

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 16, 2018 at 2:00 p.m.

1. [18-23503](#)-C-13 MICHAEL YANG OBJECTION TO CLAIM OF REAL TIME
[DJC](#)-1 Diana Cavanaugh RESOLUTIONS, INC., CLAIM NUMBER
4
8-24-18 [[31](#)]

Final Ruling: No appearance at the October 16, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2018. Forty-four 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 4-1 of Real Time Resolutions, Inc. as agent for Ellington Loan Acquisition 2007-2, LLC is sustained, and the claim is disallowed in its entirety.

Michael Yang, the Debtor, ("Objector") requests that the court disallow the claim of Real Time Resolutions, Inc. as agent for Ellington Loan Acquisition 2007-2, LLC ("Creditor"), Proof of Claim No. 4-1 ("Claim"),

Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$251,434.73. Objector asserts that Creditor's claim relates to a "first mortgage loan" in connection to a in February 2007 for the purchase of Objector's former personal residence located at 2023 Bonavista Way Sacramento, CA. (Dckt. 33, Yang Declaration). Objector further asserts that the residence was sold at a foreclosure sale in September of 2008. Objector claims that no payments were made on the loan since the property was foreclosed in 2008. Objector is unaware of any law suit initiated against him related to this obligation.

DISCUSSION

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

The court notes that neither the Debtor's Motion nor the documents filed in support of the Creditor's claim include any documents related to the 2008 foreclosure. The remarks associated with Creditor's Claim No. 4-1 state "Foreclosed out junior mortgage @ 2023 Bonavista Way Sacramento, CA 95832." As such, the court determines that there is no dispute that a foreclosure of the subject property occurred. Objector claims that he has not made any payment on the obligation since September of 2008, no party has provided evidence to contrary to this position. Objector claims that no law suit relating to the obligation has been filed, again this assertion has not been contested.

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

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

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

The Objection to Claim of Ellington Loan Acquisition 2007-2, LLC ("Creditor"), filed in this case by Michael Yang, the Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 4-1 of Ellington Loan Acquisition 2007-2, LLC is sustained, and the claim is disallowed in its entirety.

Tentative Ruling: The Motion to Confirm the Debtor's First 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First 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). 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 court's decision is to grant the Motion to Confirm the Plan.

The Chapter 13 Trustee flags for the court that Debtors' Motion to Confirm may be misleading. Debtors' Plan provides for 36 monthly payments of \$100 with 0% paid to the general unsecured creditors. Debtors' Motion indicates that the unsecured claims will receive approximately 1%, however, this is not what is provided for in the Plan. The Plan is other feasible and the Debtors are current.

RULING

At the hearing -----.

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 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, Debtors' Chapter 13 Plan filed on August 27, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Confirm the Debtor's First 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First 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). 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 court's decision is to grant the Motion to Confirm the Plan.

The Chapter 13 Trustee flags for the court that Debtors' Motion to Confirm is silent regarding increases to household expenses. (Dckt. 36). The Trustee notes that the increases appear reasonable for a family of 5.

RULING

At the hearing -----.

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 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, Debtors' Chapter 13 Plan filed on August 28, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2018. 28 days' notice is required. That requirement was met.

The Motion to Employ 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 Employ is granted.

Lorraine Legg ("Debtor") seeks to employ Remax Gold ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to sell property of the estate commonly known as 1791 Landmark Drive, Vallejo, CA.

The Debtor argues that Broker's appointment and retention is necessary to establish the fair market value of the property and market the property. The Broker agrees to take a commission of 5% (2.5 % if representing both buyer and seller) upon sale of the Property.

Robin Jaurique, a real estate agent employed by Remax Gold, testifies that she is a licensed real estate agent for the state of California and is familiar with the area where the subject property is located. Robin Jarurique testifies she and Remax Gold do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

TRUSTEE'S RESPONSE:

The Chapter 13 Trustee filed a response stating that he does not oppose the Motion but indicates that the commission provision is ambiguous because it is not clear whether the Broker does in fact represent both the buyer and the seller of the property. (Dkct. 26). The Trustee requests that the Order clarify this issue.

At the hearing ----.

