

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 1, 2019 at 1:30 p.m.

1. **18-27801-E-13 ROBERT SCOTT ORDER TO SHOW CAUSE**
 RHS-1 Peter Macaluso

**NO TELEPHONIC APPEARANCES PERMITTED FOR
ROBERT SCOTT, THE DEBTOR,
AND PETER MACALUSO, COUNSEL FOR DEBTOR**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 14, 2019. The court computes that 17 days' notice has been provided. The court notes that there was a typographical error in the Order stating that responses to the Order to Show Cause being heard on October 1, 2019, were to be filed by October 26, 2019. Therefore, responses may be presented orally at the hearing.

<p>The Order to Show Cause is sustained, and the case is converted to one under Chapter 7.</p>

Debtor Robert Charles Scott commenced this Chapter 13 case on December 17, 2018. He is represented by knowledgeable, experienced bankruptcy counsel. On Schedule A, Debtor states that he owns real property commonly known as 5293 Francesca Street, Elk Grove, California (the "Property"), with a value of \$420,000.00. Dckt. 1 at 3. This is Debtor's only asset of significant value. See Schedule A/B, *Id.* at 3-8. On Schedule D, Debtor lists First American Title Insurance Company as having a claim of (\$190,000.00) secured by a lien against the Property. *Id.* at 11. This is the only secured claim for which the Property is listed as collateral. This would give the estate an equity of \$200,000.00 in the Property.

On May 27, 2019, Debtor filed a Motion to Sell the Property. Dckt. 62. In the supporting

pleadings, Debtor provided the court with evidence that the Property did not belong to the Debtor, but was property of the Barbara A. Ozobiani 2017 Revocable Living Trust. Debtor has provided the court with an order of the California Superior Court for the County of Sacramento to document that the property is in the trust. Cal. Sup. Ct. Order; Exhibit C, Dckt. 65. Ms. Ozobiani was the mother of the Debtor. It has repeatedly been advanced in this court by the Debtor that the property is property of the Ozobiani Trust and that the Debtor is the successor trustee of the Ozobiani Trust. The Order of the California Court also specifically identifies the Debtor as the Trustee of the Ozobiani Trust.

The court denied the Motion for an order authorizing the Debtor to sell property that was not property of the bankruptcy estate. Civil Minutes, Order; Dckts. 85, 86.

At the hearing on the Motion to Sell, at which the Debtor was present, the court had an extended discussion with counsel for the Debtor of the need for the trustee of the Ozobiani Trust (the Debtor) to fulfill his duties and preserve the value due the bankruptcy estate which includes the Debtor's rights and interests. Debtor's counsel stated that he did not have experience in trust law and the Debtor would need to obtain other counsel for assistance if fulfilling his duties. The court questioned counsel's statements that the trustee (Debtor) would have to go back to the probate court for authorization to fulfill his duties and exercise the powers as the trustee of the trust. That was on July 16, 2019.

At a hearing on September 10, 2019, Patelco Credit Union sought relief from the automatic stay to foreclose on the Property. Motion, Dckt. 88. The Motion was brought because Debtor listed the property on Schedule A. Patelco identified for the court that it held two obligations secured by two deeds of trust. Copies were provided as exhibits. Dckt. 90. It is asserted that the obligations owed on the two notes secured by the two deeds of trust totaled \$229,015.55, as of July 2019. Even at this higher amount, there is still almost \$200,000.00 of equity for the beneficiary (the bankruptcy estate holding that interest) of the trust.

At the hearing, Counsel for Debtor advised the court that the Debtor has obtained a new job, that has occupied his time, and he has not been able to go back to the probate court to get the orders to sell the Property. Further, that Debtor, as the trustee of the trust, has not begun marketing the property. Counsel for Debtor further notified the court that Debtor had not obtained counsel to assist him in fulfilling his fiduciary duties as trustee of the trust.

These proceedings left the court very concerned about the Debtor and Debtor's ability to fulfill not only his fiduciary duties as trustee of the trust, but his fiduciary duties in this case concerning property of the bankruptcy estate (which includes the beneficial interest in the trust which appears to have a value of around \$200,000.00). While the court does not expect the Debtor to understand California trust law, as the trustee of the trust, he has the obligation to properly manage the property of the trust, which includes hiring the necessary professionals.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on September 24, 2019. Dckt. 102. Trustee notes Debtor has no plan pending, and that Debtor's employment situation has been very volatile indicating a successful reorganization is not likely possible without the sale of the Debtor's trust interest in real property.

DISCUSSION

It appears to the court that Debtor is not capable of fulfilling his duties as a debtor in this case and has put the bankruptcy estate in grave risk of losing an asset worth \$200,000.00. While in theory he, as the fiduciary responsible for property of the bankruptcy estate, could sue himself, as the fiduciary of the trust, for breach of his fiduciary duties if the Property is lost to foreclosure, it does not appear that he has assets, a bond, or other way to pay the bankruptcy estate for such losses.

At the hearing, xxxxxxxxxxxxxx.

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 Order to Show Cause 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 Order to Show Cause is sustained, and the case is converted to one under Chapter 7.

2 thru 3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Plan is denied.</p>

The debtor, Hsin-Shawn Cyndi Sheng ("Debtor") seeks confirmation of the Chapter 13 Plan. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The basic terms of the Third Amended Plan (Dckt. 126) are:

- A. Adequate Protection Payments shall "CEASE ENTIRELY" (emphasis in original) of \$1,130.00 are to be made monthly to Citibank, N.A., as Trustee, and prior disbursements, "believed to be \$1,130.00" are authorized. Third Amended Plan, § 7.01; Dckt. 126.
- B. To complete the Plan Debtor will make payments of "\$." Debtor has paid \$1,000 for the first six months of the Plan and will pay \$100.00 a month thereafter. *Id.*, § 7.11.

C. For the Citibank, N.A., as Trustee, Claim, § 7.13 provides:

1. Debtor “intends” to short sell the Corriente Way Property that secures the Claim.
2. The short sale shall occur not more than seventy-five (75) days. After the seventy-five days Citibank, N.A., as Trustee, may have relief from the stay by *ex parte* motion, or said creditor may seek relief from the stay sooner.

In the Chapter 7 bankruptcy case the court filed its order on April 24, 2018, abandoning the Corriente Way Property to the Debtor (17-25114, Dckt. 76).

D. For the Chase Home Mortgage claim, no claim has been filed in this case. The Barrington Terrace Property securing the claim is being abandoned from the Debtor’s prior Chapter 7 case estate. Third Amended Plan, § 7.14, Dckt. 126. Once abandoned, Debtor will begin making payments.

In Debtor’s Chapter 7 case the court ordered the abandonment of the Barrington Terrace Property that secured the Wells Fargo Bank, N.A. claim on August 26, 2019 (17-25114, Dckt. 244).

E. The Wells Fargo Bank, N.A. secured claim will be paid by Debtor when the Barrington Terrace Property securing the claim is abandoned from Debtor’s prior Chapter 7 case estate. *Id.*

In Debtor’s Chapter 7 case the court ordered the abandonment of the Barrington Terrace Property that secured the Wells Fargo Bank, N.A. claim on August 26, 2019 (17-25114, Dckt. 244).

F. The Wells Fargo Bank, N.A. secured claim will be paid by Debtor when the Vintage Park Drive Terrace Property securing the claim is abandoned from Debtor’s prior Chapter 7 case estate. *Id.*

The court cannot identify an order in the Chapter 7 case abandoning this property.

CREDITOR’S OPPOSITION

Creditor Citibank, N.A. filed an Opposition on September 16, 2019. Dckt. 129. Creditor argues the plan fails to cure its arrearages of \$673,126.03, and that no plan Debtor proposes could feasible do so. Creditor further opposes confirmation of any plan holding payments pending a proposed short sale.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on September 16, 2019. Dckt. 132. Trustee opposes confirmation on the basis that:

1. The plan is not feasible because it relies on a speculative short sale.
2. The Plan lists Class 4 claims with total payments of \$2,944.59 to be made, but does not list those payments as an expense on Schedule J.
3. The Debtor provides for the claim of Wells Fargo Bank, N.A. as a Class 4 where that claim is in default for at least \$1,166.74 prepetition.

DEBTOR'S REPLY

Debtor filed a Reply on September 27, 2019. Dckt. 135. Debtor's Reply is lengthy, but in essence argues that Debtor has enough asset to satisfy claims through liquidation.

DISCUSSION

Creditor Citibank, N.A., as Trustee, has filed a timely proof of claim in which it asserts \$673,126.03 in pre-petition arrearages. The Plan does not propose to cure those arrearages, but to have a short sale of the Property. Generally, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

The proposed plan relies on a 75-day short sale. A review of the docket shows there is no licensed real estate person or other professional assisting the Estate with marketing and selling the property. It is unclear how such a plan can be feasible where Debtor is clearly setting herself up to fail.

Further, a short sale by its very nature requires the cooperation of the creditor with the debtor. In stating that it will be a short sale, Debtor admits that she can only sell the property with Creditor's cooperation. Creditor, essentially, argues that it has 673,126.03 reasons for not cooperating with Debtor.

