UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 16, 2018 at 3:00 p.m.

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1. **18-23401-E-13** **PAUL/SHERI D'ANGELO** **OBJECTION TO CONFIRMATION OF PLAN BY MARK JAGUSIAK AND MARY JAGUSIAK**
Mark Briden **9-10-18 [45]**

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

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

Sufficient Notice Not Provided. No proof of service has been filed for the Objection. The Notice of Hearing was dated September 12, 2018. If the court presumed notice was provided that day, 34 days' notice was provided. 14 days' notice is required.

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

The pleading titled "Objection to Confirmation of Plan" is recast as an "Opposition to Debtor's Motion to Confirm the Plan" at issue, as no "Objection to Confirmation" would be filed in response to a motion to confirm.

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 Mark and Mary Jagusiak ("Creditors") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the pleading titled Objection to Confirmation of the Plan is deemed by the court to be an opposition to the Motion to Convert, DCN: MWB-1.

2. **18-23401-E-13 MWB-1** **PAUL/SHERI D'ANGELO** **Mark Briden** **MOTION TO CONFIRM PLAN** **8-20-18 [33]**

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 20, 2018. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Paul and Sheri D'Angelo ("Debtors") seek confirmation of the Second Amended Plan, which would be their first confirmed plan in this case. Dckt. 36. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 27, 2018. Dckt. 48.

The Chapter 13 Trustee asserts that Debtors are $2,300.00 delinquent in plan payments, which represents one month of the $2,300.00 plan payment. Before the hearing, another plan payment will be due.

According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13.

The Trustee alleges further Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) because the Plan is inconsistent with its own terms, incomplete, and ambiguous. The Plan provides the real property securing the claim by creditors Mark and Mary Jagusiak is to be sold within 18 months, but does not specify what will happen to the proceeds.

Additionally, Trustee asserts the Plan does not provide for secured claims of Mark and Mary Jagusiak or the IRS. The Plan provides for payments totaling $96,739.80 to Jagusiak, even as it states $175,000.00 is the amount due to be paid. While Trustee presumes the difference is going to be provided through the real property sale, nothing is specified within the Plan. The IRS' claim is not listed in the Plan as a secured claim.

Trustee further alleges that Debtors do not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $394,725 and noncontingent, liquidated, secured debts of less than $1,184,200." The claim filed by the Internal Revenue Service has been amended to include an unsecured amount of $364,848.66. Proof of Claim, No. 4-4. Additionally, the Franchise Tax Board has filed an amended unsecured claim in the amount of $116,218.32. Proof of Claim 6-2. Other unsecured claims by creditors total $4,134.97. Debtors' unsecured debt totals $485,201.95.

CREDITOR INTERNAL REVENUE SERVICE OPPOSITION

The Internal Revenue Service ("IRS") filed an Opposition on October 2, 2018. Dckt. 51.

The IRS alleges that Debtors do not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) has been exceeded, that the Plan has been proposed and the case filed in bad faith, and that the plan is not feasible given the Debtors' income.

CREDITOR MARK AND MAY JAGUSIAK OPPOSITION

Mark and Mary Jagusiak ("Jagusiak") filed a pleading entitled "Notice of Objection and Objection to Confirmation." Dckt. 45. In addition to improperly combining the notice of motion and motion, Jagusiak failed to place a docket control number on the pleading. L.B.R. 9004-1, 9014. Jagusiak also improperly combines the points and authorities with the "Objection to Confirmation." Further, because there is a pending motion of the Debtor to confirm a plan, an "Objection to Confirmation" is not proper. Rather, Jagusiak was required to file an opposition to the motion, not commence a separate contested matter.

However, given the nature of the "Objection," it is not unfair nor improper for the court to recast it as a opposition to the present Motion. Though Jagusiak offers no evidence (declaration or documentary) with the "Opposition,"Jagusiak has filed Proof of Claim No. 7 for Jagusiak's secured claim. Amended Proof of Claim No. 7 does not identify the property securing the claim. Original Proof of Claim No. 7 does not identify the property securing the claim. The documents attached to original Proof of Claim No. 7 indicate that the property is 100 Brown Canyon Road, Douglas, California.

The secured claim is filed in the amount of $190,195.55, but Debtor's plan only provides for paying and proposing to pay only $96,000 over the 60 month term of the Plan.

The $96,000 payment amount is provided in Class 1 to be $1,458.33 for the current post-petition mortgage payment and then $165.00 for sixty months to cure a $9,240.00 arrearage.

Amended Proof of Claim No. 7 filed on August 8 2018, states that the defaults as of the date of the petition was $0.00. Amended Proof of Claim No.7, p. 2. However, the attachment to Amended Proof of Claim No. 7 appears to show that there were interest only payments of $1,166.67 and late fees of $116.67 due for the months of December 2017 through June 2018 (the May 2018 interest). This bankruptcy case was filed on May 31, 2018.

Thus, it appears that Debtor's statement of no default may be in error.

Additionally, the attachment to Amended Proof of Claim No. 7 identifies $1,484 in insurance payments and $3,047 in delinquent taxes, but I ti snot clear if Jagusiak has made advances and paid such amounts.

The attachment also identifies "approximately" $1,681 in foreclosure fees.

The attachments to the original Proof of Claim No. 7 include a summary of the "terms" of the note, which indicates that there was to be a modified note, but it was not signed by Debtor. The note attached to the original Proof of Claim No. 7 states that the entire obligation was due in full on June 1, 2018. Proof of Claim No. 7, filed July 5, 2018, p. 6. The principal amount of the original loan is $175,000.

The Second Amended Plan (Dckt. 35) provides that the Brown Canyon Road property is to be sold within 18 months from the "filing" (presumably of the case). Second Amended Plan, Additional Provisions; Dckt. 35 at 7. Thus, it appears that this secured claim is improperly listed in Class 1, but is a claim to be paid in full through the plan, with there being monthly interest payments and a monthly arrearage payment.

While such a plan could be filed, it has not been filed. Rather, there is Class 1 plan treatment which does not properly provide for Jagusiak. The court will not *sua sponte* make such amendments to Debtor's Second Amended Plan, nor allow such substantive amendments to be made "on the fly" in open court.

DISCUSSION

The opposing grounds advanced by Trustee and the IRS are well-taken.

Debtors' unsecured debt totals $485,201.95 and is a basis for sustaining the Opposition as well.11 U.S.C. § 109(e).

Debtors are delinquent $2,300.00 under the proposed plan terms. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Plan ambiguously proposes sale of property without detailing what are to be done with the proceeds, and how the sale will be executed. The Plan also fails to provide for the secured claims of

Jagusiak or the IRS. The Plan's ambiguity and failure to provide for secured claims suggest it is not feasible. 11 U.S.C. § 1325(a)(6).

Jagusiak's Opposition is also well taken, with the Plan improperly providing for the Claim in Class 1. The claim is due in full during the term of the Plan, and is not a claim that matures after completion of the plan - which is necessary to be a Class 1 claim.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Paul and Sheri D'Angelo ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

3.	**18-23003-E-13** **TAG-3**	**SUNG O AND JAE PALMER** **Aubrey Jacobsen**	**MOTION TO CONFIRM PLAN** **8-21-18 [47]**

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 21, 2018. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

Sung Hwan O and Jae Man Palmer ("Debtor") seek confirmation of the Second Amended Plan, which would be the first confirmed plan in this case. Dckt. 47. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 27, 2018. Dckt. 59.

