filing.

- B. Creditor objects to Debtor's classification of its secured claim as subject to 11 U.S.C. § 506(a), because the Vehicle was purchased only 727 days prior to filing the petition.
- C. Because Debtor fails to acknowledge Creditor's Purchase Money Security Interest, Creditor further objects to the fact that Debtor has failed, or otherwise refused, to provide Secured Creditor with pre-confirmation adequate protection payments as is required by governing law, ensuring that the value of Secured Creditor's security will depreciate at a much higher rate than that at which Secured Creditor will receive adequate protection payments under the Plan FN.1

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FN.1. On this point, Movant does not present any evidence how or why it's now five model year old vehicle is depreciating at such a greater rate than the amortized monthly payments. While it is common knowledge that a new vehicle suffers rapid depreciation for the first three years of ownership, such facts are not now before the court.  
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- D. Secured Creditor further objects to the \$196.00 post-confirmation monthly adequate protection payments offered it under Debtor's proposed Plan in that the value of Secured Creditor's security will depreciate at a much higher rate than that at which Secured Creditor will receive adequate protection payments under the Plan
- E. The Secured Creditor objects to the Plan because the proposed interest rate of 5.00% is less than the guidelines provided in *Till vs. SCS Credit Corp.*, 541 U.S. 465, 124 SCt 1951, 158 L.Ed. 2d 787 (2004) (In re Till). In the instant matter, the national prime rate of interest as of July 2, 2018, was 5.00%. (See Exhibit "C" filed concurrently herewith). Adjusting the interest rate upwards is appropriate in this case because of the following risk factors to Debtor's successful completion of the Plan:
  - (a) The Vehicle is a rapidly depreciating asset due to the passage of time and accruing mileage at a significant rate which contributes to the loss of value to the Vehicle with continued use and time.
  - (b) The Plan provides for repayment of Movant's secured claim over a period of time which extends twelve (12) months beyond the original terms of the Contract and,

as a consequence, Movant is exposed to additional risk of default.

- (c) The Plan is subject to greater risk of failure, if the Debtor elects to retain the property, since the Debtor is required to pay almost \$100 additional dollars a month to pay off the outstanding principal balance due on the loan pertaining to the Debtor's purchase of the property. Based upon the foregoing factors, the Court should adjust the national prime rate of interest of 5.00% upward three (3) percentage points as a result of the above risk factors which demonstrate a potential for default by the Debtor.

## **DISCUSSION**

Creditor's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Creditor. Debtor has already filed and this court has denied a motion to value Creditor's claim substantially on the grounds Creditor has asserted herein. *See* Dckts. 24 and 25. Without the court valuing the claim, the Plan is not feasible and confirmation of the Chapter 13 Plan is denied. 11 U.S.C. § 1325(a)(6).

Because all Creditor's other requests for relief are plead in the alternative to denial of confirmation, the court need not consider those requests.

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 Global Lending Services ("Creditor") holding a secured claim] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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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’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2018. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

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

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

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

- A. The Debtor’s Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4) by proposing a 0% dividend to unsecured creditors where Debtor has non-exempt equity totaling \$19,729.00 (consisting \$2,500.00 in household goods and \$17,229.00 in equity on the 746 Kelly Way, Rio Vista, California property( the “Property”). The Property value is listed on Schedule A/B as \$300,00.00, with debts on Schedule D totaling \$182,771.00 and exemptions claimed on Schedule C totaling \$100,000.00.

Trustee questions the asserted value of the Property where Debtor has indicated the Property was purchased for \$325,000.00 15 years ago and explains the Property needs repairs.

- B. Debtor cannot make the payments as Debtor is delinquent on mortgage payments. Debtor proposes to pay Wells Fargo Home Mortgages First deed of trust as a Class 4 debt, however Debtor admitted at the Meeting of Creditors to having over \$7,000.00 in arrears not reported. Debtor indicated an agreement with that creditor for an increased payment of \$1,640 to cover arrears until cured.
- C. Debtor's ability to make the plan payments rests on the Motion to Value Collateral of Global Lending Services, which was heard and denied on July 31, 2013.
- D. Debtor has not filed tax federal tax returns for 2016 or 2017. The Meeting of Creditors was continued to September 27, 2018, to allow Debtor to file the missing returns.