DISCUSSION:

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Remax Gold as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 22.

Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Lorraine Legg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ Robin Jaurique as Broker for the Debtor on the terms and conditions as set forth in the Listing Agreement as Exhibit A, Dckt. 22.

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

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

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the 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 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.

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) (iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. Fourteen days' notice is required. That requirement was met.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Avoid Judicial Lien is granted.

A judgment was entered against the Debtor in favor of The Best Service Co., Inc. ("Creditor") for the sum of \$17,862.73. The abstract of judgment was recorded with Sacramento County on May 29, 2018. That lien attached to the Debtor's residential real property commonly known as 7565 Watson Way Citrus Heights, California.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$402,560.00 as of the date of the petition. The unavoidable consensual liens total \$290,613.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 this judicial lien impairs the

Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

Both the Chapter 13 Trustee and the Creditor filed non-oppositions. (Dckts. 21; 27).

ISSUANCE OF A MINUTE ORDER

An 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 the Debtor(s) 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 The Best Service Co., Inc., Sacramento County Superior Court Case No. 34-2017-00209150, Document No. 201805290101, recorded on May 29, 2018, with the Sacramento County Recorder, against the real property commonly known 7565 Watson Way Citrus Heights, California, is avoided 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.

No Tentative Ruling: The Motion to Confirm the Debtor's Second 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First 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). 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 court's decision is to grant the Motion to Confirm the Plan.

The Chapter 13 Trustee flags for the court that Debtor's declaration indicates that the Debtor has reduced her expenses by \$100.00 and does not oppose the confirmation if Debtor inserts language in the order confirming the Plan with increased Plan payments of \$1,815.92.

RULING

At the hearing -----.

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 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, Debtors' Chapter 13 Plan filed on September 1, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [18-20628](#)-C-13 LEON DOTSON
[18-2061](#) Peter Macaluso
DOTSON V. CITY OF SACRAMENTO

CONTINUED MOTION TO DISMISS
CAUSE(S) OF ACTION FROM
COMPLAINT
7-11-18 [[13](#)]

No Tentative Issued. Case Ordered to Dispute Resolution (Dckt. 48), no
appearances necessary.

Final Ruling: No appearance at the October 16, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 18, 2018. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Ally Financial Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$23,000.00.

The Motion filed by David Lopez and Katie Lopez ("Debtors") to value the secured claim of Ally Financial Inc. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2015 Ram 1500 ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$23,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in December 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 \$37,350.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$23,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

On September 27, 2018, the Chapter 13 Trustee filed a response stating that the Trustee does not oppose the Motion to Value. (Dckt. 18). The Trustee notes that Debtors provide for the Creditor on Schedule D and in Class

2B of the proposed Plan. The Creditor has not filed a proof of claim and the bar date is November 26, 2018.

The court notes that on October 1, 2018 the Creditor filed Claim 4-1 asserting a claim of \$37,553.35 with \$23,800.00 listed as secured.

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Financial Inc. "Creditor") secured by an asset described as a 2015 Ram 1500("Vehicle") is determined to be a secured claim in the amount of \$23,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$23,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Tentative Ruling: The Motion to Modify 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Modified 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). 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 court's decision is to grant the Motion to Modify the Plan.

The Chapter 13 Trustee responds that he will not oppose the modification if the order confirming the modified Plan corrects the statement in Section 7.01 to correctly reference that the payment on August 25, 2018 is the tenth month of the Plan not the eighth month of the Plan.

Debtors respond that they are agreeable to the correction proposed by the Trustee.

The Plan, with the clarification, 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 Modify the Chapter 13 Plan filed by the 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, Debtors' Chapter 13 Plan filed on September 4, 2018, as incorporating the agreed upon correction, is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying 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.

10. [18-24147](#)-C-13 JUDY SYPNIESKI
[AP-1](#) Mary Ellen Terranella

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY U.S.
BANK, N.A
8-22-18 [[19](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee, and the Office of the United States' Trustee on August 22, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to overrule the Objection.