Trustee asserts Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee identifies several creditors described on Debtor's Schedule D as judgment liens from a lawsuit that are not provided for under the proposed plan terms, including Cach, LLC; EGC Financial, LLC; LVNV Funding; and The E-Tail Network, inc. No claim has been filed by any of the creditors described as holding the liens in Schedule D, and no motions to avoid liens have been filed.

Additionally, the Trustee notes that the Plan calls for 59 months, not 60 (the additional terms and provisions providing two August payments and 57 monthly payments thereafter). The Trustee is amenable to language correcting this technical error in an order confirming the Plan.

Lastly, the Trustee argues that, while Debtor has filed Amended Schedules on August 21, 2018, they have yet to file pages 4 and 5 of Schedule B. The Trustee would not object if Schedule B were resubmitted to the court correcting this error.

DEBTORS' REPLY

Debtor filed a Reply to Trustee's Motion on October 5, 2018. Dckt. 62. Debtor clarifies that after research, Debtor discovered the judgements from civil suits had not actually been reduced to liens and should be treated as unsecured debt. Debtor states further that Debtor agrees that the Plan term should be set to 60 months in the order confirming, and Debtor will file a complete Amended Schedule B.

DISCUSSION

No secured claims have been filed for the judgments. Debtor provides an explanation of error, which counsel states has been "researched." The concerns of the Trustee have been addressed (including the clarification that the plan is 60 months, not 59 months).

The Amended Plan, as amended to state a 60 month term, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by San Hwan O and Jae Man Palmer ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtors' Amended Chapter 13 Plan filed on August 21, 2018, as further amended to have a 60 month term, is confirmed. Debtors' Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, including such amendment, 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.

4.	**16-25007-E-13 BLG-3**	**WILLIE MORRIS AND MONICA TATNEY-MORRIS Chad Johnson**	**MOTION TO INCUR DEBT 10-1-18 [46]**

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

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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is denied.

Willie Morris and Monica Tatney-Morris ("Debtor") seek permission to purchase a 2016 Nissan Sentra with 41,920 miles, with a "sales price" of $ $22,101.84 and monthly payments of $306.97 over 72 months with a 14.00% interest rate. Debtor states the new vehicle is necessary because the prior vehicle is unpredictably and regularly breaking down. Dckt. 48.

The Motion states the sales price is $22,101.84. Debtor filed as an Exhibit a document which states the amount financed for the sale is $14,810. *See* Exhibit A, Dckt. 49. In the Declaration, Debtor states that this is a true and accurate copy of the "retail work sheet" (whatever such may be). Dckt. 48 at 2. This "Worksheet" states the selling price to be $13,765.36. When taxes, fees, and license are added in, the total price is stated to be $15,310.99. Exhibit A, Dckt. 49 at 3.

The sales price is not $22,101.84. That appears to be the total of principal and interest payments through the financing.

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

Here, the transaction does not appear to be in the best interest of Debtor or for commercially reasonable terms. The loan calls for a substantial interest rate—14%. While the Debtor is in bankruptcy, Debtor's pre-petition creditors are held at bay and payment for the car financing will be included in Debtor's expenses to be paid before any payment is made to pre-petition creditors.

In the Declaration Debtor provides no testimony as to attempts made to find alternative, commercially reasonable financing. Debtor has not provided the court with a Kelly Blue Book or NADA statement of retail sales prices.

In addition to the 14% interest rate not appearing to be reasonable, Debtor has failed to provide the court with adequate evidence to support the court granting the requested relief.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Willie Morris and Monica Tatney-Morris ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied, and Willie Morris and Monica Tatney-Morris is not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 49.

5. **17-23911-E-13 LBG-4** **CRAIG MASON** **Lucas Garcia** **MOTION TO CONFIRM PLAN** **8-20-18 [114]**

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 20, 2018. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Craig Mason ("Debtor") seeks confirmation of the Fourth Amended Plan, no proposed plan to date having been confirmed. Dckt. 114. The Amended Plan provides for Debtor's mortgage as a Class 1 claim; estimates $19,200.00 in Class 5 claims; calls for minimum 5 percent dividend on Class 7 claims totaling $86,499.88; and provides for a $5,750.00 payment, which increases to $5,950.00 in Month 14 of the Plan. Dckt. 118. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 26, 2018. Dckt. 125.

The Trustee asserts that Debtor fails to indicate in Section 3.05 of the Plan whether he proposes to pay attorney fees in accordance with Local Bankruptcy Rule 2016-1(c) or will be filing a motion for fees in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

The Trustee further argues Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee states that, because this case was filed on June 12, 2017, the Month 14 payment became due on August 25, 2018. Debtor's projected disposable income listed on his Schedule J, and confirmed in his declaration in support of this Motion, is $5,773.00, while the Amended Plan calls for payments in Month 14 to increase from $5,750.00 to $5,950.00.

DISCUSSION

Trustee's Opposition is well-taken. Debtor's proposed plan payments are higher than his disposable income reflected in his testimony and Schedules. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. 11 U.S.C. § 1325(a)(6).

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed. The proposed Plan contradicts Debtor's testimony as to what payments he can actually afford and the court is without an accurate picture of his financial reality.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Craig Mason ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6.	**18-24434-E-13** **DPC-1**	**LINDA OLIVER** **Julius Cherry**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-28-18 [16]**

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).

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

The Objection to Confirmation of Plan is ~~overruled without prejudice~~.

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

A. Debtor failed to appear at the First Meeting of Creditors scheduled for August 23, 2018. Debtor is required to attend the meeting under 11 U.S.C. § 343. Debtor's counsel emailed Trustee August 16, 2018, advising Trustee that Debtor missed the meeting due to surgery. The Meeting was continued to September 13, 2018.

B. Debtor would be unable to afford payments or comply with the proposed Plan. Debtor's proposed plan relies on a motion to value collateral being filed for Travis Credit Union, listed in the proposed plan as a Class 2B claim.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on September 19, 2018. Dckt. 30. Trustee states that Debtor attended the continued Meeting of Creditors. Trustee states further that Debtor has filed a Motion to Value Collateral, set for hearing October 16, 2018.

Trustee requests the court continue the hearing on this Motion to be heard alongside Debtor's Motion to Value.

OCTOBER 2, 2018 HEARING

At the October 2, 2018 hearing the court determined the sole remaining grounds for opposing confirmation of the plan was reliance on Debtor's Motion to Value. Therefore, the court continued the hearing to October 16, 2018 to be heard alongside that motion. Dckt. 37.

DISCUSSION

The court has ~~**granted/denied**~~ Debtor's Motion to Value Collateral set to be heard the same day as the hearing on this Motion. All of Trustee's grounds for opposition being resolved, the objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled without prejudice.

7. **18-24434-E-13 JJC-1** **LINDA OLIVER** **Julius Cherry** **MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION** **9-5-18 [20]**

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 the Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 4, 2018. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,133.00.