The Chapter 13 Trustee's objections are well-taken.

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's Schedules reflect non-exempt equity in the amount of \$19,729.00, and Debtor is proposing a 0 percent dividend to unsecured claims. Therefore, the plan cannot be confirmed.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to pay Wells Fargo Home Mortgages First Deed of Trust as a Class 4 debt. Since Trustee filed this Objection, Wells Fargo has filed Proof of Claim No. 2 asserting a claim for \$187,985.23 and arrears of 7,660.09. Because Wells Fargo's claim is being provided for outside the Plan as a Class 4 claim, and Debtor has apparently not listed the correct payment amount, the court cannot determine whether the Plan is confirmable.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Global Lending Services, LLC. Debtor has already filed and this court has denied a motion to value that creditor's claim. *See* Dckts. 24 and 25 Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Proof of Claim No. 4, filed by the Internal Revenue Services, indicates that Debtor failed to file federal income tax returns for the 2016 and 2017 tax years. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Finally, the court notes creditor Global Lending Services, LLC has its own objection to confirmation set to be heard the same day as this hearing, which has been tentatively sustained.

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

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

9. [18-24449-E-13](#)      **STEVEN SMITH**  
[AF-1](#)                      **Arasto Farsad**

**AMENDED MOTION TO VALUE  
COLLATERAL OF BANK OF NEW YORK  
MELLON  
8-27-18 [22]**

**Final Ruling:** No appearance at the September 11, 2018, hearing is required.  
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**The hearing on the Amended Motion to Value Collateral and Secured Claim of the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, as owner and holder of loan/contract originated by Countrywide Home Loans, Inc., its assignees and/or successors in interest (“Creditor”) is **continued by prior order to 3:00 p.m. on November 20, 2018, (Dckt. 29) to allow the parties to complete discovery, at which time the court will set the Motion for a final hearing.****

Steven Claude Smith (“Debtor”) filed an Amended Motion to Value Collateral and Secured Claim of the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, as owner and holder of loan/contract originated by Countrywide Home Loans, Inc., its assignees and/or successors in interest (“Creditor”) on August 27, 2018. Dckt. 22. At the September 11, 2018, hearing on the original motion filed, the court continued the hearing to 3:00 p.m. on November 20, 2018.



10. [18-25150-E-13](#) RICHARD GREENE  
[LBG-1](#) Lucas Garcia

MOTION TO RECONSIDER DISMISSAL  
OF CASE  
9-4-18 [18]

DEBTOR DISMISSED: 09/04/2018

**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.

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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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2018. 28 days' notice is required.

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

**The Motion to Vacate is granted, and the order Order Dismissing Case for Failure to Timely File Documents (Dckt. 14) is vacated.**

Richard Greene ("Debtor") filed the instant case on August 16, 2018. Dckt. 1. A plan was proposed alongside Debtor's submission of the missing documents that prompted the court's dismissal of this case on September 4, 2018. Dckts. 15 and 16.

On August 16 and 20, 2018, this court gave notice that Debtor's petition was incomplete and identified the missing documents. Dckts. 6 and 7. On September 4, 2018, with Debtor having filed some, but not all of the missing documents, this court dismissed the case pursuant its prior notices. Dckt. 14. The ruling was final because Debtor did not file any opposition.

On September 4, 2018, Debtor's counsel filed this instant Motion to Vacate, claiming the failure to file all of the required documents was a technical error internal to his office. He further asserts, in the Motion, that Debtor had signed and dated the documents for filing at the same time. Reviewing the late filings, the documents were filed the same day the case was dismissed and have digital signatures dated for August 28, 2018.

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

## TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee ("Trustee") filed a Response on September 10, 2018, indicating nonopposition but noting Debtor has not provided any supporting declaration. Dekt. 22.