Creditor, U.S. Bank, N.A., opposed confirmation of the Plan based on the following:

A. Debtor's plan does not cure pre-petition arrears of Creditor's secured claim (Claim No. 3-1). Debtor's Plan lists Creditor's claim as a Class 4 creditor.

B. Debtor does not have adequate disposable income to fund

the proposed Plan. Debtor's Plan relies on income contributions from undisclosed family members of \$675.00 a month for (60) months.

At the hearing September 18, 2018 hearing, the parties were granted additional time to determine if they could reach a stipulated agreement. On October 4, 2018, the parties filed a Joint Stipulation resolving the Objection. (Dckt. 35).

The Plan compiles 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 Creditor U.S. Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. [18-24248](#)-C-13 VERNON STONE
[DPC-1](#) Bruce Dwiggins

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
8-13-18 [[14](#)]

No Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the 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 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.

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) (iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 13, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan because Debtor's Plan is not the Debtor's best efforts. Debtor is below the median income and proposes Plan payments of \$175.00 per month for 36 months, with a 2% dividend to the unsecured creditors.

Debtor deducts on Schedule J, \$400.00 a month for "**Pet Care and Food.**" The Debtor admitted to having a collie and house cat at the Meeting of Creditors held on August 9, 2018. Debtor's proposes to pay \$6,300.00 over the next 36 months, while the pet care over the next 36 months is \$14,400.00, which is \$8,100.00 more than what Debtor proposes to pay through the Plan.

The September 11, 2018 hearing was continued to permit the Debtor additional time to support the claimed pet care and food expenses.

At the hearing -----.

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

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

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

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

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

12. [14-29550](#)-C-13 TRISHA MEJIA DONNELL
[MET](#)-4 Mary Ellen Terranella

MOTION TO RECONSIDER DISMISSAL
OF CASE
9-27-18 [[135](#)]

DEBTOR DISMISSED: 09/20/2018

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

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

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

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 September 27, 2018. 14 days' notice is required. That requirement was met.

The Motion to Vacate 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 Vacate is xxxx, and the order dismissing the case (Dckt.132) is xxxxxxx.

Trisha Donnell ("Debtor") filed the instant case on September 24, 2014. Dckt. 1. An order confirming the plan was entered on December 16, 2014. Dckt. 38.

On August 6, 2018, David Cusick ("the Chapter 13 Trustee") filed a Motion to Dismiss the Case due to failure to make required plan payments. Dckt. 127. On September 5, 2018, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 131. The ruling was final because Debtor did not file any opposition.

On September 27, 2018, Debtor filed this instant Motion to Vacate, claiming that she mistakenly thought she had until September 22, 2018, rather than August 22, 2018, to respond to the Trustee's Motion to

Dismiss. Debtor also acknowledges receiving, and not responding to, telephone calls from her attorney prior to August 22, 2018. (Dckt. 138, Donnell Declaration). Debtor states that she was behind on Plan payments as a result of spousal support payment reductions and caring for a sick family member. Debtor claims she will be able to become current with the help of her adult children. Additionally, Debtor notes that she has one more year in her Plan and requires the completion of the Plan to retain her home.

APPLICABLE LAW

While Debtor's Motion requests that the court reconsider its Order dismissing the case, the court will consider the Debtor's Motion as one seeking to vacate the Order, per Federal Rule of Civil Procedure 60(b).

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

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

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

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

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

DISCUSSION

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

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

The court recognizes that Debtor stated that she did not communicate with her attorney prior to the deadline in order to provide the bases for opposing the Motion. However, this court has stated that in such cases the attorney should file a response notifying the court of such circumstances.

Debtor states that she will be able to cure the payment delinquencies with the assistance of her adult children, however, Debtor's request is not accompanied by declarations from her adult children.

At the hearing -----.

Therefore, in light of the foregoing, the Motion is **xxxx**, and the order Dismissing the Case (Dckt. 132) is **xxxx**.

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

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

The Motion to Vacate filed by Trisha Donnell ("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 **xxxx**, and the order dismissing the case (Dckt. 132) is **xxxx**.