The Motion filed by Linda Oliver ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Chevrolet Equinox ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $4,205.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor states that the actual value of the Vehicle is $6,700.00 at the time of filing the petition. Dckt. 23.

CREDITOR'S OPPOSITION

Creditor filed an Opposition to Debtor's Motion on September 14, 2018. Dckt. 26. Creditor asserts that Debtor has incorrectly relied on the NADA Guide "trade-in-value" in valuing the Vehicle. Creditor believes the actual value of the Vehicle is $8,133.00 based on Kelly Blue Book retail value, which has been properly authenticated and filed as Exhibit (unnamed). Dckt. 28.

Creditor argues further that Debtor incorrectly subtracts costs of the warranty and gap contracts from the value of the vehicle.

TRUSTEE'S RESPONSE

Trustee filed a Response on September 24, 2018. Dckt. 33. Trustee summarizes Creditor's treatment under the Plan and creditor's Proof of Claim filed, including optional service and gap contracts indicated in the agreement for $1,700 and $795, respectively.

DEBTOR'S RESPONSE

Debtor filed a Response to Creditor's Opposition on September 25, 2018. Dckt. 36. Debtor replies stating she relied on multiple sources and consideration in determining the value of the Vehicle, and did not simply use NADA guides. Debtor argues Creditor's position is that Debtor performed the incorrect valuation merely because Debtor arrived at a different number, and points out Creditor's Declaration likely was not based on personal knowledge of the state of the Vehicle.

Debtor responds (citing In re Penrod, 611 F.3d at 1162 (9th Cir. 2008)) to Creditor's argument about the deduction in value for the cost of warranty and gap insurance by stating payment of an antecedent debt does not establish a Purchase Money Security Interest in collateral and therefore is not included in the secured value.

DISCUSSION

Debtor misunderstands *In Re Penrod*. That case involved 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). The Debtor filed bankruptcy approximately 523 days after purchasing the new Vehicle and sought to value the secured claim. *Id*. Americredit Financial Services opposed the valuation, arguing that this was a purchase money security interest incurred less than 910 days before filing and could not be valued according to the hanging paragraph of 11 U.S.C. § 1325(a). The court held that the financing for the remainder of what the debtor owed on his old vehicle was an antecedent debt, and not an expense incurred in buying the new vehicle (i.e. a purchase money security interest). *Id*. at 1162.

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 the warranty and gap insurance provided at the time the agreement was entered. Debtor has not cited to where in 11 U.S.C. § 506 the code permits deduction for antecedent debts. Moreover, Debtor has not provided authority establishing warranty and gap insurance as antecedent debts.

Debtor's counsel labors to distinguish what expenses incurred were purchase money security interests and what were not. However, 11 U.S.C. § 506 does not rely on this distinction. That section provides:

> **An allowed claim of a creditor secured by a lien on property in which the estate has an interest**, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest**

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

11 U.S.C. § 506(a)(1)(emphasis added).

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.

Debtor argues, possibly frivolously, that a optional service and gap contracts are not sufficiently connected to the purchase of the Vehicle to constitute purchase money security interests. The aforementioned services have zero value but for their connection to the Vehicle. Those services are far-cry from the financing to cover a prior loan for a prior vehicle. *See Americredit Financial Services, Inc.*, 611 F.3d at 1159. Debtor has not established that the services sought to be deducted are actually antecedent debts.

Finally, Debtor has not provided authority for her method of separating the purchase money security interests (secured) from the antecedent debts (unsecured). Debtor appears to argue that Creditor's claim should be treated as wholly secured for the purposes of 11 U.S.C. § 506 (Debtor seeking to value the entirety of the claim at $6,700.00, and valuation only applying to secured claims), and then deducting the "unsecured" antecedent debt after valuation has been performed.

Assuming, arguendo, that the "antecedent debts" alleged herein were unsecured, those portions would be deducted before the secured claim is valued because unsecured debts cannot be valued. In that hypothetical, the Creditor's secured claim would be $7,901.10 before valuation, and (using Debtor's asserted fair market value) would be valued at $6,700.00.

RULING

The value of the Vehicle is properly determined to be $8,133.00. Dckt. 28. While Debtor argues that Creditor improperly relied on a KBB valuation without understanding the condition of the Vehicle or necessary repairs, Debtor does not actually explain what Debtor believes is affecting the Vehicle's value, or what repairs might be necessary. Debtor not having demonstrated its valuation is actually based on the condition of the Vehicle, Creditor's Kelly Blue Book valuation is more credible.

The lien on the Vehicle's title secures a purchase-money loan incurred on November 14, 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 $10,396.10. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $8,133.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Linda Oliver ("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 Linda Oliver ("Creditor") secured by an asset described as 2011 Chevrolet Equinox ("Vehicle") is determined to be a secured claim in the amount of $8,133.00, 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 $8,133.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

8. **17-27449-E-13** **BONITA MELENDEZ** **MOTION TO MODIFY PLAN**
RJM-3 **Rick Morin** **8-29-18 [69]**

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 29, 2018. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Bonita Melendez ("Debtor") seeks confirmation of the Modified Plan to catch up on Plan payments missed after emergency medical expenses for Debtor's pet-companion were incurred. Dckt. 71. The Modified Plan seeks to modify payments to $0.00 for the next three months of the Plan and increase Debtor's plan payments to $2,475.00 for the remaining 51 months of the Plan after that. Dckt. 72. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 24, 2018. Dckt. 76.

Trustee asserts Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). While Debtor's Declaration (Dckt. 71) indicates she will receive a distribution from a personal injury settlement, Debtor has not amended her schedules or provided any specific information as to the settlement, including the expected date and amount of settlement. Debtor has not explained how

she can, before the settlement comes to fruition, make the payments that have increased by $200 monthly. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. 11 U.S.C. § 1325(a)(6).

The Trustee notes further that Section 3.05 of the Plan provides "N/A" for the entries relating to attorney's fees paid prior to filing and additional fees paid through the Plan. The Trustee points out that $640.00 was paid prior to filing and $3,360.00 is to be paid through the Plan. Dckt. 76 (*citing* Dckt. 38). The Plan not authorizing payments already made to Debtor's attorney also affects the feasibility.

Lastly, Trustee asserts Debtor is in material default under the Plan because the Plan will complete in more than the permitted 60 months. The Plan will complete in 62 months due to the remaining balance to paid totaling $128,765.00. In order to complete the Plan within 60 months, Debtor would need to make $2,525.00 payments for the 51 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Bonita Melendez ("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.

9. 14-23652-E-13 MET-1 PHILIP/YVETTE HOLDEN Mary Ellen Terranella MOTION TO MODIFY PLAN 8-23-18 [163]

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 23, 2018. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Philip and Yvette Holden ("Debtor") seek confirmation of the Modified Plan to cover payments missed under the confirmed Plan after Debtor became unemployed. Dckt. 165. The Modified Plan provides for $1,678.00 plan payments for 51 months and $1,780.00 for 9 months. Dckt. 168. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 27, 2018. Dckt. 174.