## APPLICABLE LAW

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

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

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

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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

## DISCUSSION

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

At outset, the court must agree with the Trustee’s concern that no declaration or other evidence has been provided supporting the Motion. If Debtor’s counsel desired to inform the court of his own personal knowledge recounting his mistake and inadvertence, he should have provided a supporting declaration attesting to the events under penalty of perjury.

However, a review of the docket shows the untimely documents were filed the same day the case was dismissed and have digital signatures dated for August 28, 2018. In tandem with Debtor’s nonopposition to the Notice of Intent to Dismiss Case if Documents are Not Timely Filed, the court finds that there was some mistake and inadvertence in this case. Therefore, the Motion is granted, and the order dismissing this case for failure to timely file (Dckt. 14) is vacated.

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

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

The Motion to Vacate filed by Richard Greene (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the order dismissing this case for failure to timely file (Dckt. 14) is vacated.

11. [18-24198-E-13](#)  
[DPC-1](#)

ANDRE ABERNATHY  
George Burke

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK**  
8-20-18 [\[16\]](#)

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 20, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor's Plan does not propose equal distribution payments to a Class 1 creditor, thus placing an undue administrative burden on the Trustee. The proposed Plan's Additional Provisions proposes payments towards Candela at Westlake Community Association's Class 1 claim, with 5 percent interest only towards the secured portion (estimated at \$5,017.50).
- B. The proposed Plan misclassifies the claim held by Nationwide West, LLC as unsecured debt. The Proof of Claim, No. 2, filed by Nationwide West, LLC states this debt is secured by a 2003 Mercedes E Class. Debtor indicated at the Meeting of Creditors that the vehicle has been surrendered, and therefore the claim should be treated as a Class 3.

C. Debtor has failed to file his 2017 tax return.

The Chapter 13 Trustee's objections are well-taken.

The Trustee alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(I) because it proposes to pay only 5 percent interest on the secured portion of the claim held by Candela at Westlake Community Association. At the heart of this objection is Trustee's assertion that the 5 percent interest to the "secured portion only" renders a disbursement via Trustee's software impossible, as the software is unable to determine what amounts should receive interest. Dckt. 18. To the extent that the secured amount is not yet determined, the plan may not be feasible (11 U.S.C. § 1325(a)(6)) and may violate 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

Debtor's Plan may misclassify the claim held by Nationwide West, LLC as unsecured debt. The Proof of Claim, No. 2, filed by Nationwide West, LLC states this debt is secured by a 2003 Mercedes E Class. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. 11 U.S.C. § 1325(a)(6).

Trustee indicates that Debtor has not provided either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). FN.1.

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FN.1. The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Because the notice complies substantially with all requirements, the court will waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

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

The Bankruptcy Code permits Heidi Eileen Baker, Chapter 13 Debtor ("Movant" or "Debtor") to sell property of the estate after a noticed hearing to complete her Confirmed Plan. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2210 Russell Circle, Woodland, California ("Property").

The proposed purchaser of the Property is Kelly Weiss & Robert Newcomb ("Purchasers"), and the terms of the sale are:

- A. Buyer shall make an initial deposit of \$5,000.00.

- B. Buyer shall pay \$535,000.00 for the Property.
- C. Buyer and Seller shall split the Escrow costs evenly.
- D. The Closing period shall be 5 days after receipt, sign, and return of te Escrow Holder's general provisions.

### **TRUSTEE'S OPPOSITION**

David P. Cusick, Chapter 13 Trustee ("Chapter 13 Trustee") filed a response to Movant's proposed sale on August 22, 2018 (Dckt. 34). Chapter 13 Trustee brings notices the Court of the following:

- A. Movant's Motion and Declaration state the amount of the exemption of Property is \$0.00. Trustee does not oppose the sale if the proceeds are used to complete the plan.
- B. Movant states in her Declaration that she has reconciled with her ex-husband and is living in at an address different than the Property. However, Movant has not filed an amended Schedule J to reflect the \$2,656.68 in mortgage payments that Movant is no longer paying, or indicate what rent she is paying in her new living situation. In the event this sale does not complete the plan, Movant's schedules will need to be updated.
- C. Movant does not provide in the Motion for the specific treatment of the net proceeds and has not asserted whether proceeds will be reinvested to maintain the homestead exemption. Chapter 13 Trustee does not oppose the sale so long as the proceeds go towards completion of the Chapter 13 plan.