The court also notes that cramming a short sale marketing, negotiating, contracting, financing, and closing into two short months is not a commercially reasonable sale timetable. Rather, it appears to be one destined to artificially reduce the ultimate short sale price.

Here, Creditor does not want Debtor's assistance in selling its collateral. Debtor should be relieved that she can now surrender the Property and let Creditor deal with the headaches of controlling, protecting, insuring, paying property taxes, maintaining, marketing, negotiating, and selling the Property. Instead, Debtor can now head off unencumbered into her reorganized Chapter 13 life.

Unfortunately, Debtor insisting on the seventy-five day short sale is not a feasible, proper provision for treatment of the Citibank, N.A., as Trustee, secured claim in this case.

The 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 Chapter 13 Plan filed by the debtor, Hsin-Shawn Cyndi Sheng (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. [19-20302-E-13](#) **HSIN-SHAWN SHENG** **MOTION TO CONFIRM PLAN**
[RJ-5](#) **Richard Jare** **8-27-19 [123]**

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 23, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXXXXXXX.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Hsin-Shawn Cyndi Sheng (“Debtor”), has not filed, served, and set for confirmation a new proposed plan since the court sustained Trustee’s Objection To Confirmation of the prior plan on March 26, 2019. Dckt. 56, 57.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on May 15, 2019. Dckt. 72. Debtor states the following:

There are problems as outlined in the various documents and in the request for

judicial notice filed today. A modified plan is coming soon. At present the debtor is suffering from diminished income because the Chapter 7 trustee has caused income flow to be suspended. We are acting to rectify this.

Id. The Request for Judicial Notice referenced in the Opposition states the following:

The debtor herein requests that the court take judicial notice of Documents 146 through 158 in Case number 17-25114-E-7

Dckt. 73.

Debtor filed her Declaration in support of the Opposition. Declaration, Dckt. 75. The Declaration adds the following explanation to shed light on the Opposition which does not offer any explanation of failure to propose a new plan:

1. I understand that my attorney is showing the trustee and the court the difficulties that I am having in connection with my other pending case. This has caused complications.
2. I do want to continue with the Chapter 13 to save my home from foreclosure. I will be review a modified plan closely as soon as my attorney can prepare one in the next couple days.

Id.

MAY 30, 2019 HEARING

At the May 30, 2019 hearing the court continued the hearing on the Motion to afford Debtor and Debtor's counsel the opportunity to structure a plan demonstrating a good faith prosecution of this Chapter 13 case. Civil Minutes, Dckt. 86.

AUGUST 21, 2019

At the August 21, 2019, hearing the court continued the hearing to allow Debtor to propose a new plan.

DISCUSSION

When the Trustee filed the Motion, Debtor had not filed a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 26, 2019.

Debtor's Opposition does not state grounds with particularity (FED. R. BANKR. P. 9013) in support of Debtor's request that the Motion be denied. The court is told the Chapter 7 Trustee in Debtor's Chapter 7 Case, No. 17-25114 ("Chapter 7 Case"), has stopped Debtor's cash flow, and Debtor is working to solve the problem. Debtor then requests the court take judicial notice of several documents filed in Debtor's other case to discover the extent of the "problem" here.

In reviewing the documents referenced, the court first notes that the range of documents does

not pin-point any document to enlighten the court. Docket Number 146 in Debtor's Chapter 7 Case is a Proof of Service.

In digging through the range of pages provided, two motions are filed: a motion to convert the Chapter 7 case to one under Chapter 11, and a motion to compel professionals of the estate to file fee applications. Bankr. E.D. Cal. No. 17-25114, Dckts. 147, 149. In reviewing those motions the general allegation is that the chapter 7 trustee is attempting to liquidate Debtor's property to pay unsecured claims and administrative expenses in the case.

While it may appear to the Debtor that the filing of these motions creates a self-evident explanation for why the hearing on this Motion needs to be continued, such is not so clear to the court.

Rather, it appears that Debtor's Chapter 13 case relies on assets of the Debtor which may be administered in Debtor's pending Chapter 7 case.

Whether those assets are administered or whether allegations made by Debtor in the motion to convert the Chapter 7 case to 11 are correct, the question remains why creditors in this case should be forced to sit and wait on a result.

1st Amended Plan Filed May 23, 2019

Debtor's 1st Modified Plan has been filed. Dckt. 80. With respect to the required Plan payments, the additional provisions state:

Section 7.10 - - NonStandard Provisions, for section 2.01, merely expanded entries:

Monthly plan payments. To complete this plan, Debtor shall submit to the supervision and control of Trustee on a monthly basis the sum of \$ Debtor shall pay \$1000 for each of the first 6 months and thereafter \$3500 from future earnings. This monthly plan payment is subject to adjustment pursuant to section 3.07(b)(2) below and it must be received by Trustee not later than the 25th day of each month beginning the month after the order for relief under chapter 13. The monthly plan payment includes all adequate protection payments due on Class 2 secured claims.

Dckt. 80 at 9.

For the Citibank, N.A., as Trustee, claim, Debtor states that she will seek a loan modification. *Id.*, ¶ 7.02. The adequate protection payment (11 U.S.C. § 361) to be made Citibank, N.A., as Trustee, on its (\$1,272,304.32) secured claim, for which there is a (\$673,126.03) pre-petition arrearage, Proof of Claim No. 2, is to be \$565.00. This is stated by the Debtor to only be sufficient to pay the projected costs of insurance and property taxes, with this payment to "resume" in July 2019. *Id.* ¶ 7.04.

Then, beginning in September 2019, the monthly adequate protection payment will increase to \$2,700, of which \$1,120 a month is for property taxes and insurance, and \$1,580 for "principal and interest." *Id.*

On her Amended Schedule I Debtor states that her monthly gross income is \$6,336, which consists of \$1,234 of business/rental income, \$1,198.00 of Social Security, and \$3,904.00 of “INCREASED Draws & Income Stream/Bangeter Investment (which Debtor states will only be available if she confirms a Chapter 13 Plan). Dckt. 25 at 1-2. Generating the business/rental income is dependent on the Chapter 7 Trustee in the Debtor’s Chapter 7 case abandoning the property generating the income to Debtor. *Id.*

On Amended Schedule J Debtor states that she has (\$2,836) in monthly expenses, excluding mortgage payments, property taxes, and insurance. *Id.* at 4-6. These expenses include (\$225.00) to maintain “Hyatt & Diamond” timeshares. However, for the next five years Debtor’s expenses provide:

\$550 for food and housekeeping supplies

Assuming \$75 a month for housekeeping supplies, that leave
\$475 for food, which is a 30 day month averages (\$5.27) per meal.

\$250 for transportation - Debtor listing a 2014 C250 Mercedes Benz on Schedule A/B (Dckt. 1 at 13).

The \$250.00 a month is for gas, maintenance, repairs, registration. Assuming \$50 a month for maintenance and repairs and \$20 for registration, that leaves \$150 for gas. At \$4.00 a gallon, Debtor can purchase 38 gallons a month, which at an average of 20 miles to the gallon gives Debtor a driving range of 760 miles.

\$71 for entertainment

\$150 for medical and dental expenses

These appear to present a challenging economic scenario for Debtor.

On Schedule A/B Debtor lists the property securing the Citibank, N.A., as Trustee, claim to have a value of \$940,000.00

Using the Microsoft Loan Calculator Program, *if* the creditor modifies the loan balance down to what Debtor says the property is worth, *and if* the creditor fully amortizes the new loan balance over thirty years, *and if* the creditor allows a 5% interest rate for a 100% loan to value ratio loan, then *just the monthly principal and interest payment* would be (\$5,046.12). Debtor tells us in the Plan that monthly escrow amount for property taxes and insurance is (\$1,120.00). Thus, just the monthly payments for principal, interest, taxes, and insurance would be (\$6,166.12).

Given that in Debtor’s austere budget above there is only \$3,500.00 on net monies after the payment of her other reasonable and necessary expenses (Amended Schedule J, Dckt. 25 at 4-5), the Debtor falls short each month by (\$2,666.12) in having funds to pay a projected modified loan.

Debtor's Chapter 7 Case

On May 13, 2019, Debtor and her counsel filed a Motion to Convert her Chapter 7 case to one under Chapter 11. 17-25114; Motion, Dckt. 149. In the Motion Debtor asserts that the Chapter 7 Trustee "has acted inappropriately in attempting to sell outside of the ordinary course of business, WITHOUT A COURT ORDER, property of the estate in an amount grossly disproportionate to the minuscule amount of unsecured claims." *Id.* at p. 2:1-4. Debtor notes that she has already received her Chapter 7 discharge in that bankruptcy case.

Debtor further asserts that the Trustee making demand for the Investment Fund brokered by Bangerter Financial Services, Inc. which Debtor had to be turned over to the Trustee is improper. Debtor is not arguing whether the investments are property of the bankruptcy estate, but asserts that by the Trustee instructing the sale of the investments so that they can be liquidated into cash to be administered by the bankruptcy estate is an improper "sale" of property of the bankruptcy estate without court order.

Debtor objects that the trustee has, by instructing Fidelity Investments to "remit those funds to the bankruptcy estate" tried to sell property without a court order.