The Chapter 13 Trustee asserts that Debtor is in default $425.00 under the Modified Plan, which represents a partial payment of the proposed $1,678.00 plan payment. The Trustee states under the proposed Modified Plan, $89,138.00 has become due. Dckt. 175. With their last payment on September 24, 2018, Debtors had paid $88,713.00 to the Trustee's office. *Id.* Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

RULING

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied and the Modified Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Philip and Yvette Holden ("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.

10. 18-24663-E-13 JJC-1 — VIOLET GARCIA — Julius Cherry — MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORPORATION — 8-29-18 [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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 27, 2018. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Nissan Motor Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,500.00.

The Motion filed by Violet Ruth Ruby Garcia ("Debtor") to value the secured claim of Nissan Motor Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Nissan Sentra, VIN ending in 82172 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $8,500 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

While Debtor claims the value of the Vehicle is $8,500, Debtor seeks to value the secured claim at $ 3,906.00. Debtor argues (1) an optional deterrent device express code ($199), (2) an optional extended warranty portfolio ($3,500), and (3) an optional debt cancellation GAP insurance ($895) are all antecedent debts, and should be deducted from the secured claim as they are not sufficiently connected to the purchase of the Vehicle to constitute purchase money security interests.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Response to the Motion on August 29, 2018. Dckt. 16. Trustee summarizes Debtor's Motion, treatment of Creditor's claim in the proposed plan, Debtor's Schedules, and Creditor's Proof of Claim, No. 1.

DISCUSSION

The case upon which Debtor largely relies, *In Re Penrod*. involved 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). The Debtor filed bankruptcy approximately 523 days after purchasing the new Vehicle and sought to value the secured claim. *Id*. Americredit Financial Services opposed the valuation, arguing that this was a purchase money security interest incurred less than 910 days before filing and could not be valued according to the hanging paragraph of 11 U.S.C. § 1325(a). The court held that the financing for the remainder of what the debtor owed on his old vehicle was an antecedent debt, and not an expense incurred in buying the new vehicle (i.e. a purchase money security interest). *Id*. at 1162.

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 several "antecedent debts." Debtor has not cited to where in 11 U.S.C. § 506 the code permits deduction for antecedent debts.

Debtor's counsel labors to distinguish what expenses incurred were purchase money security interests and what were not. However, 11 U.S.C. § 506 does not rely on this distinction. That section provides:

> **An allowed claim of a creditor secured by a lien on property in which the estate has an interest**, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property,** or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed

> disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a)(1)(emphasis added).

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.

Debtor argues, possibly frivolously, that an optional deterrent device express code, an optional extended warranty portfolio, and an optional debt cancellation GAP insurance are "not sufficiently connected to the purchase of the Vehicle to constitute purchase money security interests." All the aforementioned services have zero value but for their connection to the Vehicle. Those services are far-cry from the financing to cover prior loan for a prior vehicle. *See Americredit Financial Services, Inc.*, 611 F.3d at 1159. Debtor has not established that the services sought to be deducted are actually antecedent debts.

Finally, Debtor has not provided authority for her method of separating the purchase money security interests (secured) from the antecedent debts (unsecured). Debtor appears to argue that Creditor's claim should be treated as wholly secured for the purposes of 11 U.S.C. § 506 (Debtor seeking to value the entirety of the claim at $8,500.00, and valuation only applying to secured claims), and then deducting the "unsecured" antecedent debt after valuation has been performed.

Assuming, arguendo, that the "antecedent debts" alleged herein were unsecured, those portions would be deducted before the secured claim is valued because unsecured debts cannot be valued. In that hypothetical, the Creditor's secured claim would be $10,165.21 before valuation, and Creditor's secured claim would be valued at $8,500.00.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on July 7, 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 $14,759.21. 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 $8,500, 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 Violet Ruth Ruby Garcia ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Nissan Motor Acceptance Corporation ("Creditor") secured by an asset described as 2015 Nissan Sentra, VIN ending in 82172 ("Vehicle") is

determined to be a secured claim in the amount of $8,500, 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 $8,500 and is encumbered by a lien securing a claim that exceeds the value of the asset.

11. **18-24772-E-13 DPC-1** **NICOLE JACKSON** **Rafael Icaza** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-11-18 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on September 11, 2018. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled as moot .

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Nicole M. Jackson ("Debtor") filed a First Amended Plan on October 12, 2018 [FN.1.]. Dckts. 39. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

FN.1. Debtor has not filed a Motion to Confirm the Amended Plan. In Debtor's Reply to Trustee's Objection filed October 9, 2018 (Dckt. 33), Debtor includes a prayer that the court confirm her Amended Plan. If Debtor desires the court grant its requested relief, the Debtor must properly file and notice a motion.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation of the Amended 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 the Objection is Overruled as moot, the proposed Chapter 13 Plan is not being confirmed and Debtor prosecuting an amended plan.

12. **18-24772-E-13 KEH-1** **NICOLE JACKSON** **Rafael Icaza** **OBJECTION TO CONFIRMATION OF PLAN BY BALBOA THRIFT & LOAN 9-13-18 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on September 13, 2018. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled as moot .

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Nicole M. Jackson ("Debtor") filed a First Amended Plan on October 12, 2018 [FN.1.] . Dckts. 39. Filing a new plan is a de facto withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

FN.1. Debtor has not filed a Motion to Confirm the Amended Plan. In Debtor's Reply to Trustee's Objection filed October 9, 2018 (Dckt. 32), Debtor includes a prayer that the court confirm her Amended Plan. If Debtor desires the court grant its requested relief, the Debtor must properly file and notice a motion.

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

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

The Objection to Confirmation of the Amended Chapter 13 Plan filed by creditor Balboa Thrift & Loan having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the proposed Chapter 13 Plan is not confirmed, and Debtor having filed an amended plan.

13. 18-24772-E-13 RAI-1 — NICOLE JACKSON, Rafael Icaza — MOTION TO VALUE COLLATERAL OF BALBOA THRIFT & LOAN, 9-5-18 [14]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 5, 2018. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Balboa Thrift & Loan ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $2,200.

The Motion filed by Nicole M. Jackson ("Debtor") to value the secured claim of Balboa Thrift & Loan ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Pontiac G6 with 145,000 miles ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $2,200.00 as

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

CREDITOR'S OPPOSITION

Creditor filed an Opposition to the Motion on October 2, 2018. Dckt. 29. Creditor opposes the valuation provided by Debtor on the grounds it is "insufficient, inadequate and unjust." Creditor asserts a fair market value for the Vehicle of $4,874.00.

Creditor bases its valuation on a Kelly Blue Book value. *See* Exhibit 3, Dckt. 30. While Creditor asserts in its Opposition the Exhibit is "A true and correct of the pertinent page from the publication," Creditor has not provided testimony or other evidence authenticating the document or explaining how it is admissible (the document constituting hearsay). Furthermore, it is not even clear to the court the "pertinent" page has been filed; Exhibit 3 references a range of $3,327.00 to $4,874.00, but does not explain the various values in the range.