13. [17-27056](#)-C-13 PATRICK BERNARD
[AF-6](#) Arasto Farsad

MOTION TO AVOID LIEN OF
JONATHAN NEIL AND ASSOCIATES,
INC.
9-5-18 [[73](#)]

Final Ruling: No appearance at the October 16, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2018. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Jonathan Neil and Associates, Inc. ("Creditor") against property of Patrick Bernard ("Debtor") commonly known as 730 Stella Street, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$124,930.57. An abstract of judgment was recorded with Solano County on April 6, 2017, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$196,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$58,192.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C. Dckt. 1.

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 Patrick Bernard ("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 Jonathan Neil and Associates, Inc., California Superior Court for Santa Clara County Case No. 115CV285729, recorded on April 6, 2017, Document No. 201700028779, with the Solano County Recorder, against the real property commonly known as 730 Stella Street, Vallejo, 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.

14. [18-23557](#)-C-13 DANIEL BUTLER
[DPC-2](#) Kyle Schumacher

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-14-18 [[33](#)]

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2018. 28 days' notice is required. That requirement was met.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in the amount of \$xxxxx**.**

David Cusick ("the Chapter 13 Trustee") objects to Daniel Butler's ("Debtor") claimed exemptions under California law because they exceed the exemption allowance under C.C.P. § 703.140(b) (1), (b) (5). Debtor claims a total of \$37,642.00 in exemptions and the maximum allowance is \$28,225.00, claiming an excess of \$9,417.00 in exemptions. The Debtor claims:

- A. \$26,800.00 in 3220 Groveland Way, Antelope, CA (C.C.P. § 703140(b) (1));
- B. \$7,500.00 in undeveloped land in Gainesville, GA (C.C.P. § 703140(b) (5));
- C. \$3,242.00 in a 2003 Infinity G35 (C.C.P. § 703140(b) (5));
and
- D. \$100.00 in books, pictures, art objects, cd's and dvd's (C.C.P. § 703140(b) (5)).

The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed in the amount of \$**xxxxxx**..

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

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

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemptions for under California Code of Civil Procedure § 703.140(b)(1), (b)(5). are disallowed in the amount of ~~xxxxxx~~.

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to grant the Motion to Confirm the Modified Plan.

TRUSTEE'S OBJECTION:

The Trustee responds to the confirmation on the basis that:

A. The Debtors propose to cure a post-petition default of the mortgage in the plan. Debtors did not list separately the amount of pre-petition and post-petition arrears in Class 1 of the plan. The Trustee cannot determine the amount of post-petition arrears Debtor intends to pay over the remainder of the plan.

B. The Trustee is uncertain about proposed plan payments in Section 7.01. The Debtors refer to \$80,358.00 for months 1 -18 (February 2017 through August 18). This period is actually 19 months. The Trustee believes the Debtors intended for the payment of \$5,966.00 per month to be effective September 25, 2018 which would be months 20 - 60.

C. The Debtor's declaration discloses an apparent gift (trade in of Debtor 2's mother's vehicle) which Debtor used on the cash purchase of a 2015 Nissan Pathfinder. The Trustee states that while the Debtors did not report the gift or the transaction, it appears reasonable and the Trustee does not oppose the transaction if the court does not oppose it.

DEBTOR'S RESPONSE:

The Debtors agree that the Order Confirming the Plan can clarify the pre-petition arrears of \$562.94 per month (\$23,080.35/ 41 months) and post-petition arrears of \$303.35 per month (\$12,437.42/ 41 months). These two amounts total the \$866.29 shown in Class 1 of the First Modified Chapter 13 Plan.

The Debtors also agree that the Order Confirming the Plan can separate the pre and post-petition arrears for the second Class 1 creditor, George and Julie Kidney, as pre-petition arrearage of \$26.00 per month and post-petition arrearage of \$46.54 per month.

Debtors acknowledge that the labels for the months used in Section 7.01 were mislabeled but the amounts and calculations were correct. As stated in the additional provisions the Debtors are to resume their plan payments in September 2018.

Debtors disagree that the transaction required court authorization as the Debtors were not incurring new debt or disposing of their own property (Debtor 2's mother's vehicle).

DISCUSSION:

At the hearing -----.