### **MOVANT'S SUPPLEMENTAL DECLARATION**

Movant filed Supplemental Declarations on September 5, 2018. Dckts. 38, 39. Movant states she is releasing her homestead claim and will use proceeds of this sale to complete the Plan.

### **DISCUSSION**

The Debtor seeks to sell the Property for \$535,000. By Debtor's calculation there will be \$102,432.47 in net sales proceeds which will be used to fund the Chapter 13 Plan in this case. The claims to be paid through Debtor's Confirmed Chapter 13 Plan are only general unsecured claims (there being no Class 1, 2, 3, 5, or 6 claims provided for in the Plan). This is consistent with the proofs of claim filed in this case, which \$64,115.56. Official Register of Claims. FN.2.

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FN.2. Movant submitted Exhibits D-G as a single document with the Motion. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l). In providing Movant’s counsel an abundance of lenience, the court is considering that current counsel recently substituted into the case. Dckt. 43.  
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Movant has estimated that a 4.50 percent broker’s commission from the sale of the Property will equal approximately \$24,075.00. The court has issued an order authorizing Movant to employ Town and Valley Properties, through agent Kathy Aukes. The Motion seeking the employment states that the real estate commission for seller’s broker is 2 percent. Motion, Dckt. 40. The Motion states that the real estate commission to be paid buyer’s broker will be “paid separately.” *Id.*, ¶ 5.

As part of the sale in the best interest of the Estate, the court permits Movant to pay the real estate broker a 2 percent commission, which was the requested and permitted by this court’s September 9, 2018, Order. Dckt. 46. As set forth in the Motion, Buyer will provide separately for Buyer’s own broker.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Movant will obtain approximately \$102,432.47 in proceeds after the sale of the Property, which Debtor has stated under penalty of perjury she will use to complete her Plan.

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

**IT IS ORDERED** that Heidi Eileen Baker, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(3) to Kelly Weiss & Robert Newcomb (“Buyers”), the Property commonly known as 2210 Russell Circle, Woodland, CA 95776 (“Property”), on the following terms:



- A. The Property shall be sold to Buyer for \$535,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit D, Dckt. 29, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount equal to 2.0 percent of the actual purchase price upon consummation of the sale to Kelly Aukes, as an agent with Broker National Town and Valley Properties.
- F. After payment of the above costs of sale, expenses, liens, and encumbrances, the next monies disbursed directly from escrow shall be to the Chapter 13 Trustee in such amounts as made by written demand in an amount the Chapter 13 Trustee determines necessary to complete all plan payments and costs of administration.
- G. After payment of the above and the disbursement to the Chapter 13 Trustee, any remaining proceeds may be disbursed directly from escrow to the Chapter 13 Debtor.
- H. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

13. [17-27410-E-13](#)      **PATRICIA ALEXANDER**      **MOTION TO SELL**  
[MRL-2](#)                      **Mikalah Liviakis**                      **8-23-18 [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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 24, 2018. By the court’s calculation, 25 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

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

The Bankruptcy Code permits Patricia Alexander, the Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing to complete the Confirmed Plan. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 6365 Puerto Drive, Rancho Murieta, California (“Property”). FN1. Movant explains he is selling the Property because he no longer wishes to live in the Property, because the Property generates no revenue for the estate, and because sale of the Property will allow Debtor to pay the estate’s creditors in full.