Id., p. 4:10-12. Debtor asserts that such sale of all the investment is unreasonable in that there are only (\$9,800) in general unsecured claims to be paid.

In the Trustee's Opposition, he states that he has not instructed the sale of such investments, just that he asserts the right to control property of the bankruptcy estate. *Id.*; Opposition, Dckt. 161. The Trustee asserts that when he asserted control over the investments the Debtor was attempting to sell the investments. The Trustee projects that \$40,200.00 is all that is required to administer the Chapter 7 estate. *Id.*, ¶ 23.

With the assistance of her former counsel in this case, Debtor filed her original Schedules on August 30, 2017. *Id.*; Dckt. 32. On Schedule A Debtor stated under penalty of perjury that her real property had a value of only \$830,000. *Id.*; Dckt. 32 at 2. She listed two other properties, one with a value of \$850,000 and the other with \$215,000. *Id.* at 3.

Turnover of Property of the Estate

In the Chapter 7 Case the Trustee obtained an order for the Debtor to turn over the Barrington Terrace Real Property listed on the Schedules that was property of the Bankruptcy Estate. *Id.*; Order, Dckt. 109. The court's Findings of Fact and Conclusions of law in granting the Turnover Motion, include:

Debtor's Response fails to acknowledge that a bankruptcy estate has been created and that, pursuant to Bankruptcy Code § 541(a)(1), the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the case. Rather, **Debtor appears to exempt herself from federal law** as enacted by Congress, assert that she can file Chapter 7 and **ignore the law**, and **assert that Chapter 7 exists as her personal tool** to use (and abuse) against others.

...

The court notes **that Debtor has chosen (or refused) to provide any testimony** in opposition to this Motion, instead using the two paragraph arguments of her counsel as a shield between her and the Motion. **Debtor's counsel ignores 11 U.S.C. § 541 and the obligations of the Chapter 7 Trustee to control, assemble, and manage all property of the bankruptcy estate.** 11 U.S.C. § 704, 721.

Id.; Civil Minutes, p. 5; Dckt. 108 (emphasis added).

Apparent Quick Conclusion of Chapter 7 Case

There exists a very modest amount of claims and administrative expenses in the Chapter 7 case (at least modest in light of the very valuable investments which Debtor states exists and should not be “sold” by the Chapter 7 Trustee). A Debtor working in good faith with the Trustee could quickly identify the investments to be liquidated, claims and expenses paid, and Chapter 7 case closed. Then, all of the remaining property of the bankruptcy estate would be abandoned back to the Debtor when the Chapter 7 case was closed.

There would be no need to convert the case to one under Chapter 11 and incur \$20,000 to \$30,000 in Chapter 11 plan confirmation and administration expenses - so long as the Debtor was working to prosecute her Chapter 7 case in good faith. To the extent a trustee was attempting to act improperly and waste property of the bankruptcy estate by unnecessarily liquidating property of the bankruptcy estate, the Debtor and/or the U.S. Trustee seeking relief from the court would quickly put an end to such “shenanigans” (as a former law clerk for this court would say).

Denial of Modified Plan Confirmation

At a hearing July 16, 2019, the court denied confirmation of Debtor's Modified Plan substantially based on Debtor's understating the adequate protection payment in the Ensminger provision. Civil Minute, Dckt. 110.

RULING

A new proposed plan was set for confirmation hearing the same day as the continued hearing. While potentially close to confirmation, Debtor has stumbled by trying to force Citibank, N.A., as Trustee, agreeing to a seventy-five day delay while the Debtor attempts to short sell the property securing the Citibank claim. Citibank, N.A., as Trustee, opposition to the motion to confirm is not unreasonable. Rather than having Debtor desperately try to dump the Property in a quick short sale, Citibank, N.A., as Trustee, is electing to pursue its rights to foreclose, obtain title to its collateral, employ a realtor to market and sell the property in a commercially reasonable manner, rather than trying to employ a realtor, list the property, negotiate a sale, contract, and then try to have the buyer have financing in place and close all within two months.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**

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

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

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

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

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

4. [15-28908-E-13](#) **WILLIAM/SARAH MCGARVEY** **MOTION TO MODIFY PLAN**
[MJD-5](#) **Matthew DeCaminada** **8-14-19 [110]**

4 thru 5

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2019. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is XXXXX.
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The debtor, William Norbert McGarvey and Sarah Marie McGarvey (“Debtor”) seek confirmation of the Modified Plan to cure . Declaration, Dckt. 114. The Modified Plan provides for \$39,200.00 paid through July 2019, and payments of \$985 for the remainder of the plan term. Modified Plan, Dckt. 112. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on September 13, 2019. Dckt. 124. Trustee opposes confirmation on the basis that it is uncertain Debtor can make the \$3,246.18 lump sum due October 2019. Trustee further opposes confirmation on the basis that several of the claims proposed to be paid as Class 2A claims are for creditor who did not file a proof of claim, where section 3.01 of the plan states no claim shall be paid unless a proof is filed.

DISCUSSION

Grounds Stated in Support of Modification

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

The Motion explains why the Modified plan will work and why it meets the requirements of the Bankruptcy Code. However, the motion does not state the reason modification is sought.

Digging through the pleadings into Debtor’s Declaration (Dckt. 114), the following is stated:

6. It has been explained to us, and we understand, that our plan is being modified to catch up on three post-petition mortgage payments that we were unable to make during 2019 due to unforeseen veterinary and automobile expenses.

It is unclear why this was buried in the pleadings outside the Motion, particularly where the Modified Plan has to be demonstrated feasible (showing why it will succeed where the prior plan failed).

Also peculiar about the Declaration’s testimony is the language “It has been explained to us, and we understand.” It is not clear if this is actual personal knowledge testimony, or if Debtor is just parroting was told to Debtor. FED. R. EVID. 602. Also unclear is if this is actual testimony under penalty of perjury, or if this is mere “information and belief” allegations.

28 U.S.C § 1746 states the following as to unsworn declarations under penalty of perjury:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office,

or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: “I declare (or certify, verify, or state) **under penalty of perjury** under the laws of the United States of America **that the foregoing is true and correct**. Executed on (date).

(Signature).”

(2) If executed within the United States, its territories, possessions, or commonwealths: “**I declare** (or certify, verify, or state) **under penalty of perjury** that the **foregoing is true and correct**. Executed on (date).

(Signature).”

28 U.S.C. § 1746 (emphasis added).

Modified Plan

Trustee has raised concerns over the feasibility of the plan.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

IT IS ORDERED that the Motion to Confirm the Plan is **XXXXXXX**.

5. [15-28908-E-13](#) [MJD-6](#) **WILLIAM/SARAH MCGARVEY** **MOTION FOR COMPENSATION BY**
Matthew DeCaminada **THE LAW OFFICE OF STUTZ LAW**
OFFICE, P.C. FOR MATTHEW J.
DECAMINADA, DEBTORS
ATTORNEY(S)
8-20-19 [116]

Final Ruling: No appearance at the September 28, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Stutz Law Office, P.C., the Attorney ("Applicant") for William Norbert McGarvey and Sarah Marie McGarvey, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period March 8, 2019, through the date of the Application. Applicant requests fees in the amount of \$650.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Reasonable Fees

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

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

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant’s for the Estate include case administration and prosecution of a modified plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 29. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant bills at an hourly rate of \$275.00. Applicant provides the following summary of services provided, for which Applicant states 11.8 hours were spent:

Meetings with Debtors to discuss the current case and the effects of substituting as counsel of record; review documents filed by former attorney’s office; reviewing and preparing, filing, and serving an opposition the motion for relief from the automatic stay filed by Debtors’ mortgage lender and appearing at the hearing on the motion (PPR-1); preparing, filing, and serving a third modified Chapter 13 plan along with a motion to confirm said plan (MJD-5); preparing, filing, and serving the instant application for attorney fees and costs (MJD-6); and subsequent correspondence and meetings with the clients to maintain the case.

The Application requests only a reduced fee of \$650.00.

FEES ALLOWED

Fees

The unique facts surrounding the case, including case administration and development and prosecution of a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$650.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$650.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Stutz Law Office, P.C. (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Stutz Law Office, P.C. is allowed the following fees and expenses as a professional of the Estate:

Stutz Law Office, P.C., Professional Employed by William Norbert McGarvey and Sarah Marie McGarvey (“Debtor”)

Fees in the amount of \$650.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

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

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

Local Rule 9014-1(f)(3) 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 September 24, 2019. By the court's calculation, 7 days' notice was provided. The court issued an Order setting the hearing on shortened notice.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Incur Debt is denied.