The modified Plan, with the agreed upon clarification, 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 Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan is confirmed counsel for the Debtors 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. [18-24560](#)-C-13 MICHAEL/JUANITA CHOCHLA
[ALF](#)-2 Ashley Amerio

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
9-11-18 [[28](#)]

Thru #17

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2018. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Americredit Financial Services, Inc DBA GM Financial ("Creditor") is ~~xxxxxx~~, and Creditor's secured claim is determined to have a value of \$~~xxxx.xx~~.

The Motion filed by Michael Chochla and Juanita Chochla ("Debtors") to value the secured claim of Americredit Financial Services, Inc. dba GM Financial ("Creditor") is accompanied by Debtors' declaration. Debtor is the owner of a 2015 Chevrolet Traverse ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$19,123.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on August 23, 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 \$26,123.51.

TRUSTEE RESPONSE:

The Trustee responds that Debtors' declaration merely states that the value is based on Debtors' "significant personal experience and knowledge of the property" and does not provide specifics regarding the style, condition, options, or needed repairs. Debtors' Plan includes "GM Financial/ 2015 Chevrolet Travers LS Sport Utility 4D 15,000 miles (Good condition, value per kbb.com)." (Dckt. 2) While Debtor's Schedules A/B describe the vehicle as a 2015 Chevrolet Traverse LS Sport Utility 4D with 32,980 miles and a current value of \$19,132.00.

CREDITOR OPPOSITION:

Creditor opposes the Debtors' Motion asserting that the Vehicle should be valued no less than \$24,850.00. Creditor submitted a NADA Guides report listing the retail value of the Vehicle as described in Debtor's Schedules A/B with 32,980 miles to support their valuation. (Dckt. 43, Exhibit C).

The court notes that the Creditor's NADA Guide report was based on a 2015 Chevrolet Traverse Utility 4D 2LT and the Debtor claims to own a 2015 Chevrolet Travers LS Sport Utility 4D. The model identified by the Debtor is a lower model than the one the Creditor's report is based.

DEBTORS' REPLY:

Debtors reply that the Vehicle has needed repairs for numerous dents and scratches which Debtors claim supports the \$19,123.00 valuation. Further Debtors stated they obtained a retail replacement appraisal from West Auctions located at 427 Cleveland Street, Woodland, CA from Donna Bradshaw valuing the Vehicle at \$15,600.00. (Dckt. 50, Exhibit A).

DISCUSSION:

At the hearing -----.

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 \$xxxx.xx, 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 Michael Chochla and Juanita Chochla ("Debtors") having been presented to the court, and upon review of

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Americredit Financial Services, Inc. dba GM Financial ("Creditor") secured by an asset described as 2015 Chevrolet Traverse ("Vehicle") is determined to be a secured claim in the amount of \$xxxx.xx, 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 \$xxxx.xx and is encumbered by a lien securing a claim that exceeds the value of the asset.

17. [18-24560](#)-C-13 MICHAEL/JUANITA CHOCHLA
[DPC-1](#) Ashley Amerio

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
9-5-18 [[24](#)]

No Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on September 5, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to ~~xxxxx~~ the Objection.

The Trustee opposes confirmation of the Plan based on the following grounds:

A. Debtors Plan relies on a Motion to Avoid Lien of Midlanding Funding, LLC. The court notes that Debtors' Motion to Avoid the Lien was granted on September 11, 2018. Dckt. 33.

B. Debtors list GMC Financial as a Class 2(A) creditor regarding a 2015 Chevrolet Traverse. Based on the claim relating to this creditor (Claim

1-1 filed by Americredit), it appears the vehicle can be valued.

DEBTOR'S RESPONSE:

Debtors respond by stating that a Motion to Value Collateral of Americredit Financial Services, Inc. dba GM Financial was filed on September 11, 2018 and is set for hearing on October 16, 2018. Debtor requested that this hearing be continued to October 16, 2018 to permit the court to resolve the Motion to Value and rule on the Trustee's Objection to Confirmation.

The court continued the hearing to allow for the resolution of the pending Motion to Value.

At the hearing -----.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is **xxxxxx**.