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FN.1. The Motion and Debtor’s Petition and Schedules refer to a “6365 Puerto Dr, Sloughhouse, California.” Dckt. 1. The Agreement filed with this court as Exhibit A identifies 6365 Puerto Drive, Rancho Murieta . Exhibit A, Dckt. 25. A search for “6365 Puerto Drive” on the Sacramento County assessor’s parcel-viewer website turns up the Rancho Murieta location, assessor parcel #07307400320000. <http://assessorparcelviewer.saccounty.net/JSViewer/assessor.html>.

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The proposed purchasers of the Property are Mika Miyagi-Adams and Donald Miyagi-Adams (“Buyers”), and the terms of the sale are:

- A. Buyers will purchase the Property of \$599,900.00.
- B. Debtor will credit the Buyers \$5,000.00 at the time of sale.
- C. Debtor’s real estate agent will be paid \$29,995.00 commission through escrow from the proceeds of the sale.
- D. The escrow period is 75 days, set to run approximately October 2, 2018.
- E. Debtor will pay \$9,616.12 in closing costs through escrow from the proceeds of the sale that will include: home warranty, property taxes, utilities, notary fees, title and escrow fees, seller credit to buyer for recurring and NRCC, repairs, and transfer tax.
- F. Sale of the Property is subject to adjustments and overbids.

#### **TRUSTEE’S RESPONSE**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a response to Debtor’s Motion on September 4, 2018. Dckt. 28. Trustee asserts the Debtor’s estimate of \$97,397.00 as the payoff amount for all remaining claims (Dckt. 20 at 3:27) is inaccurate, and would need to be \$197,000.00 based on the current Trustee rate. Trustee believes the discrepancy may exist based on student loan claims filed by Sallie Mae totaling \$102,453.24. *See* Proofs of Claim, Nos. 7-11. Trustee argues that unless the Plan, which proposes a 100% dividend to general unsecured claims, is Amended or Modified, the amount proposed by Debtor to complete the plan is higher than Debtor states in the Motion.

Trustee notes generally that he does not oppose the Motion, as the amount generated by the sale exceeds the correct payoff amount.

#### **PROPOSED OVERBID PROCEDURES**

The Motion proposes the following overbid procedures:

- 1) Interested Parties need not submit bids prior to the September 18, 2018 hearing because Debtor filed this motion on twenty-one (21) days notice pursuant to Local Rule 9014-1(f)(2) and FRBP 2002(a). Therefore, parties of interest can submit bids at the hearing. Parties can also appear to oppose the motion at the hearing.
- 2) Any party attempting to overbid the proposed sale must appear at the scheduled hearing for this motion.

- 3) The overbid offer must include a deposit of \$2,500.00 in the form of a cashier's check. This deposit must be presented at the time this matter is heard, on September 18th 2018. The deposit shall become nonrefundable if the party presenting it becomes the winning bidder.
- 4) Bids shall be submitted in increments of at least \$5,000.00 more than the previous bid, with the first overbid required amount of \$604,900 or higher.
- 5) Within 15 days of the hearing date on this matter, the over-bidder/purchaser must provide Debtor with an approval letter from a financing entity for the full amount of the purchase price, or a bank statement demonstrating that the over-bidder/purchaser has the full amount of funds on hand necessary for the complete purchase price.
- 6) Within 45 days of the date of the hearing on this matter, the over-bidder/purchaser must provide Debtor with full payment of the purchase price as submitted to the Court by the over-bidder/purchase at the hearing during the over-bidding process.
- 7) In the event that an over-bidder/purchaser fails to comply with any of these terms, their deposits paid shall be forfeited, and the next highest and previous bidder shall automatically become the winning bidder, and thus obligated to complete the terms of the sale; however, an over-bidder/purchaser that becomes the winning bidder under these circumstances shall have the same amount of time to execute the terms for this sale that have been set-forth in this motion and by the Court.