The debtor, Vicky Lou Saavedra ("Debtor") seeks permission to purchase a 2020 Toyota Corolla LE with 4 miles on it, with a total purchase price of \$20,000.00, and a term of 5 years with a 17.99% 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 Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. Debtor owns a 2013 Hyundai Elantra (“Current Vehicle”) which is “falling apart,” and has negotiated a deal for a brand new vehicle for \$20,000.00. Motion ¶ 1, Dckt. 38.
2. Debtor’s Current Vehicle cannot idle steadily and has little power. “Debtor has no idea what is wrong with it.” Debtor needs a new vehicle to get to work. The Current Vehicle is a “maintenance nightmare.” *Id.*, ¶ 2.
3. The new vehicle is reasonably necessary for the maintenance and support of Debtor and her family. *Id.*, ¶ 3(a).
4. The present interest rate is the best Debtor can get. *Id.*, ¶ 3(d).
5. Debtor will trade her Current Vehicle in and provide a \$3,500.00 down payment (\$1,000 from her funds and \$2,500 from her sister as a gift). *Id.*, ¶ 3(e).
6. Debtor will modify the plan to extend the term from 36 to 60 months so she can afford the payments. *Id.*, ¶ 3(g).
7. This hearing was set because the Trustee did not believe he could approve this financing. *Id.*, ¶ 4.
8. Debtor has shown that the new vehicle is reasonably necessary for her care and maintenance, and that the terms of the transaction are fair and reasonable affordable. *Id.*, ¶ 6.

In reviewing the request for order shortening time, the court also preliminarily reviewed the Motion. In granting shortened notice, the court noted that the interest rate on the credit sought was high, and that it is not explained why Debtor’s sister was gifting \$2,500.00 towards a car but not simply cosigning to allow for lower interest. Order, Dckt. 46.

Thereafter, Debtor filed another Declaration. Dckt. 47. This Declaration is not simply testimony, but actually an extension of argument in favor of the Motion and in rebuttal to the court’s observations made in the Order Shortening Time.

The Declaration is four pages in length, but can be summarized as follows:

1. Debtor cannot get a better interest rate because she is in bankruptcy . . . “even outside of Bankruptcy, [Debtor] would not have been able to finance a vehicle for less than 17.99%.”
2. Debtor looked into buying a 2013 Ford Focus, 2016 Chevy Impala, and a few other cars with mileage ranging from 25 to 50 thousand miles, but the proposed loan terms for those vehicles was less reasonable.
3. Debtor’s sister is not in a position to be legally obligated on a new

vehicle loan. Debtor's sister gave Debtor \$2,500.00 as an early graduation gift.

DISCUSSION

The present Motion seeks permission for Debtor to purchase a brand new vehicle at a 17.99% interest rate.

The first issue to address is the necessity of the vehicle. It is unclear what is wrong with the Debtor's Current Vehicle. Debtor does not describe her efforts to repair the Current Vehicle. She actually admits she "has no idea what is wrong with it."

On Debtor's Schedule A/B, Debtor states under penalty of perjury that the Current Vehicle has 112,000 miles and is in "Good Condition." Dckt. 1.

The Current Vehicle was subject to the secured claim of Regional Acceptance Corporation. Debtor filed a Motion To Value that claim, asserting the Current Vehicle has a value of \$7,000.00 at the time of filing, and the court granted that Motion on May 7, 2019. Dckts. 10, 27.

In her Declaration in support of the valuation, Debtor states the following:

Although my car is not that old, it does have more than 100,000 miles on it, which greatly reduces its value. **The vehicle is in generally good condition. However, I have had some issues with the vehicle's cylinders. I have had to bring the vehicle into the shop a couple of times for that,** the most recent being just earlier this year. Although **Hyundai has been warranting the issue**, the issue appears to repeat itself frequently. The vehicle also needs new tires, which I estimate will cost around \$400.

Declaration ¶ 7, Dckt. 12(emphasis added).

It is not clear whether the present issues with the Current Vehicle are the same as those being covered by warranty. However, Debtor lists a \$250 monthly expense on Schedule J for transportation, and that expense is stated to include maintenance. Schedule J, Dckt. 1. Debtor has not stated what the cost is to be for the repairs to the Current Vehicle and whether they exceed the money allocated for maintenance.

While Debtor states 17.99% interest is the best rate she could get "because she is in bankruptcy," both the court and Debtor's counsel have seen much lower rates come through in bankruptcy cases on a regular basis.

Additionally, assuming the Current Vehicle does need to be replaced, it is unclear why Debtor and Debtor's counsel think it is reasonable to buy a new vehicle.

Debtor reports net income of \$3243.75 a month. Schedule I, Dckt. 1. On Schedule J, Debtor lists expenses of \$2,803.00—these expenses include expenses of four dependents, including a granddaughter (aged 8), grandson (aged 9), son (aged 27), and daughter (aged 33). Dckt. 1. However, it is clarified the daughter "splits living expenses." *Id.*

In Debtor's Confirmed Plan, she makes a monthly payment of \$440, which over 36 months pays 0 percent to unsecured claims totaling \$118,425.00. Plan, Dckt. 3. Essentially, the Chapter 13 plan pays only the claim secured by Debtor's Current Vehicle, and the taxes owing to the Internal Revenue Service. *Id.*

In reviewing the claims in the official claims registry, the brunt of the unsecured debt (\$71,009.16) is from student loans. Proof of Claim, No. 21.

In order to be able afford the new car, Debtor proposes extending the plan out from 36 to 60 months. Debtor filed a Supplemental Schedule J as Exhibit B to show estimated expenses. Dckt. 41. The Supplemental shows the estimated monthly payment is \$460, and decreases Debtor's disposable income to \$129.98. *Id.* However, no vehicle insurance expense is estimated, making it likely Debtor is going to have no disposable income.

The present Motion has brought in to question whether Debtor's Confirmed Plan was proposed in good faith. Debtor seems to be of the mind set that she can take on immense expenses, leaving creditors footing the bill.

Debtor is currently taking care of two adult dependents, one which has an unexplained illness. The other adult dependent is "splitting" expenses, but not contributing any income. It is not stated anywhere what income either adult dependent is receiving.

The other two dependents are the children of Debtor's daughter. From the Schedules it appears Debtor is covering all of their expenses—again with no word as to what income Debtor's daughter has and what if anything she is contributing.

Now, in the present Motion, Debtor seeks to incur further debt while paying unsecured claims nothing. Debtor is getting a brand new 2020 model vehicle with less than 5 miles.

It is unclear where the \$1,000 for Debtor's down payment is coming from. While Debtor's disposable monthly income is stated to be \$440, Debtor did list and fully exempt \$6,000.00 in a checking account. Schedules A/B and C, Dckt. 1.

The Motion reads as though the down payment relies on a gift, stating as follows:

Debtor will trade in my Hyundai and will provide a down payment of \$3,500.
Debtor will pay \$1,000 her and the other \$2,500 will be a gift from her sister.

Motion ¶ 3(e), Dckt. 38. However, Debtor's subsequent Declaration makes clear that the \$2,500.00 was an early graduation gift already made to Debtor, and Debtor just happens to be using those funds. Declaration, Dckt. 47. Debtor does not explain why she does not simply make a very large down payment to get reasonable financing terms—having funds of at least \$8,500.00 on hand.

In any case, the post-petition credit sought here is not reasonable, and is not in the best interest of the Debtor or the Estate.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Vicky Lou Saavedra (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

7. [19-24883-E-13](#) **DAVID EVANS** **MOTION TO VALUE COLLATERAL OF**
[SPB-1](#) **Stanley Berman** **U.S. BANK**
8-19-19 [17]
7 thru 8

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 19, 2019. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Value Collateral and Secured Claim of U.S. Bank, National Association (“Creditor”) is denied without prejudice</p>
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INSUFFICIENT NOTICE PROVIDED

The Proof of Service for this Motion indicates that it was served by **First Class Mail** on:

U.S. Bank, National Association
Diane V. Weifenbach, Esq.
LAW OFFICES OF DIANE WEIFENBACH
5120 E. LaPalma Avenue #209
Anaheim, CA 92807

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

“(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

The correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. Either service was not made to those addresses, or service was not addressed to an officer by name or “Attn: Officer for Service of Process.” Service was not made by certified mail. Service has not been adequately made on the federally insured financial institutions in this case.

Debtor has apparently served only an

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 David Garfield Evans (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

8.

[19-24883-E-13](#)
[SPB-2](#)

DAVID EVANS
Stanley Berman

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA
8-19-19 [\[25\]](#)

Final Ruling: No appearance at the October 1, 2019 Hearing is required.

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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 19, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by David Garfield Evans (“Debtor”) to value the secured claim of Bank of America (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 27. Debtor is the owner of the subject real property commonly known as 14920 Chattering Pines Road, Grass Valley, California (“Property”). Debtor seeks to value the Property at a fair market value of \$460,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued. While Creditor has filed a claim, that Proof of Claim, No. 2, is for a credit card debt.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on September 16, 2019. Dckt. 37.

DISCUSSION

The senior in priority deeds of trust secure a claims with a balance of approximately \$492,807.00. Schedule D, Dckt. 12. Creditor's third deed of trust secures a claim with a balance of approximately \$49,593.00. *Id.* Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is

granted, and the claim of Bank of America (“Creditor”) secured by a third in priority deed of trust recorded against the real property commonly known as 14920 Chattering Pines Road, Grass Valley, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$460,000.00 and is encumbered by senior liens securing claims in the amount of \$492,807.00, which exceeds the value of the Property that is subject to Creditor’s lien.