18. [18-22165](#)-C-13 CECILIA MOMOH
[SLE](#)-2

MOTION TO CONFIRM PLAN
Steele Lanphier9-4-18 [[40](#)]

Final Ruling: No appearance at the October 16, 2018 hearing is required.

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

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

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

The Motion to Withdraw As Attorney having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

19. [18-24367](#)-C-13 FRANCES PORTER
[JJC-1](#) Julius Cherry

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
8-23-18 [[16](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2018. 28 days' notice is required. That requirement was met.

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 Santander Consumer USA, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$4,800.00.

The Motion filed by Frances Porter ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Nissan Versa ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$2,005.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor lists the value of the Vehicle as \$4,800.00 on Schedule A/B. (Dckt. 1). Debtor seeks to value the Vehicle at \$2,005.00 by deducting from the \$4,800.00 the amount the Debtor paid to the Creditor for an optional service contract (\$2,000.00) and an optional gap contract (\$795.00). Debtor claims that these amounts of the claim are not included in the purchase-money security instrument because they do not hold a close nexus to the property securing the obligation. Debtor argues that the amounts attributable to those optional contracts should be treated as unsecured claims.

TRUSTEE'S RESPONSE:

On September 24, 2018, the Chapter 13 Trustee filed a response stating

that the Creditor is included in Class 2(B) in the Debtor's Plan with a claim amount of \$8,231.00 and a value of \$4,079.00. The Vehicle is included on Debtor's Schedule A/B with a reported value of \$4,800.00. The Creditor filed Claim No. 1-1 for \$8,135.43 reporting \$5,925.00 as secured. The installment contract reflects a signature date of March 20, 2014 and includes the optional service contracts identified by the Debtor.

DISCUSSION:

The case upon which Debtor largely relies, *In Re Penrod*, involves a loan for a new vehicle that incorporated the remainder of the debt secured by debtor's trade-in vehicle. *Americredit Financial Services, Inc. v. Marlene A. Penrod* (In re Penrod), 611 F.3d 1158, 1159 (9th Cir. 2010). *In Re Penrod* is inapplicable to the current case. In that case, the creditor was seeking a total prohibition on the valuation of the secured debt based on its recent purchase and the hanging paragraph of 11 U.S.C. § 1325(a). Here, Debtor is seeking to deduct from the fair market value of the Vehicle the value of an optional service contract and optional gap insurance for a debt incurred more than 901 days before the filing of the petition. Debtor has not provided authority for the method of separating the purchase money security interests (secured) from the optional service contract and optional gap insurance (unsecured) for an obligation that falls outside of the 910 provision of 11 U.S.C. § 1325(a).

Here, Debtor does not contest that Creditor has a claim secured by a lien on property of the estate. Pursuant to 11 U.S.C. § 506, Creditor's claim is secured to the extent of the value of the Creditor's interest in the estate's interest in the property. The court notes that the reported value of the Vehicle on Debtor's schedules is \$4,800.00. (Dckt. 1). Debtor's Declaration in support of the Motion to Value does not provide any other statement modifying the value of the Vehicle. (Dckt. 19).

However, even assuming that the Debtor would be entitled to peel off the debts associated with optional contracts incurred more than 910 days from the petition, Debtor's arithmetic application does not hold water. Creditors Claim 1-1 reports an obligation of \$8,231.00. The portion of that debt that Debtor claims is attributable to the optional contracts is \$2,795.00 (assuming no payments on those debts have ever been made). Thus, the arguable remaining value of the claim attributable to the Vehicle itself would be \$5,436.00. As such, the remaining amount of the obligation attributable to the Vehicle itself (\$5,436.00) exceeds the Debtor's reported value of the Vehicle (\$4,800) and would not support the argument that the secured portion of the debt should fall below the value of the replacement cost of the Vehicle.

RULING:

The lien on the Vehicle's title secures a purchase-money loan incurred on March 20, 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 \$8,231.00. 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 **\$4,800.00** 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 in part.

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 Frances Porter ("Debtor") to 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 in part, and the claim of Santander Consumer USA, Inc. ("Creditor") secured by an asset described as a 2012 Nissan Versa ("Vehicle") is determined to be a secured claim in the amount of \$4,800.00 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 \$ 4,800.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the October 16, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by the creditors. The Chapter 13 Trustee withdrew his Opposition (Dckt. 34) on September 27, 2018. (Dckt. 39).