## **DISCUSSION**

As pointed out by the Chapter 13 Trustee, it appears that \$197,000.00+/- will be need to fund the 100 percent distribution as written if all of the Student Loans are to be paid by Debtor through the Plan. At the proposed sales price, with a sales price of \$559,900, broker's fees of (\$29,995), escrow closing costs of (\$9,616.12), and there being no secured claims to be paid, there are sufficient net sales proceeds to fully fund the Plan.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the projected proceeds from the sale of the Property will be sufficient to complete the Chapter 13 Plan providing 100 percent distribution for all claims (even adjusting for the correct amount of claims owing, \$197,000.00).

Movant has estimated that a 5.0 percent broker's commission from the sale of the Property will equal approximately \$29,995.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 5.0 percent commission.

The Motion seeks to sell the Property free and clear of all liens. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that the price at which the Property is to be sold is greater than the aggregate value of all liens on such property.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because time is of the essence in this case, given that the proposed buyers have presented the highest and best offer for the Property listed in Debtor's schedules as valued at \$500,00.00; that the buyers have established a timeline for purchasing, closing, and moving into the Property; that the buyers' purchase requires financing; and that the agreed upon escrow period of 75 days is set to run near October 2, 2018.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

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

**IT IS ORDERED** that Patricia Alexander, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mika Miyagi-Adams and Donald Miyagi-Adams or nominee (“Buyers”), the Property commonly known as 6365 Puerto Drive, Rancho Murieta, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$599,900.00, on the terms and conditions set forth in the Purchase Agreement, Exhibits A, B, Dckt. 25, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 13 Debtor is authorized to pay a real estate broker’s commission to Town and Country Real Estate and the agent(s) thereof, as the real estate broker for the Chapter 13 Debtor, in an amount not to exceed to 5.0 percent of the actual purchase price upon consummation of the sale.

**IT IS FURTHER ORDERED** that after payment of the above costs of escrow and broker’s commission, monies shall first be disbursed directly from escrow to the Chapter 13 Trustee in the amounts so demanded from escrow by the Trustee for such monies necessary to complete the payments due creditors and costs of administration in this case. Upon disbursement of the amounts so demanded from the Chapter 13 Trustee, all remaining sales proceeds may be disbursed directly to the Patricia Alexander, the Chapter 13 Debtor.

**IT IS FURTHER ORDERED** that within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

## FINAL RULINGS

14. [18-23521-E-13](#)      EDWARD PETTYPLACE      MOTION TO CONFIRM PLAN  
[SLE-2](#)                      Steele Lanphier                      8-2-18 [30]

**Final Ruling:** No appearance at the September 18, 2018 hearing is required.

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

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 31, 2018. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition). FN.1.

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FN.1. The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Because the notice complies substantially with all requirements, the court will waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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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. Edward Pettyplace (“Debtor”) has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“the Chapter 13 Trustee”), filed a statement of non-opposition on August 29, 2018. Dckt. 35. 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 Edward Pettyplace (“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 2, 2018 is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“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.

15. [17-23928-E-13](#)  
[MET-1](#)

DELIA OLSEN  
Mary Ellen Terranella

MOTION TO MODIFY PLAN  
8-6-18 [17]

**Final Ruling:** No appearance at the September 18, 2018 hearing is required.

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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 the Chapter 13 Trustee, creditors, parties requesting special notice, the U.S. attorney for the IRS, the U.S. Department of Justice, and Office of the United States Trustee on August 6, 2018. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Delia Olson ("Debtor") has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("the Chapter 13 Trustee") filed a statement of non-opposition on August 27, 2018 (also noting that though IRS appears to have been served, it was not served at P.O. Box 7346, Philadelphia, PA). Dckt. 24. 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 Delia Olson ("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 6, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

16. [18-24144-E-13](#)  
[DPC-1](#)

JILL ROBERTS-WILSON  
Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
8-20-18 [22]

**Final Ruling:** No appearance at the September 18, 2018, hearing is required.

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The case having previously been dismissed, the Objection is overruled as moot.

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

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

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

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

17. [18-23848-E-13](#)  
[MAC-1](#)

**RHONDA DEJESUS**  
**Marc Carpenter**

**MOTION TO CONFIRM PLAN**  
**8-3-18 [22]**

**Final Ruling:** No appearance at the September 18, 2018 hearing is required.  
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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’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2018. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). FN.1.