Creditor also contests the interest rate Debtor seeks in its proposed plan.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on September 27, 2018. Dckt. 26. Trustee summarizes the Motion, treatment of Creditor's claim in Debtor's proposed plan (Dckt. 3), Debtor's Schedules (Dckt. 1), Creditor's Proof of Claim, No. 2, and Creditor's objection to Confirmation. Dckt. 22.

DEBTOR'S REPLY

Debtor filed a Reply to Creditor's Opposition on October 9, 2018. Dckt. 34. Debtor replies that Creditor's Exhibit 3 does not reflect a valuation based on the actual condition (including model and year) of the Vehicle. Debtor asserts further that its valuation is fair relative to the Kelly Blue Book value, considering ranges of trade-in-value Debtor attached along with its Declaration. Dckt. 35. Debtor replies finally that the interest rate of 5% is adequate.

DISCUSSION

Debtor's Motion is seeking to value the secured claim held by Creditor. The interest rates sought to be paid by Debtor under any proposed plan are not relevant.

While Creditor contests the valuation provided by Debtor, no authenticated , admissible evidence has been provided in support of another value. Despite Debtor improperly replying with a Kelly Blue Book trade-in-value (11 U.S.C. § 506(a)(2) providing that retail value is the proper bench mark), Debtor's initial valuation appears based on his own opinion. *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 November 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,165.34. 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 $2,200, 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 Nicole M. Jackson ("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 Balboa Thrift & Loan ("Creditor") secured by an asset described as 2009 Pontiac G6 with 145,000 miles ("Vehicle") is determined to be a secured claim in the amount of $2,200, 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 $2,200 and is encumbered by a lien securing a claim that exceeds the value of the asset.

14. **18-24872-E-13 DPC-1** **KEITH/LAKEISHA STEWART** **Richard Kwun** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-11-18 [39]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney September 11, 2018. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor's plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Trustee argues Debtor appears over the median income, and proposes payments of $1,685.00 for 60 months with a 0 percent dividend to unsecured claim holding creditors. On Form 122C-2 Debtor deducts $1,882.00 for taxes, while Schedule J lists taxes deducted as $1,108.00. Debtor does not provide an explanation of how the tax savings will be held, and recommends using a separate account where funds are applied to tax expenses, and the remainder returned to the Trustee.

Trustee does not object to providing for this concern in the order confirming the plan.

DISCUSSION

Trustee's objections are well-taken. Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date

> of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee asserts that Debtor may have remaining funds after paying tax obligations , given the discrepancy between Form 122C-2 and Schedule J. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

15. **18-24173-E-13 CAS-1** **FERRIC/STACY COLLONS** **Peter Macaluso** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE** **8-20-18 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, the Chapter 13 Trustee, and Office of the United States Trustee on August 20, 2018. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Capitol One Auto Finance, a division of Capital One, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan. The court notes two additional pending Objections to Confirmation of this same Plan by additional parties. The bases for this Objection are that:

A. The Plan fails to pay the full replacement value of the Collateral. In a Chapter 13 proceedings, a Debtor may confirm a Plan over a creditor's objection only if the Plan provides the creditor the full value, as of the effective date of the Plan, of the allowed amount of the secured claim. 11 U.S.C. § 1325(a)(5)(B). The allowed amount of the secured claim is determined based on the replacement value a retail merchant would charge for a Collateral of a similar age and condition. 11 U.S.C. § 506(b). The estimated replacement value a retail merchant would charge for the Collateral is $15,618.00. A copy of the vehicle valuation is included as Exhibit "C" filed in conjunction with this objection. To the extent that the Plan does not pay the full value of the Collateral pursuant to 11 U.S.C. § 506(b), Creditor objects to the confirmation of the Plan.

B. The Plan fails to pay the applicable prime plus interest rate. In addition, the Debtor must pay the present value of the secured claim by paying the creditor a discount rate of interest as measured by the formula rate expressed by the United States Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). See, also Drive Fin. Servs., L.P. v. Jordan, 521 F.3d 343 (5th Cir. 2008) (applying prime plus rate to vehicle lender's claim). The current prime rate of interest is 5.000%. To the extent that the Plan proposes to pay less than the prime interest rate plus 1.000%, Creditor objects to the confirmation of the Plan.

OCTOBER 2, 2018 HEARING

At the October 2, 2018, hearing, the court continued the Hearing on the Motion to October 16, 2018 at 3:00p.m. Dckt. 64. No supplemental pleadings have been filed since the date of that hearing.

Value of Creditor's Collateral

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not necessarily denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the

claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact a Plan does not provide for a secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6).

Creditor has not provided any declaration or other evidence authenticating exhibits it is using for its valuation. Creditor has filed Proof of Claim No. 2 asserting a secured claim in the amount of $14,068.87 for which a 2015 Chrysler Town and Country is identified as the collateral. The Plan provides for a secured claim in the amount of $14,048.30, the amount that Debtor listed on Schedule D.

The Debtor must pay the secured claim in the amount stated in the Proof of Claim or in an order valuing the secured claim, if any. Chapter 13 Plan ¶ 3.02, Dckt. 13. The $20.00 amount is sufficiently *de minimis* that it does not render the Plan not confirmable.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.00%. Creditor's claim is secured by a 2015 Chrysler Town and Country. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had *a preference for the formula approach. See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Despite Creditor not identifying the risk factors common to every bankruptcy case, much less this particular case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.00%, plus a 1.06% risk adjustment, for a 6.06% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii). [FN.1.]

FN.1. At 6.06% Creditor will actually be "enjoying" the original contract rate for this obligation. See Attachment 1 to Proof of Claim No. 2.

The court notes that it has tentatively sustained other objections to the confirmation of the proposed plan set to be heard the same day as the hearing on this Objection.

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

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

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

The Objection to the Chapter 13 Plan filed by Capital One Auto Finance ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

16. 18-24173-E-13 CCR-1 — FERRIC/STACY COLLONS — Peter Macaluso — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RANCHO MURIETA AIRPORT, INC. — 8-30-18 [34]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 30, 2018. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Rancho Murieta Airport, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan. The court notes two additional pending Objections to Confirmation of this same Plan by additional parties. The bases of this Objection are that:

A. Creditor objects to the proposed assumption of the rental agreements in the proposed plan. In Section 4 of the proposed Plan, Debtors seek to assume the Rental Agreements under 11 U.S.C. Section 365(b)(1), which are month to month agreements that are substantially in default. Debtors also seek to cure the prepetition default by making a de minimis monthly payment of $37.00 over five years. Finally, the amount of the proposed monthly direct payment is incorrect. The current monthly payment for all three units is $525.00. Based upon the substantial failure to make the monthly rental payments both prepetition and postpetition, Debtors fail to meet the requirements of Section 365(b)(1) to be able to assume the Rental Agreements and RMA objects to the proposed assumption on this basis.

B. The Plan is facially not feasible because Debtors have not made any postpetition payments to Creditor.

C. The Plan's proposed five-year cure of the prepetition arrears on this Creditor's claims indicates that this Plan has not been proposed in good faith as to this Creditor. Debtors have proposed a plan that inequitably tries to extend the cure payments to well beyond the potential duration of the Rental Agreements. Moreover, the Agreements were entered into only 5 months prior to the bankruptcy filing and were shortly thereafter defaulted on by the Debtors. Debtors cannot afford these storage units and their proposed assumption of the defaulted contracts is not a good faith attempt to resolve this matter.