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 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, Debtor's Chapter 13 Plan filed on September 6, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [18-24870](#)-C-13 ALICE RANSOM
[AP-1](#) Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
9-13-18 [[14](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 13, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

Creditor, Bank of New York Mellon FKA the Bank of New York, as Trustee for the benefit of the Certificate holders of the CWHEQ Inc, Home Equity Loan Asset-Backed Certificate Series 2006-S3, opposes confirmation of the Plan based on the following:

A. Debtor's Plan provides for Creditor in Class 4. The Plan does not provide for payment of pre-petition arrears in the amount of \$817.22. Additionally, the Plan does not provide for the lump sum payment of \$70,174.18 which will come due on July 1, 2021 as a result of the maturity of the obligation.

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and 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 Bank of New York Mellon FKA the Bank of New York, as Trustee for the benefit of the Certificate holders of the CWHEQ Inc, Home Equity Loan Asset-Backed Certificate Series 2006-S3, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

22. [18-24873](#)-C-13 LAWRENCE/LISA NEULA
[NLG-1](#) Richard Kwun

OBJECTION TO CONFIRMATION OF
PLAN BY ARVEST CENTRAL MORTGAGE
COMPANY
9-14-18 [[16](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 14, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

Creditor, Averest Central Mortgage Company, opposes confirmation of the Plan based on the following:

A. Creditor asserts that the post-petition payment amounts need to be \$2,956.70, not a payment of \$1,846 as provided for in Debtor's Plan.

B. Debtor's Plan indicates there are \$0.00 in unpaid pre-petition arrears. Creditor claims that there are pre-petition arrears of \$2,956.70.

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and 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 Averest Central Mortgage Company having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the October 16, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 court's decision is to grant the Motion to Modify the Plan.

The Trustee opposed confirmation on the basis that:

A. Debtor is delinquent \$6,050.00 under the proposed terms of the Plan. The Debtor has paid a total of \$51,875.00 into the Plan.

DEBTOR'S RESPONSE:

Debtor's counsel responds, without a declaration from the Debtor, that the delinquency will be cured prior to the hearing.

The hearing was continued on October 2, 2018 to permit the Debtor additional time to cure the delinquency. On October 3, 2018, the Trustee confirmed that the required payments were made and no longer opposes the Motion.

The Plan does comply 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 Modified Chapter 13 Plan filed by the Debtor having been presented to the court, and

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

IT IS ORDERED that Motion to Confirm the Modified Plan
is granted and the proposed Chapter 13 Plan 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.

Final Ruling: No appearance at the October 16, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors.

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 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, Debtor's Chapter 13 Plan filed on August 28, 2018 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Penny Pelkey, the Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1125 Cornfield Drive, Roseville, California ("Property"). Debtor states that the sale will generate enough funds to pay all of the allowed creditors a 100% dividend. (Dckt. 34, Pelkey Declaration).

The proposed purchaser of the Property are Steven and Brenda Pieper, and the terms of the sale are:

- A. Purchase price of \$280,000.00;
- B. Debtor's reverse mortgage held by American Advisors Group in the amount of \$181,012.68 paid from the proceeds of the sale by Debtor (sale not intended to be free and clear of liens);
- C. \$50,000.00 of the proceeds to be directed to the Chapter 13 Trustee and the remainder to the Debtor;

RESPONSE OF AMERICAN ADVISORS GROUP:

American Advisors Group, the holder of the reverse mortgage, filed a non-opposition to the sale, so long as the lien is paid off in full.

TRUSTEE'S RESPONSE:

The Trustee filed a response stating that he did not oppose the sale so long as the Order directs the payment of \$50,000.00 to be paid to the Trustee from the escrow, prior to any distribution to the Debtor.

DISCUSSION:

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale provides for full payment of the allowed claims.