9. [17-27906-E-13](#) **PAMELA SPRING** **MOTION TO MODIFY PLAN**
[MMM-1](#) **Mohammad Mokarram** **8-20-19 [45]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Pamela Gaynell Spring (“Debtor”) seeks confirmation of the Modified Plan to address increasing rent and transportation costs. Declaration, Dckt. 47. The Modified Plan provides for payments of \$297.73 for the first 19 months and then \$252.00 per month for the remaining 26 months. Modified Plan, Dckt. 49. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on September 13, 2019. Dckt. 53. Trustee argues that the plan is confirmable so long as Debtor cures the delinquency of \$48.87

(possibly by reducing the monthly payment by \$3 each month of the plan term in the order confirming the plan).

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx.

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Pamela Gaynell Spring ("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 20, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 23, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. The debtors, Ronald William Garner and Kimberly Kay Garner ("Debtor") did not appear at the August 29, 2019, Meeting of Creditors.
- B. The Plan is not Debtor's best efforts where Debtor 2 is employed but not contributing income, and Debtor 1 overstates income tax withholdings. Additionally, Debtor's disabled dependent son's age is not stated, so it is unclear whether there is more unreported income.
- C. The Debtors have not provided pay advices for the 60 day period preceding filing.

DEBTOR'S REPLY

Debtor filed a Reply on September 16, 2019. Dckt. 20. Debtor argues as follows:

1. Debtor will appear at the continued Meeting.
2. The original Schedule I mistakenly marked “employed” for Debtor 2 where she was not. An Amended Schedule I will be filed.
3. Debtor’s son contributes no income.
3. Pay advices have been provided to the Trustee which support the claimed 34% tax withholding.

STATUS REPORT

Trustee filed a Status Report on September 24, 2019. Dckt. 23. The Report states that some of the grounds for opposition have been resolved, but that:

- (1) it is unclear when Debtor 2 stopped working, and
- (2) the pay advices provided do not support a 34% withholding.

DISCUSSION

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Trustee argues that Amended Schedule I overstates the withholding and therefore does not provide all of Debtor’s disposable income despite this not being a 100 percent plan. That is reason to sustain the Objection.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of

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

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

11. 19-20026-E-13 **THOMAS IVERS** **MOTION TO SELL**
LBG-3 **Lucas Garcia** **9-17-19 [100]**

11 thru 12

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

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

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

Sufficient Notice Not 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 September 17, 2019. **By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).**

At the hearing Debtor's counsel made an oral motion to shorten time. In light of the specific facts and circumstance of this case and Contested Matter, the court ~~granted/denied~~ the request to shorten time to that given.

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 the debtor Thomas James Ivers, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 8610 Pershing Avenue, Sacramento, California ("Property").

The proposed purchaser of the Property is Zana Melvin for a purchase price of \$520,000.00

TRUSTEE'S OPPOSITION

Even though no written opposition was required for this Motion, the Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 25, 2019. Dckt. 107. Trustee points out that Debtor's proposed plan calls for a lump sum of \$608,000.00 from the sale of the Property, and notes that now Debtor seems to be paying only

DISCUSSION

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

~~Despite the lower than expected sale price, it appears that the sale proceeds will be enough to pay off all claims in this case. The proposed sale is in the best interest of the Estate because it allows Debtor to complete the Chapter 13 case.~~

~~Notably, despite Debtor claiming \$175,000.00 exemption (and Debtor previously representing the exemption would be waived to the extent necessary), all claims in this case are secured by Debtor's Property and will take first.~~

~~A 5 percent broker's commission from the sale of the Property will equal approximately \$26,000.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5 percent commission.~~

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

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

~~The Motion to Sell Property filed by the debtor Thomas James Ivers ("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 Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Zana Melvin or nominee ("Buyer"), the Property commonly known as 8610 Pershing Avenue, Sacramento, California ("Property"), on the following terms:~~

~~A. The Property shall be sold to Buyer for \$520,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 103, 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.~~

~~D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale. The 5 percent commission shall be paid to Chapter 13 Debtor's broker, Kristy Hernandez.~~

~~E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 13, 2019. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is xxxxx.

The debtor, Thomas James Ivers ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for all claims to be paid by lump sum from sale proceeds of Debtor's residence. Plan, Dckt. 91. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition arguing that the plan relies on a proposed sale that is not likely to occur. Dckt. 97.

DEBTOR'S REPLY

Debtor filed a Reply on September 23, 2019, asserting that a sale motion is pending the same hearing day as this Motion.

DISCUSSION

A Motion To Sell seeking approval to sell Debtor's residence for \$520,000.00 (an amount which could pay off all claims in this case), is currently pending.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

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

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

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

~~_____ The Motion to Confirm the Chapter 13 Plan filed by the debtor, Thomas James Ivers ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the Motion is granted, and Debtor's Chapter 13 Plan filed on August 12, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

13 thru 14

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, Tanya Dorene Hall ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$3,052.00 for 60 months; a lump sum of \$62,437.70 to creditor Real Time Resolutions on or before December 1, 2021; and 0 percent dividend to unsecured claims totaling \$70,883.70. Amended Plan, Dckt. 38. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 16, 2019. Dckt. 54. Trustee opposes confirmation on the following grounds:

1. Debtor is delinquent \$3,246.09 under the proposed plan.
2. Debtor's Schedule I shows Debtor is receiving a \$1,400.00 contribution from his significant other, but no declaration has been filed in support of the gift.

3. The arrearages on Bank of America's claim are greater than scheduled. Therefore, the plan will not complete within 60 months.
4. Debtor does not list creditor Real Time Resolutions in Schedule D.

CREDITOR'S OBJECTION

Creditor Real Time Resolutions, Inc. as agent for Bank of America, N.A. ("Creditor") filed an Objection To Confirmation on August 29, 2019. Dckt. 47. Creditor argues as follows:

1. The plan is too speculative and not feasible where it relies on a \$60,000+ lump sum.
2. The plan does not provide adequate protection for the 35 months coming before the lump sum is due.
3. The proposed plan constitutes of prejudicial delay.

DISCUSSION

Trustee and Creditor's arguments are well-taken. Debtor does not explain where the lump sum is coming from, or why Debtor is provided until roughly 2022 to come up with the funds. The proposed plan appears to be one to delay creditors while Debtor maybe comes up with a way to pay.

Debtor's plan relies on a \$1,400.00 a month contribution from his "significant other." This amount is a substantial gift, amounting to \$84,000 over the life of the plan. Debtor has not shown that this is a reliable source of income.

Additionally, Debtor is delinquent under the proposed plan, and the proposed plan understated the arrearages owing to Bank of America.

All the aforementioned demonstrates the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

14.	<u>19-20429</u> -E-13 <u>RMP-2</u>	TANYA HALL Timothy Walsh	OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS, INC. 8-29-19 <u>[47]</u>
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<p>The Objection To Confirmation shall be heard as an Opposition to the Debtor’s Motion To Confirm (Dckt. 36) set for hearing the same day.</p>
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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).

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 August 19, 2019. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

-----.

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

Posner Investments, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that its claim is understated in the amount of \$1,915.56 (the amount of accrued post-judgment interest prior to filing this case).

DISCUSSION

Here, Creditor objects to confirmation unless its claim provided in the plan is increase by roughly \$2,000 to reflect the accrued post-judgment interest prior to filing this case.

The Plan provides for a 100% dividend for creditors holding (\$27,996) in general unsecured claims. There is sufficient monies in the plan to provide for the general unsecured claims. There are sufficient monies in the Plan to provide for this claim as filed by Creditor.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

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

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

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

~~—————The Objection to the Chapter 13 Plan filed by Posner Investments, Inc. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~—————**IT IS ORDERED** that the Objection is overruled, and Eddie Warren Verdon’s (“Debtor”) Chapter 13 Plan filed on July 28, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

16.	<u>19-24735-E-13</u> <u>DPC-1</u>	EDDIE VERDON Richard Kwun	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-3-19 <u>15</u>
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WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 1, 2019, hearing is required.

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 22, 2019. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Schools Financial Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$6,317.00.

The Motion filed by Mona Melanie Mitchell ("Debtor") to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2006 Acura MDX ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$5,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on September 13, 2019, noting Creditor's Proof of Claim filed. Dckt. 18.

Creditor filed Proof of Claim, No. 1 ("Claim"), on September 4, 2019. The Claim asserts a total claim of \$7,318.94, of which \$6,317.00 is secured. In the attachments to the Claim, Creditor provides a Kelly Blue Book report in support of its valuation of the Vehicle.

DISCUSSION

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

Here, Debtor's Declaration states:

8. My opinion of the Collateral's value at the time of filing the petition in this case: \$5,000.

9. My opinion is based on: first-hand personal knowledge of and experience with the collateral.

Dckt. 10 (emphasis in original). Debtor's Declaration presents a mere conclusion, not supported by factual arguments. *In re Austin*, 583 B.R. at p. 483. Therefore, Debtor did not present substantial evidence to rebut Credit's Proof of Claim.

Creditor's valuation relies solely on the make and model and mileage of the Vehicle without further knowledge of its condition. However, while the Debtor may be in a better position to provide first-hand testimony as to the condition of the Vehicle, the Debtor here has chosen not to do so.