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FN.1. The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Because the notice complies substantially with all requirements, the court will waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).  
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The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Rhonda DeJesus (“Debtor”) has provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on August 22, 2018. Dckt. 29. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on August 6, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“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.

18. [18-24868-E-13](#)  
[MC-1](#)

SHARON PATTERSON  
Muoi Chea

MOTION TO VALUE COLLATERAL OF  
INTERNAL REVENUE SERVICE  
8-20-18 [19]

**Final Ruling:** No appearance at the September 18, 2018 hearing is required.  
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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 the Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 20, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and Creditor’s secured claim is determined to have a value of \$17,667.00.**

The Motion filed by Sharon Patterson (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2009 Chevrolet Cobalt, 2017 Nissan Altima, 2017 Mazda Mazda6, 2006 Lincoln Navigator, and various other personal property listed on Schedules A/B (“Property”), which Debtor has detailed in his Declaration. Dckt. 21. Debtor seeks to value the Property as having a replacement value of \$17,667.00 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).

Creditor filed Proof of Claim No. 1 on August 16, 2018. The Proof of Claim asserts that \$17,667.00 is secured by the Property, that \$10,197.77 is a priority unsecured claim, and that \$42,122.04 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 1, the court determines the value of the secured claim to be \$17,667.00, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion 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 Sharon Patterson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Internal Revenue Service ("IRS" or "Creditor") secured by assets described as a 2009 Chevrolet Cobalt, 2017 Nissan Altima, 2017 Mazda Mazda6, 2006 Lincoln Navigator, and other personal property listed on Schedules A/B (Dckt. 12) and specified in Debtor's Declaration (Dckt. 21)("Property") is determined to be a secured claim in the amount of \$17,667.00, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.



**Final Ruling:** No appearance at the September 18, 2018 hearing is required.

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

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 2, 2018. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).FN.1.

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FN.1. The court notes that the notice provided does not meet the standard of Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). Because the notice complies substantially with all requirements, the court will waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

**The Motion to Amend is granted.**

Sam and Dayna Crowley (“Debtors”) have filed a Motion to Amend requesting permission to amend Schedule C pursuant to Federal Rules of Bankruptcy Procedure 1007(h), 1009, and 9005. Debtor’s counsel asserts that because of the limitations of the bankruptcy software used at the time of the original filing of the case, no exemption was made for the real properties although there were exemptions available under CCP sections 703.140(b)(5).

The Chapter 13 Trustee, David Cusick (“the Chapter 13 Trustee”), filed a statement of non-opposition on August 22, 2018. Dckt. 102. Trustee asserts further that the amended Schedule C appears complete and corrects issues raised by the Trustee in its response filed on August 18, 2018. Dckt. 92.

Debtor's Amended Schedule C (Dckts. 98 and 101) includes the required cover sheet and other missing info not included in the prior Amended Schedule. Dckt. 88.

Debtor has the right to Amend the Schedules before the case is closed. FED. R. BANKR. P. 1009(a). Therefore, the Motion 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 Amend filed by Sam and Dayna Crowley ("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 Amend is granted, and Debtor's Amended Schedule C filed August 2, 2018 (Dckt. 101), is effective.

**Final Ruling:** No appearance at the September 18, 2018, hearing is required.

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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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 1, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

Marco and Monica Romo ("Debtors") seek permission to purchase real property commonly known as 5351 Standish Road, Sacramento, California, with a total purchase price of \$122,736.00 and monthly payments of \$637.00 to Wholesale West Lending, Inc. over 30 years with a 4.75% fixed interest rate.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. Debtor's are currently paying rent in the amount of \$950.00 monthly, which is nearly the same as they will pay for the mortgage, taxes, and insurance combined. The Chapter 13 Trustee, David Cusick, filed a statement of nonopposition on August 22, 2018. Dkt. 81. There being no opposition from any party in interest and the terms being reasonable, the Motion 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 Incur Debt filed by Marco and Monica Romo (“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 Marco and Monica Romo are authorized to incur debt pursuant to the terms of the agreement, Exhibits A, B, Dckt. 79.