OCTOBER 2, 2018 HEARING

At the October 2, 2018, hearing, the court continued the Hearing on the Motion to October 16, 2018 at 3:00p.m. Dckt. 65. No supplemental pleadings have been filed since the date of that hearing.

DISCUSSION

Creditor's objections are well-taken.

Creditor asserts that Debtor has not commenced payments under the proposed plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 365 permits assumption of an executory contract or unexpired lease only where defaults are cured or there is adequate assurance that they will be promptly cured, and where there is adequate assurance of future performance under the contract or lease. 11 U.S.C. § 365(b)(1)(A) and (C). Here, Debtor proposes to cure the defaults under the lease over a period of five years. Furthermore, Debtor has not commenced postpetition payments. Debtor has not demonstrated adequate assurance of prompt cure or future performance of the lease. If Debtor cannot assume the lease agreement with Creditor the proposed plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court is not persuaded that Debtor's plan, deficient in many respects, has been filed in bad faith as argued by Creditor.

The court notes that it has tentatively sustained other objections to the confirmation of the proposed plan set to be heard the same day as the hearing on this Objection.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Rancho Murieta Airport ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17. **18-24173-E-13 DPC-1** **FERRIC/STACY COLLONS** **Peter Macaluso** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-28-18 [25]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtors' Attorney on August 28, 2018. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan. The court notes two additional pending Objections to Confirmation of this same Plan by Creditors. Trustee premises his Objection on the basis that:

A. Debtor cannot make the Plan payments (which increase from $810.00 for 24 months to $2,340.00 for the remaining 36 months). Debtor's plan depends on a worker's compensation and disability claim, about which Debtor has not provided any evidence as to the likely time period for the claim to be resolved.

B. Debtor's plan relies on the valuation of secured claims held by Capital One and Wells Fargo Bank N.A. for $11,000.00 and $20,000.00 respectively. However, no motions to value have been filed.

OCTOBER 2, 2018 HEARING

At the October 2, 2018, hearing, the court continued the Hearing on the Motion to October 16, 2018 at 3:00p.m. Dckt. 66. No supplemental pleadings have been filed since the date of that hearing.

DISCUSSION

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not properly supported Debtor's expectation of being capable of nearly tripling their plan payments in month 25 through the end of the Plan. Without an accurate picture of Debtors' financial reality, the court cannot determine whether the Plan is confirmable.

Furthermore, Debtors' Plan relies on the court valuing the secured claims of Capital One Auto Finance and Wells Fargo Bank N.A. Though Debtors have filed a Motion to Value Collateral regarding the Capital One Auto Finance claim, they have failed to file a Motion to Value the Secured Claim of Wells Fargo Bank N.A. Without the court valuing both claims, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court notes that it has tentatively sustained other objections to the confirmation of the proposed plan set to be heard the same day as the hearing on this Objection.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

18. **18-24173-E-13 PGM-1** **FERRIC/STACY COLLONS** **Peter Macaluso** **MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE** **8-29-18 [29]**

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

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, parties requesting special notice, and Office of the United States Trustee on August 29, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $11,000.00.

The Motion filed by Ferric and Stacy Collons ("Debtor") to value the secured claim of Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Chrysler Town & Country ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor filed an Opposition to the Motion on September 20, 2018. Dckt. 58. Creditor objects to Debtor's valuation as insufficient and relies on Kelly Blue Book to provide an alternate valuation of $15,618.00.

Creditor supports its Opposition with a copy of a Kelly Blue Book valuation, filed as Exhibit C. Exhibit C, Dckt. 59. Creditor has not provided testimony or other evidence authenticating the document or explaining how it is admissible (the document constituting hearsay). Furthermore, Creditor has not provided any testimony explaining to the court the information within the KBB valuation and how it applies to this case.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition to Debtor Motion on September 27, 2018. Dckt. 61. Trustee notes Debtor's Declaration is defective [FN.1.], and that Creditor has filed a Proof of Claim and Opposition to this Motion.

FN.1. Trustee's argument regarding the defective Declaration is well-taken. 28 U.S. Code § 1746 requires an affirmation under penalty of perjury that the testimony provided is "true and correct." Debtor's"declaration" affirms that it is "true and correct to the best of [his] knowledge." What has been provided, therefore, does not appear to be testimony given under penalty of perjury, but statements made with "plausible deniability" for whatever it said - if it turns out not to be actually true. The court will give Debtor the benefit of the doubt and hold him to these statements as having been made pursuant to the requirements of Federal Rules of Evidence 601 and 602.

DEBTOR'S REPLY

Debtor filed a Reply to Creditor's Opposition on October 9, 2018. Dckt. 75. Debtor asserts that Creditor's Exhibit C is inadmissable hearsay. Debtor argues it has met its burden in valuing the Vehicle.

DISCUSSION

Debtor's arguments are well-taken. Creditor has not provided evidence supporting its Opposition.

The lien on the Vehicle's title secures a purchase-money loan incurred on September 8, 2015, which is (approximately 1,029 days) more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,068.87. 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 $11,000.00, 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.

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 Ferric and Stacy Collons ("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 Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") secured by an asset described as 2015 Chrysler Town & Country ("Vehicle") is determined to be a secured claim in the amount of $11,000.00, 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 $11,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

19. 18-22883-E-13 ASW-1 | **RICHARD HARRIS** | **Mark Briden** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB** | **6-21-18 [30]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on June 21, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained and the Plan is not confirmed.

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it violates the anti-modification provisions of 11 U.S.C. § 1322(b)(2).

JULY 17, 2018 HEARING

At the hearing, Debtor and Creditor agreed to a voluntary continuance of the hearing specially set at 1:00 p.m. on July 19, 2018.

JULY 19, 2018 HEARING

Creditor's counsel argues that Creditor has a secured claim because counsel argues that the real property securing the claim has a value of $360,000. However, no person comes forward to provide testimony of value. Creditor has filed a document titled "Appraisal" as an exhibit, but there is no one who has come forward to properly authenticate it or provide any expert testimony. The Exhibits not having been authenticated and there being no testimony, Creditor has not provided any credible evidence with the merely factual arguments in the Objection.

Creditor has a detailed discussion of the law and limitation of valuing secured claims for less than the value of the collateral. Further, Creditor argues that a debtor cannot "stip a lien" when the claim is not wholly unsecured (citing *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002)).

Unfortunately, Creditor has also chosen not to file a proof of claim in this case. As the Chapter 13 Plan clearly provides, it is the creditor's claim, in the absence of an order of the court, that controls the value of the secured claim. Plan ¶ 3.02. If Creditor had filed a secured claim, this Objection is as easy as: (1) Proof of Secured Claim filed for $82,000, (2) Plan does not provide for Secured Claim, (3) Objection sustained, but Creditor has not done that, depriving the court of a basis to deny confirmation.