The lien on the Vehicle's title secures a purchase-money loan incurred in July 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$7,318.94. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of 6,317.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Schools Financial Credit Union ("Creditor") secured by an asset described as 2006 Acura MDX ("Vehicle") is determined to be a secured claim in the amount of \$6,317.00, 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 \$6,317.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

18. [19-21047-E-13](#) **MELODY SIMPSON** **CONTINUED MOTION TO CONFIRM**
[WSS-1](#) **Steven Shumway** **PLAN**
7-3-19 [23]

18 thru 19

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

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

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

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

The Motion to Confirm the Amended Plan is denied without prejudice.

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

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

June 25, 2019 payment amount. Dckt. 29.

Continuance of August 13, 2019 Hearing and Supplemental Pleadings

Bank of New York Mellon, as Trustee, (“Bank”) filed an opposition on August 8, 2019. This Opposition asserted that it no longer has a claim in this case, a non-judicial foreclosure on its secured claim having occurred on July 22, 2019, which was three weeks before the hearing on this motion. The purchaser at the sale was a third-party.

Bank asserts that this being Debtor’s third Chapter 13 bankruptcy case that has been pending in the one year period preceding the February 22, 2019 filing of this case, there is no automatic stay that went into effect in this case. See 11 U.S.C. § 362(c)(4). The two prior cases were:

Chapter 13 Case 18-23532.....Dismissed December 21, 2018

Chapter 13 Case 18-20883.....Dismissed June 1, 2018

The present Plan would require the Debtor to make payments, through the Trustee, for a claim that the Bank asserts no longer exists.

Such a plan term would appear to be outside what is permitted under the Bankruptcy Code and could result in significant confusion and loss for the Debtor.

The court continued the hearing to afford the Bank the opportunity to file supplemental pleadings and properly authenticated evidence of the purported sale. Civil Minutes, Dckt. 35.

Subsequent Filings

On September 13, 2019, the Creditor filed Declarations and Exhibits showing the Property was sold at foreclosure on July 22, 2019, and that a Trustee’s Deed Upon Sale was recorded August 8, 2019. Dckts. 37–40.

DISCUSSION

Based on the evidence presented, the Plan would provide for paying a claim that does not exist, it having been satisfied by the non-judicial foreclosure sale. It would further create the misimpression that the property is still owned by Debtor.

In her Declaration, Debtor states that she is trying to prevent a foreclosure of her home. Debtor has not responded to the evidence of such sale having already occurred. If Debtor believes that the sale is not valid, then that battle has to be part of a plan in this case.

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

The Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

19.	<u>19-24355</u> -E-13 <u>DCN</u> -1	GLENN LEWIS Chad Johnson	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-27-19 [<u>20</u>]
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The Trustee having filed a subsequent objection to confirmation (Dckt. 25), this Objection is dismissed without prejudice as moot.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 9, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor, Glenn Burton Lewis ("Debtor") failed to provide his recent tax return and has not clarified his source of income for the years 2017 and 2018.

DISCUSSION

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

Additionally, Debtor has not clarified his source of income for the years 2017 and 2018 and therefore has not met his burden to show the plan is feasible.

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

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

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

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

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

21.	<u>19-24768-E-13</u> <u>DPC-1</u>	LARRY BELLANI Michele Pooteracke	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-4-19 [24]
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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).

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 September 4, 2019. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

- A. The Plan does not provide any arrearage payments to the three creditors listed under Class 1.
- B. Debtor stated on Schedule I he was receiving \$1,000 monthly from his son for rent, but later admitted he was receiving nothing.
- C. Debtor has not clarified whether his income of \$2,060.00 is gross or net, and Debtor has not provided 6 months of profit and loss statements.

DISCUSSION

Debtor proposes curing arrearages to Class 1 claims through the sale of his residence. Nothing is being paid until the sale is completed, which Debtor anticipates will be by month 12 of the plan.

Additionally, Debtor stated under penalty of perjury he was receiving \$1,000 in rent from a “tenant,” but later admitted he was not receiving those funds. Based on the foregoing, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Furthermore, Debtor has failed to timely provide the Chapter 13 Trustee with six months of profit and loss statements. Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Plan states that Debtor will “immediately” list his residence for sale. This Bankruptcy Case was filed on July 30, 2019. The Chapter 13 Plan was filed on July 30, 2019. Yet, during the sixty-two days that has expired since filing this case, “immediately” listing the property for sale has not included obtaining authorization to hire a Realtor to do just that (unless Debtor has a Realtor who is doing that for free).

Debtor’s prior bankruptcy was filed on February 25, 2019, and dismissed on May 29, 2019. Bankr. E.D. Cal. 19-21107. A review of the Docket for that case discloses that Debtor did not seek authorization to employ a Realtor or make any attempt to pay creditors with claims secured by the residence.

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

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

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

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

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

22. [19-24473-E-13](#) **JANICE PERIOLAT** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Julius Cherry** **PLAN BY DAVID P. CUSICK**
8-26-19 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 26, 2019. By the court’s calculation, 36 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the debtor, Janice Dawn Periolat (“Debtor”) did not list the Internal Revenue Services’ claim of \$48,831.43, as well as a debt to Debtor’s employer whom is deducting \$284 biweekly from Debtor’s pay check.

Debtor filed an Amended Plan on September 26, 2019. The Plan filed July 16, 2019, does not

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney September 3, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor is delinquent \$400.

Debtor is \$400 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

24. [19-24493-E-13](#) **TEMA ROBINSON** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Peter Macaluso** **PLAN BY DAVID P. CUSICK**
9-5-19 [17]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 5, 2019. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

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<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the plan may fail the liquidation test. Trustee argues that while Debtor claims a ½ interest in her real property, it is unclear if this is correct, and if Debtor owns the entire property then there is \$27,002.00 in non-exempt equity.

Court Review in Related Matter

At a hearing on a motion for relief in Debtor's mother, Janette Payne's, bankruptcy case, no. 19-24741, the court made the following observations (addressing Janette Payne as "Debtor" and Tema Payne as "Debtor's Daughter"):

Debtor's counsel also mentions a bankruptcy was filed by Debtor's Daughter to cure the prepetition arrearages. In Debtor's Daughter's case, Debtor's daughter has proposed a plan with a monthly payment of \$2,660.00, of which \$1,837.28 monthly is going to Movant's post-petition payments and \$350.00 to cure Movant's arrearages totaling \$21,000.00. 19-24493, Plan, Dckt. 10.

In reviewing Schedule I, Debtor's Daughter has only \$725 and \$472 in gross monthly income from a primary and secondary job. 19-24493, Schedule I, Dckt. 11. Debtor's Daughter also receives \$1,590.00 a month (identified as Mother's Social Security) from the Debtor herein, \$856 a month from Debtor's Daughter's granddaughter, and \$192 from food stamps. All told, Debtor's Daughter's income is \$3,835.00. *Id.*

\$1,590.00 is all of Debtor's income. which she is purportedly giving her daughter. Schedule I. Dckt. 1. On Debtor's Official Form 107, Question No. 13, Debtor responds under penalty of perjury "no" when asked if she has made any gifts of more than \$600 within 2 years of filing Debtor's case.

On Debtor's Daughter's Schedule J, Debtor's Daughter lists overall monthly expenses of \$1,175.00. This includes only \$300 a month for food for Debtor's Daughter and her two listed dependants (one being Debtor), which is only \$3.33 per day per individual.

It is unclear whether Debtor is actually included in those sparse expenses because Debtor in this case lists monthly expenses of \$610.00, including \$300 for food and \$200 for transportation. Dckt. 1. But, if the Debtor is paying those expenses (which she states under penalty of perjury she does), then Debtor has only \$980 to put towards her daughter's plan, leaving the Debtor's Daughter's plan at least \$610 underfunded every month.

Based on the information provided between the two cases, it is not surprising that Debtor and Debtor's Daughter have defaulted in post-petition payments. It appears that Debtor's Daughter may not have sufficient income to propose a viable Chapter 13 plan.

Significantly, Debtor's Daughter states under penalty of perjury in her case that Daughter is the only owner of the Property. 19-24493; Schedule A/B, Dckt. 11 at 3. However, in this case Debtor states that she has an interest in the Property along with someone else as a joint tenant.. Schedule A/B, Dckt. 23 at 4. Clearly, one of these two debtors is making a false statement under penalty of perjury.

Interestingly, the same attorney is representing the two debtors who provide conflicting statements under penalty of perjury.

DISCUSSION

From the statements provided by Debtor and her mother, it is unclear what interest Debtor has in the Property. Additionally, it is unclear whether the income and expenses are accurate, with the mother and daughter sharing some expenses but not others, and Debtor's mother paying some of her own expenses but also purportedly contributing all her income into this case.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

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

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

25. [14-22789-E-13](#) **DAVID COTA AND KAREN** **MOTION TO WAIVE SECTION 1328**
[SLE-2](#) **SLAVICH-COTA** **CERTIFICATE REQUIREMENT, AS TO**
 Steele Lanphier **DEBTOR AND/OR MOTION FOR**
 ENTRY OF DISCHARGE
 8-22-19 [107]

Tentative Ruling: No appearance at the October 1, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 22, 2019. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

The Motion for Entry of Discharge 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.