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

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

The Motion to Sell Property filed by Penny Pelkey, Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Penny Pelkey, the Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Steven and Brenda Pieper or nominee ("Buyer"), the Property commonly known as 1125 Cornfield Drive, Roseville, California("Property"), on the following terms:

A. The Property shall be sold to Buyer for \$208,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 35, 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. The Trustee shall receive a distribution of \$50,000.00 from the escrow account prior to any distribution made to

the Debtor.

D. Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

26. [18-24686](#)-C-13 KEVIN MEDLEY
[DPC-1](#) Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-11-18 [[24](#)]

Thru #27

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 11, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor is delinquent \$345.00, with another payment of \$345.00 due prior to the hearing. Debtor has paid a \$0.00 into the plan.

B. Debtor does not appear to have not filed all required tax returns for the four year period preceding the filing of the Petition. Claims filed by the IRS and the Franchise Tax Board reflect that returns for the tax years 2015 and 2017 have not been filed.

C. Debtors Plan relies on a Motion to Value and is otherwise not feasible. The court notes that the Motion to Value is set for hearing on October 16, 2018.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Elite Acceptance Corporation. Debtor has filed a Motion to Value the Secured Claim of Elite Acceptance Corporation. Dckt. 19. The court anticipates granting Debtor's Motion to Value on October 16, 2018; however, the delinquent payments and failure to file required tax returns are sufficient reasons to deny confirmation of a Plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not made all required payments or filed all required tax returns. 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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

27. [18-24686](#)-C-13 KEVIN MEDLEY
[PGM-1](#) Peter Macaluso

MOTION TO VALUE COLLATERAL OF
ELITE ACCEPTANCE CORPORATION
9-9-18 [[19](#)]

Final Ruling: No appearance at the October 16, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2018. Twenty-eight days' notice is required. That requirement was met.

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 Elite Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$4,000.00.

The Motion filed by Kevin Medley ("Debtor") to value the secured claim of Elite Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Chevy Tahoe ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$4,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See FED. R. EVID. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in May 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 \$8,017.00. 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 \$4,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

On September 24, 2018, the Chapter 13 Trustee filed a response stating that Debtor's proposed Plan includes the Creditor in Class 2(B) with a claim

amount of \$8,017.00 and a value of \$4,000. The Debtor also included the Vehicle on his Schedules A/B with a reported value of \$4,000.

The Creditor filed a claim on October 3, 2018 listing a secured claim of \$8,073.86, but did not file a response to Debtor's Motion.

The court notes that on October 1, 2018 the Creditor filed Claim 4-1 asserting a claim of \$37,553.35 with \$23,800.00 listed as secured.

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 Kevin Medley ("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 Elite Acceptance Corporation ("Creditor") secured by an asset described as a 2006 Chevy Tahoe ("Vehicle") is determined to be a secured claim in the amount of \$4,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$4,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the October 16, 2018 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 September 1, 2018. Thirty-five days' notice is required. FED. R. BANKR. P. 2002(a) (5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d) (2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Thomi Manzano ("Debtor") filed evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. The Chapter 13 Trustee filed a Response indicating non-opposition on September 24, 2018. Dckt. 66. 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 Thomi Manzano ("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 September 1, 2018 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

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

Tentative Ruling: The Motion to Modify 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Modified Plan.

TRUSTEE'S OBJECTION:

The Trustee opposes confirmation on the basis that:

A. The Plan is overextended requiring (66) months to complete. The Trustee calculates that the plan payment would need to be approximately \$3,385.00 rather than \$3,219.00 to complete in the required (60) months.

B. The Plan may fail the liquidation analysis as the Debtor's non-exempt equity totals \$16,929.00 and proposes a 0% dividend to the general unsecured creditors. The Trustee notes that Debtor may be able to exempt this amount but has not filed an amended Schedule C.

C. Debtor filed a stipulation with the IRS to hold the priority portion (\$6,475.91) in abeyance pending completion of the Plan, but no Order approving the stipulation is on Pacer.

D. The Plan may not be Debtor's best effort. Debtor states that the \$393.00 monthly vehicle payment will be completed in November and the Plan does not propose payment increases when this debt is paid off.

DISCUSSION:

At the hearing -----.

The modified Plan does not comply with 11 U.S.C. §§ 1322 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 Modified Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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