**Final Ruling:** No appearance at the September 18, 2018, hearing is required.

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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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2018. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

**The Motion to Confirm the Modified Plan is denied as moot.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Subsequent to the filing of this Motion, Ryan and Mark Lecitona (“Debtors”) filed a Second Modified Plan and corresponding Motion to Confirm on September 7, 2018. Dckts 40, 41. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Modified Plan is denied as moot, and the plan is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Ryan and Mark Lecitona (“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 as moot, and the proposed Chapter 13 Plan is not confirmed.

22. [18-24658-E-13](#)      **WILLIAM FREEMAN AND**      **MOTION TO VALUE COLLATERAL OF**  
   **CARLA TAVORMINA FREEMAN**      **PACIFIC SERVICE CREDIT UNION**  
   **Carl Gustafson**      **7-31-18 [9]**

**Final Ruling: No appearance at the September 18, 2018 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 31, 2018. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required. FN.1.

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FN.1. The court notes that the notice provided does not meet the standard of Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). Because the notice complies substantially with all requirements, the court will waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).  
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The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Value Collateral and Secured Claim of Pacific Service Credit Union (“Creditor”) is granted pursuant to the Stipulation of the Parties, and the secured claim is valued to be \$23,275.00.**

The Motion filed by William and Carla Freeman (“Debtor”) to value the secured claim of Pacific Service Credit Union (“Creditor”) is not accompanied by Debtor’s declaration despite that document being listed on the proof of service. According to Debtors’ Schedule D, Debtor is the owner of a 2013 BMW X5 (the “Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$23,000.00 as of the petition

filing date. As the owner, Debtor's opinion of value would be evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor filed a Proof of Claim, No 2, on July 27, 2018. Proof of Claim, No. 2. Creditor asserts a claim for \$28,821.73 for the Vehicle which was entered into May 26, 2017. Attachment 1, Proof of Claim, No. 2. Creditor's loan was assumed to pay off \$31,953.84 owed by Debtor to CARMAX AUTO FINANCE. *Id.*

## **TRUSTEE'S OPPOSITION**

Trustee filed an Opposition to this Motion on August 30, 2018. Dckt. 18. Trustee opposes the Motion on the basis that no declaration has been filed, leaving in question whether Debtor's opinion as to the Vehicle's value is the same as at filing.

Trustee also notes Debtor's Notice and Certificate of Service do not include a caption setting forth the Docket Control Number, date of hearing, and time and location pursuant to Local Bankruptcy Rule 9004-2(b)(5).

## **DISCUSSION**

Trustee's arguments are well-taken. However, because the Debtor's Notice complies substantially with all requirements, the court will waive the defect. Debtor's counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(i).

On September 13, 2018, Debtor and Creditor filed their Stipulation agreeing to value this secured claim in the amount of \$23,275.00. Stipulation ¶ 3, Dckt. 25. This is consistent with the \$23,000.00 value asserted in the Motion.

The lien on the Vehicle's title secures a loan incurred on May 26, 2017, securing a debt owed to Creditor with a balance of approximately \$28,821.73. FN.2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$23,275.00, 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.

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FN.2. The court notes that while the debt was incurred on May 26, 2017, less than 910 days before filing, the loan here is from a credit union to pay off a car financing company. Attachment 1, Proof of Claim, No. 2. Creditor has not presented a response asserting the claim is for a purchase money security interest. Therefore, the court finds on the facts presented that 11 U.S.C. § 1325(a)(9) is inapplicable here where the debt was not for a purchase money security interest.  
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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 William and Carla Freeman (“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, and the claim of Pacific Credit Services Union (“Creditor”) secured by an asset described as 2013 BMW X5 (“Vehicle”) is determined to be a secured claim in the amount of \$23,275.00, 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 \$23,275.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.