The Motion for Entry of Discharge is denied.

The present Motion filed by the debtors, David Brian Cota (“Debtor David”) and Karen Louise Slavich-Cota (“Debtor Karen”) (collectively “Debtor”) seeks two forms of relief.

The primary relief sought is a Motion for Entry of Discharge. With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. The Chapter 13 Trustee, David Cusick’s (“Trustee”) final report was filed on May 14, 2019, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the Chapter 13 Trustee was entered on June 19, 2019. Dckt. 100. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Debtor Karen’s filed a 11 U.S.C. § 1328 Certificate which states she:

A. has completed the plan payments;

- B. does not have any delinquent domestic support obligations;
- C. has completed a financial management course and filed the certificate with the court;
- D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;
- E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and
- F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

Debtor David is reported to have passed away in 2017. The second request for relief is to waive the requirement that he complete 11 U.S.C. § 1328 certifications, so that the discharge may be entered.

DISCUSSION

On August 22, 2019, it was first reported to the court that Debtor David passed away on September 24, 2017. A copy of the Certificate of Death is filed as Exhibit A. Dckt. 110. This is reported to the court seven hundred and thirty-eight (738) days after the death.

Ostensibly, Debtor Karen and her counsel withheld the news of Debtor David's death from this court - electing to secretly proceed in the prosecution of this case without one of the Debtors properly a party before this court.

Having held this information, the surviving Debtor and counsel precluded the court from making the necessary decisions and determinations as to whether the case could be prosecuted. The Federal Rules of Bankruptcy Procedure are not ambiguous and clearly provide that the court prospectively must make a determination that the case may proceed in the event of the death of a debtor:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed** and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

FED. R. BANKR. P. 1016(emphasis added).

Debtor's confirmed Chapter 13 Plan requires very substantial monthly payments of \$4,375.00 per month to be made to fund the Plan. Second Amended Chapter 13 Plan, § 6.01; Dckt. 60. On Amended Schedule I Debtor listed having a combined monthly income (after very modest tax

withholding of only \$1,088 a month) of \$8,658. Dckt. 68 at 3-4.

From this Debtor had month expenses for the two debtors and four dependants - two grandchildren, an adult daughter, and an adult son. Amended Schedule J, *Id.* at 5-6. Though a family of six persons, Debtor stated that monthly expenses (exclusive of mortgage, property taxes, and property insurance payments) of (\$4,450.24). This left the Debtor with the monthly net income of \$4,208.43, which was slightly less than the required Plan payments.

Of this, \$2,780.67 was the deceased debtor's income. Additionally, there was a "contribution" of a son-in-law of \$2,772.08. Amended Schedule I, *Id.* at 4. It is not clear if the son-in-law "contributing" is the husband and parent of the daughter and two grandchildren which Debtor stated under penalty of perjury were dependants.

Debtor Karen and her counsel have usurped the court's role here, deciding two years ago not to report Debtor David's passing, and to just continue administration of the case like nothing happened.

If Debtor Karen and counsel had proceeded correctly in the past, the present request for waiver of the 11 U.S.C. § 1328 certifications would not be necessary. When a debtor passes away, but where further administration is possible and in the parties' best interest, then a personal representative may be appointed to resume the case. No representative, whom could easily make the 11 U.S.C. § 1328 certifications, was appointed here.

The way the present Motion was brought is problematic. Essentially, Debtor David is requesting the court waive *his* requirements under 11 U.S.C. § 1328. But, Debtor David does not have capacity to bring any kind of action, or make any request. The Motion as to the request for waiver lacks standing.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

Here, the case has been completely administered, and all payments have been made. On their petition, no claims for domestic support or claims related to the provisions of 11 U.S.C. § 522(q)(1) were listed, and no claim was filed by any creditor asserting the same. Debtor David Brian Cota has not received a prior discharge, and was able to complete the financial management course before his passing.

But, no basis for retroactive appointment of a personal representative and for determination that two years ago the Chapter 13 case for the deceased debtor should proceed has been presented. Though the Debtor and her counsel determined two years ago that the case should continue to be administered, the death of the deceased debtor was withheld from the court and no determination was made that the case could and should continue as to the deceased debtor.

The Motion is denied.

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

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

The Motion for Entry of Discharge filed by David Brian Cota and Karen Louise Slavich-Cota (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion **is denied**.

26. [19-24860](#)-E-13 **GERALD/BARBARA MILLER** **MOTION TO APPROVE LOAN**
[SLE-2](#) **MODIFICATION O.S.T**
9-19-19 [\[30\]](#)

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

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

Local Rule 9014-1(f)(3) 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 September 19, 2019. By the court’s calculation, 12 days’ notice was provided. The court issued an Order setting the hearing on shortened notice.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Incur Debt is granted.

The debtors, Gerald William Miller and Barbara Miller (“Debtor”) seek permission to enter a trial loan modification with creditor PHH Mortgage Services (“Creditor”) regarding its claim secured by Debtor’s real property commonly known as 42 W. Woodland Ave., Woodland, California.

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 Motion summarizes the terms as follows:

1. 3 trial period payments to begin September 1, 2019.
2. The payment shall be \$1,997.52, which includes principal and interest.

Debtor is not certain the interest rate or term of any permanent loan modification, but anticipates 5% over 40 years. The modification payment is a reduction from the current payment of \$2,433.85.

The court finds that the proposed trial modification, based on the unique facts and circumstances of this case, is reasonable. 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 Gerald William Miller and Barbara Miller (“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 trial loan payments as provided in Exhibit A (Dckt. 37) are authorized.

IT IS FURTHER ORDERED that the Debtor is authorized to make the trial loan modification payments to the Creditor directly for the months through and including February 2020, with such payment to be treated as if paid through the Trustee.

Final approval of the loan modification is subject to further order of the court pursuant to a separate motion.

27. [19-25021](#)-E-13 STEPHEN/KAREN GINGOLD MOTION TO VALUE COLLATERAL OF
[MMP-2](#) Michele Poteracke GM FINANCIAL
8-26-19 [21]

Tentative Ruling: No appearance at the September 26, 2019 hearing is required.

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

Sufficient Notice Not Provided, as discussed further below. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 26, 2019. By the court's calculation, 36 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.

**The Motion to Value Collateral and Secured Claim of GM Financial
("Creditor") is denied without prejudice.**

The debtors, Stephen Anthony Gingold and Karen Michelle Gingold, filed this motion seeking to value the claim of GM Financial.

A review of California's Secretary of State website shows there is no active business with the name "GM Financial." Proof of Claim, No. 4, shows that the creditor and party in interest is actually Americredit Financial Services, Inc. dba GM Financial.

Additionally, the Motion was served on:

GM Financial
PO Box 181145
Arlington, TX 76096-1145

Proof of Service, Dckt. 24. For seven years this court has made it clear that parties, be they debtors or creditors, must comply with the requirements under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, the Bankruptcy Code, and other applicable laws. As part of this, the court has provided parties and counsel with the following quote:

Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) (“Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.”).

The service on a P.O. Box is insufficient service.

A simple search of the Secretary of State website shows the creditor’s agent for service. The Motion is denied without prejudice so Debtor and Debtor’s counsel can properly serve the Motion on the proper party.

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

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

The Motion to Value Collateral and Secured Claim filed by Stephen Anthony Gingold and Karen Michelle Gingold (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

FINAL RULINGS

28. [14-32002-E-13](#) **KAO SAECHAO AND MYHANH** **MOTION TO INCUR DEBT**
[MJD-6](#) **NGUYEN** **9-2-19 [126]**
 Matthew DeCaminada

Final Ruling: No appearance at the October 1, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 2, 2019. By the court's calculation, 29 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.

Kao Ching Saechao and Myhanh Thi Nguyen ("Debtor") seeks permission to incur post-petition debt consisting a loan against Debtor's retirement account.

The Motion summarizes the terms of the loan as follows:

1. The lender is Cox Enterprises, Inc.
2. The initial amount of the loan would be \$5,035.00.
3. The fixed interest rate on the new loan would be 5.250%.

4. The loan provides for 113 biweekly payments in the amount of \$49.88.

5. The total finance charges of the loan would be \$636.44.

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. The Chapter 13 Trustee, David Cusick, filed a Response indicating non-opposition. Dckt. 137. 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 Kao Ching Saechao and Myhanh Thi Nguyen (“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 is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 129.

29.	<u>19-20606</u> -E-13 <u>ADR-1</u>	ROBERT WATTS AND SONYA Justin Kuney	MOTION TO CONFIRM PLAN SMITH8-7-19 <u>[31]</u>
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Final Ruling: No appearance at the October 1, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 7, 2019. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Robert Bernard Watts and Sonya Kristi Smith ("Debtor"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 28, 2019. Dckt. 42. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Robert Bernard Watts and Sonya Kristi Smith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on August 7, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. [19-23208-E-13](#) **PAUL/PAMELA ROBERTS** **MOTION TO CONFIRM PLAN**
[MJD-1](#) **Matthew DeCaminada** **8-27-19 [28]**

Final Ruling: No appearance at the October 1, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 27, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Paul Wayne Roberts and Pamela Lee Roberts ("Debtor"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on September 5, 2019. Dckt. 36. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Paul Wayne Roberts and Pamela Lee Roberts ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and

good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on August 27, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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Final Ruling: No appearance at the October 1, 2019 Hearing is required.