Not having the necessary evidence, the court cannot determine what secured claim needs to be provided for in connection with Creditor. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, Debtor and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

The court continued the Objection to Confirmation of Plan is continued to 3:00 p.m. on August 28, 2018, for a Scheduling Conference. Dckt. 47.

AUGUST 28, 2018 HEARING

Creditor has now filed Proof of Claim No. 7 asserting an $82,232.93, with a pre-petition arrearage of $2,673.86. Proof of Claim No.7 was filed on July 18, 2018. No objection to the claim has been filed.

RULING

The court has determined that Creditor's secured claim is valued in the amount of $75,586.59 pursuant to 11 U.S.C. § 506(b). The Plan does not provide for this secured claim. The proposed plan does not comply with 11 U.S.C. § 1322 and § 1325.

The Objection to Confirmation 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 Confirmation filed by Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is Sustained and the Plan is not confirmed.

20. **18-22883-E-13** **RICHARD HARRIS** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Mark Briden** **6-18-18 [26]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on June 18, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Richard Harris ("Debtor") cannot comply with the Plan because of an active Chapter 7 case (No. 18-21699);

B. Debtor admitted to having additional income at the Meeting of Creditors; and

C. The Plan relies on a pending motion to value.

First, the court notes that Debtor's Chapter 7 Case has been dismissed. No. 18-21699, Dckt. 28. As to the additional income, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the Meeting of Creditors that two sources of income (from Social Security for a granddaughter and from Shasta County) may cease providing funds, and the non-filing spouse may be employed such that Schedule I's calculations would be incorrect. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 ("Creditor"). The court heard Debtor's motion to value Creditor's claim at the July 17, 2018 hearing and denied it. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

DEBTOR'S DECLARATION

Debtor filed a Declaration on July 10, 2018. Dckt. 43. Debtor states that his wife become employed against on May 14, 2018, as well as receiving disability payments from the state of California. He states that the total amount of her contributions to the Plan would be $692.00 per month.

Debtor states that the Shasta County program will not be terminated because it has been renewed, but he does not state for how long. Debtor claims that the program will provide him with $630.00 per month on average.

For Social Security payments, he states that payments to his granddaughter will decrease from $815.00 to $374.00 per month beginning on September 1, 2018.

JULY 17, 2018 HEARING

At the hearing, Debtor and the Chapter 13 Trustee agreed to a voluntary continuance of the hearing specially set at 1:00 p.m. on July 19, 2018.

JULY 19, 2018, HEARING

The court continued the Objection to Confirmation of Plan to 3:00 p.m. on August 28, 2018, for a Scheduling Conference. Dckt. 48.

STATUS REPORT

Trustee filed a status Report on September 27, 2018. Dckt. 66. Trustee notes that his objections stand, and no supplemental declaration has been filed by the September 11, 2018 date set.

RULING

The court has determined that the secured claim of Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2017-1 Trust, Mortgage-Backed Notes, Series 2017-1 is valued in the amount of $75,586.59 pursuant to 11 U.S.C. § 506(b). The Plan does not provide for this secured claim. The proposed plan does not comply with 11 U.S.C. § 1322 and § 1325.

The Objection to Confirmation 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 Confirmation filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is Sustained and the Plan is not confirmed.

21. **18-22883-E-13** **RICHARD HARRIS** **CONTINUED MOTION TO VALUE**
MWB-1 **Mark Briden** **COLLATERAL OF WILMINGTON SAVINGS FUND SOCIETY**
5-24-18 [19]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 24, 2018. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society ("Creditor") is granted and Creditor's secured claim is determined to have a value of $75,586.59 .

The Motion to Value filed by Richard Harris ("Debtor") to value the secured claim of Wilmington Savings Fund Society ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 17237 Marianas Way, Cottonwood, California ("Property"). Debtor seeks to value the Property at a fair market value of $295,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 2, 2018. Dckt. 34. The Chapter 13 Trustee notes that Creditor filed an objection to confirmation in this case alleging that the

proposed plan included an impermissible lien strip (this Motion) and that Creditor had the Property appraised as being worth $360,000.00.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 3, 2018. Dckt. 37. Creditor argues that it obtained an appraisal of the Property on May 31, 2018, showing that its value is $360,000.00. Because of that valuation, Creditor argues that its claim is fully secured by the excess equity in the Property, preventing Debtor from valuing Creditor's claim.

JULY 17, 2018, HEARING

At the hearing, Debtor agreed to a voluntary continuance of the hearing specially set at 1:00 p.m. on July 19, 2018.

JULY 19, 2018, HEARING

The appraisal attached as Exhibit 1 to Creditor's Opposition shows that the Property has a value of $360,000.00 as of May 31, 2018. Dckt. 38. No proofs of claim have been filed affecting the Property in this case. Debtor has listed the Property as having a value of $295,000.00 on Schedule A, with $1.00 claimed as exempt on Schedule C. Dckt. 1. On Schedule D, Debtor lists two claims as secured by the Property: one for $306,000.00 and the other for $82,000.00. *Id.*

Using the $360,000.00 value for the Property, there would be at least $53,999.00 in additional equity to support Creditor's claim secured by a second deed of trust.

However, the evidence of value presented is very slim for Debtor, he just stating an opinion that he, as the owner, believes the property is worth only $295,000. While the Appraisal would appear to identify a number of comparable properties, there is no testimony provided by Creditor.

At the hearing, the Parties requested a continuance so that a new appraisal could be obtained, reviewed with their clients, and further discussion undertaken. The court continued the Objection to Confirmation of Plan to 3:00 p.m. on August 28, 2018, for a Scheduling Conference. Dckt. 48.

AUGUST SUPPLEMENTAL PLEADINGS

Creditor filed the Declaration of Kris Ralston, a certified real estate appraiser ("Ralston"), on the eve of this hearing, August 27, 2018. Dckt. 52. Ralston asserts the Property has a fair market value of $383,000.00 as of May 9, 2018. The Ralston Declaration also acts to authenticate Ralston's appraisal filed as Exhibit 1. Exhibit 1, Dckt. 53.

AUGUST 28, 2018 HEARING

At the August 28, 2018 hearing, the Motion was continued to 3:00 p.m. on October 16, 2018. Dckt. 55. The court indicated Debtor must file and serve any supplemental Declaration on or before September 11, 2018; Opposition filed and served on or before September 25, 2018; Replies if any filed on or before October 2, 2018.

SUPPLEMENTAL DECLARATION OF DEBTOR

Debtor filed a Supplemental Declaration on September 1, 2018 reasserting the fair market value of this Property is $295,000.00. Dckt. 58. Debtor states that the Carr Fire in California burned more than 1,000.00 homes and have made it difficult to secure estimates for needed repairs on Debtor's residence. Declaration, Dckt. 58 at ¶ 3. Debtor identifies as necessary repairs:

air/heating unit $9,088.00

carpets $2,455.42

paint and repair of doors and windows $5,475.00

roof replacement . . . . . .$14,000-$18,000.00

SUPPLEMENTAL OPPOSITION OF CREDITOR

Creditor filed a Supplemental Opposition Brief to the Motion on September 25, 2018 asserting the fair market value of the Property is $383,000.00. Dckt. 64. Creditor replies to Debtor's Declaration pointing out that Debtor originally valued the Property at $295,000.00, and it is unclear whether the introduction of needed repairs is being used to explain that value or suggest some other value. Creditor further replies that Debtor's Supplemental Declaration does not include any evidence from actual contractors as to the value of repairs.