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

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

The Motion to Confirm the Plan is denied.
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The debtor, Wanda Collier-Abbott ("Debtor") seeks confirmation of the Chapter 13 Plan. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 16, 2019. Dckt. 101. Trustee opposes confirmation on the following grounds:

1. The present Motion fails to articulate what changes exist between this proposed plan and the prior plan, which the Trustee objected to and the court sustained that objection.
2. The proposed plan used an Ensminger provision but fails to provide for the Claim to be treated as a Class 3 in the event a loan modification is not approved.
3. The monthly payments to Real Time Resolutions and Select Portfolio

Servicing are insufficient to offer adequate protection.

4. The proposed payments to secured claims are not in equal monthly payments.

CREDITOR'S OBJECTION

Creditor Real Time Resolutions, Inc. as agent for RRA CP Opportunity Trust 2 ("Creditor") filed an Objection To Confirmation on September 16, 2019. Dckt. 104. Creditor opposes confirmation on the following grounds:

1. The plan is not feasible because it does not provide for, or have adequate funding for, Creditor's full claim.
2. The plan is too speculative and infeasible to be confirmed because it relies on a loan modification, and would not likely result in a successful reorganization.

DEBTOR'S CONSENT TO DENIAL

On September 26, 2019, Debtor filed a Consent To Denial stating the Motion should be voluntarily dismissed "instead of dissecting the pleadings." Dckt. 107.

DISCUSSION

The Debtor consents to the denial of the Motion. The 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 Chapter 13 Plan filed by the debtor, Wanda Collier-Abbott ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

32. [19-21310-E-13](#)
[RMP-2](#)

WANDA COLLIER-ABBOTT
Richard Jare

**OBJECTION TO CONFIRMATION OF
PLAN BY REAL TIME RESOLUTIONS,
INC**

The “Objection” to Confirmation of Plan was considered in conjunction with the Debtor’s Motion To Confirm, which Motion was denied.

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| 33. | <u>19-20911</u> -E-13
<u>MJD</u> -1 | CODY GOLDTHRITE
Matthew DeCaminada | OBJECTION TO CLAIM OF U.S.
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,
CLAIM NUMBER 16-1
8-15-19 [<u>23</u>] |
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Final Ruling: No appearance at the October 1, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 15, 2019. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 16 of the U.S. Department of Housing and Urban Development is sustained, and the claim is disallowed in its entirety.

The debtor, Cody William Goldthrite, (“Objector”) requests that the court disallow the claim of the U.S. Department of Housing and Urban Development (“Creditor”), Proof of Claim No. 16

("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$65,773.76.

Objector argues that this Claim and Proof of Claim, No. 1, are duplicative of each other.

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

Here, Proofs of Claim Nos. 1 and 16 are identical. The supporting Notes and Deeds of Trust filed as attachments are the same. The two claims being duplicative of the same debt, the Objection is sustained and the Claim is disallowed in its entirety.

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

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

The Objection to Claim of the U.S. Department of Housing and Urban Development ("Creditor") filed in this case by debtor, Cody William Goldthrite, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 16 of Creditor is sustained, and the claim is disallowed in its entirety.

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

Final Ruling: No appearance at the October 1, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on July 30, 2019. By the court's calculation, 63 days' notice was provided. 14 days' notice is required.

The Motion to Withdraw as Attorney 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.

The hearing on the Motion to Withdraw as Attorney has been continued to 3:00 p.m. on December 17, 2019, by prior order of the court.

Tracy Wood ("Movant"), counsel of record for David Jerome Rynda ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case.

At a recent Status Conference for this case and a related Adversary Proceeding, No. 19-02023, Movant (on behalf of Debtor) reported that a settlement was being discussed, and that this Motion should be continued.

35. [19-24120](#)-E-13 JOSE MORAN
[DPC-1](#) Steele Lanphier

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID P
CUSICK
8-6-19 [19]**

Final Ruling: No appearance at the September 26, 2019, hearing is required.

The Objection to Confirmation is dismissed without prejudice.

The Chapter 13 Trustee, David Cusick (the "Trustee"), having filed an Ex Parte Motion to

Dismiss the pending Objection on September 26, 2019, Dckt. 30; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Jose Antonio Moran (“Debtor”); **the *Ex Parte* Motion is granted, the Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on June 28, 2019, is confirmed.**

Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

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| 36. | <u>19-23540-E-13</u>
<u>DPC-1</u> | LINDSAY CANNADAY
Matthew DeCaminada | CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-23-19 <u>[24]</u> |
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The court having issued an Order overruling the Objection to Confirmation of Plan (Dckt. 48), the matter is removed from the calendar.

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| 37. | <u>10-47243-E-13</u>
<u>HLG-2</u> | ALLAN/MALIA BALLARD
Kristy Hernandez | MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA) N.A.
8-29-19 <u>[105]</u> |
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Final Ruling: No appearance at the October 1, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 29, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of the debtors, Allan M. Ballard and Malia N. Ballard ("Debtor") commonly known as 712 Vintage Avenue, Fairfield, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,606.28. Exhibit C, Dckt. 108. An abstract of judgment was recorded with Solano County on October 20, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$204,500.00 as of the petition date. Dckt. 1. The unavoidable and senior liens that total \$344,939.44 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 102. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1.00 on Amended Schedule C. Dckt. 103.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Allan M. Ballard and Malia N. Ballard ("Debtor") having been presented to

the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank (South Dakota) N.A. , California Superior Court for Solano County Case No. FCM115188, recorded on October 20, 2010, Document No. 201000097058, with the Solano County Recorder, against the real property commonly known as 712 Vintage Avenue, Fairfield, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

38.	<u>18-23464</u> -E-13 <u>PGM-5</u>	CYNTHIA PAYSINGER Peter Macaluso	MOTION TO MODIFY PLAN 8-16-19 [120]
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Final Ruling: No appearance at the October 1, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 16, 2019. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Cynthia J. Paysinger (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on September 16, 2019. Dckt. 130. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Cynthia J. Paysinger (“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 16, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

39.	19-24667 -E-13 JTN-1	CINDY WRIGHT Jasmin Nguyen	MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORPORATION 8-9-19 [12]
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Final Ruling: No appearance at the October 1, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 9, 2019. By the court’s calculation, 53 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 Nissan Motor Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$16,075.00.

The Motion filed by Cindy Leann Wright ("Debtor") to value the secured claim of Nissan Motor Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 14. Debtor is the owner of a 2014 Nissan Murano ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$16,075.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on September 16, 2019, noting a proof of claim was filed by Creditor which does not assert a value of the Vehicle.

Creditor filed a Proof of Claim, No. 1 ("Claim"), on August 2, 2019. Creditor states its claim is secured in the amount of \$20,224.81.

DISCUSSION

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

Debtor here argues that he based his opinion of value of the Vehicle on his first hand knowledge of the Vehicle and review of NADA valuations. This testimony is more credible than that provided by Creditor's bankruptcy administrator in the Claim. Furthermore, the Claim does not actually assert a value of the Vehicle—it is just stated the the Creditor's claim is fully secured.

The lien on the Vehicle's title secures a purchase-money loan incurred on November 27, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a

balance of approximately \$20,224.81. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$16,075.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Cindy Leann Wright ("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 Nissan Motor Acceptance Corporation ("Creditor") secured by an asset described as 2014 Nissan Murano ("Vehicle") is determined to be a secured claim in the amount of \$16,075.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$16,075.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

40. [19-24667-E-13](#)
[DPC-1](#)

CINDY WRIGHT
Jasmin Nguyen

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
9-3-19 [\[19\]](#)

30 thru 31

Final Ruling: No appearance at the October 1, 2019 Hearing is required.

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 September 3, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Debtor’s plan relies on a Motion To Value (Dckt. 12) set for hearing the same day as the hearing on this Objection.

A review of the docket shows the court has granted that Motion.

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

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

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

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

IT IS ORDERED that the Objection is overruled, and Cindy Leann Wright’s (“Debtor”) Chapter 13 Plan filed on July 24, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41.	19-24680 -E-13 AP-1	EDWARD/KIRSTEN VARNER Scott Johnson	OBJECTION TO CONFIRMATION OF PLAN BY MUFG UNION BANK, N.A. 8-23-19 [17]
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**The court issued an Order approving a stipulation resolving this matter.
Therefore, the matter is removed from the calendar.**

42. [15-28582](#)-E-13 LYNN SANSOM
Gerald Glazer

**ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
9-10-19 [\[97\]](#)**

Final Ruling: No appearance at the October 1, 2019, hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 5, 2019. The court computes that 26 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$25.00.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 1, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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.

<p>The Motion to Confirm the Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Tema Kay Robinson ("Debtor"), has provided evidence in support of confirmation. No opposition or other responsive pleading was filed by any party in interest. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on August 20, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.