In addition to responding to Debtor's Supplemental Declaration, Creditor provides Exhibit 1, an estimate of costs of the master bathroom remodel. Dckt. 69. However, Creditor has not provided a declaration authenticating the Exhibit.

RULING

The court has now been presented with the appraisal testimony of Kris Ralston. Declaration and Appraisal Report, Dckts. 52, 53. The appraiser's testimony is that the Property has a value of $383,000.00. His Appraisal Report (Exhibit A, Dckt. 53) provides an explanation of the methodology for reaching such value, the comparable properties used, and the adjustments made in reaching his opinion of $383,000.00.

Debtor provides his opinion, as the owner of the Property, that it has a value of $295,000.00, which is less than the senior lien against the Property. Dckt. 21. In a Supplemental Declaration, Debtor testifies to deferred maintenance and damage to the Property, for which the repairs are between $14,000.00 and $18,000.00. Dckt. 58. No photographs or declarations of real estate agents or repair persons are provided.

A supplemental exhibit, unauthenticated, appears in the record, Dckt. 60, in which there is purported to be a planned "remodel" of the master bathroom. These expenses are stated to be $39,313.00. No rationale is provided as to why a future $40,000 remodel of the master bathroom would decrease the value of the Property today.

The court finds the testimony of the Appraiser more persuasive. The valuation of $383,000.00 is reasonable and so determined by the court.

With an obligation of ($307,413.41) owed on the obligation secured by the First Deed of Trust (Proof of Claim No.6-1), there remains $75,586.59 in value to secure the claim of Creditor.

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 Richard Charles Harris ("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 Wilmington Savings Fund Society ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 17237 Marianas Way, Cottonwood, California, is determined to be a secured claim in the amount of $75,413.41, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $383,000.00 and is encumbered by a senior lien securing a claim in the amount of $307,413.41, which does not exceed the value of the Property that is subject to Creditor's lien.

22. **18-26184-E-13 MS-1** | **OLEG/SOMMER ZHURKO** **Mark Shmorgan** | **MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.** **9-30-18 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 30. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Ally Financial, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $17,000.00.

The Motion filed by Oleg Zhurko and Sommer Zhurko ("Debtor") to value the secured claim of Ally Financial, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Ram 1500 Quad Cab Express Pickup 4D 6 1/3 ft ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $17,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on August 31, 2016, which is not more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $22,856.08. *See* 1325(a)(9)(Hanging Paragraph). However, Debtor states under penalty of perjury in Debtor's Declaration:

> "This vehicle was purchased on August 31, 2016 to be used exclusively in our cabinet installation business. The vehicle has a commercial registration and for all intent and purpose is used as a work truck for transporting both materials and tools from our warehouse to our end customers."

Declaration, Dckt. 12 at ¶ 6.

Therefore, the collateral for the debt is not a motor vehicle acquired for *personal use* of the debtor, and the valuation prohibition is inapplicable.

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 $17,000.00, 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.

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 Oleg Zhurko and Sommer Zhurko ("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 Ally Financial, Inc. ("Creditor") secured by an asset described as 2014 Ram 1500 Quad Cab Express Pickup 4D 6 1/3 ft ("Vehicle") is determined to be a secured claim in the amount of $17,000.00, 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 $17,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

23. **18-24785-E-13** **MARIA CURIEL** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Thomas Gillis** **PLAN BY DAVID P. CUSICK**
9-11-18 [14]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, on September 11, 2018. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor admitted during the Meeting of Creditors held September 6, 2018, the 2017 Toyota Tacoma listed in Class 4 is a 5 year loan obtained October 2017 and might actually be a Class 2 claim.

B. Debtor filed Official Form 122C-1 on July 31, 2018. Dckt. 1 at p. 44. Debtor failed to list income of any type. Therefore, it is unclear to the Trustee whether Debtor is paying all disposable income into the proposed plan.

Trustee's objections are well-taken.

Trustee argues that statements made during the Meeting of Creditors by Debtor indicate the claim held by Toyota Motor Credit Corporation should be designated as a Class 2, rather than a Class 4, given the claim will not be paid off during the plan term. However, Trustee's recounting of statements during the Meeting of Creditors is hearsay for which no exception or exemption is asserted. *See* Fed. R. Evid. 801 and 802.

Toyota Motor Credit Corporation filed Proof of Claim No. 6 on September 25, 2018. The agreement filed with the Proof of Claim indicates the agreement was entered September 2017, with a term of 63 months. Therefore, it appears the claim should properly be designated as Class 2.

Furthermore, Debtor has not provided information on her Official Form 122C-1 as to her income. Debtor's failure to properly designate claims and submit a completed statement of income prevent the court from determining whether the plan is feasible. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

24. **17-26687-E-13 RWH-3** | **RYAN/JEAN LECITONA** | **MOTION TO MODIFY PLAN**
Ronald Holland | **9-7-18 [41]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 7, 2018. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Ryan Mark Lecitona and Jean Lecitona ("Debtor") seek confirmation of the Modified Plan to cure arrears owed to Seterus and provide for future payments on that secured claim through the plan; amend the plan to reflect the actual amount owed to creditors with unsecured claims (but now providing a lower dividend); and to provide for the portion of Wells Fargo Bank, N.A.'s claim secured by furniture. Dckt. 43. The Modified Plan implements the aforementioned changes. Dckt. 40. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 27, 2018. Dckt. 48. Trustee opposes confirmation based on the proposed Modified Plan treating arrears of Seterus, Inc. as post rather than pre-petition. Trustee has placed a hold on the September Plan Payments in the amount of $1,600.22 (the mortgage payment pursuant to the Notice of Mortgage Payment Change filed April 26, 2018)

so as to have sufficient funds to make both the September and October mortgage payments. Provided the Motion is granted and Debtor corrects the Plan date, Trustee does not oppose the motion.

DISCUSSION

At the hearing, Debtor stated **XXXXXXXXXXXXXXXXX**.

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 Ryan Mark Lecitona and Jean Lecitona ("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 6, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. **18-24689-E-13** **DAVID SHELTON** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Marc Voisenat** **PLAN BY DAVID P. CUSICK**
9-11-18 [24]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 11, 2018. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent $2,235.19 in plan payments and another payment will $2,235.19 will become due before the date of the hearing. Debtor has paid $0.00 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

B. Debtor has failed to provide Trustee a copy of his latest Federal Income Tax Return as required by 11 U.S.C. § 521(e)(2)(A).

C. Debtor has not provided Trustee with 60 days of payment advices pursuant to 11 U.S.C. § 521 and the Order RE: Chapter 13 Plan Payments, Adequate Protection Payments, and Employer Payment Advices. Dckt. 5.

D. The Plan payment of $2,235.19 for 60 months paying no less than a 0% dividend to unsecured creditors is insufficient to fund disbursements totaling $2,438.45.

E. Debtor proposes to value the secured claim of Townsgate Capital regarding the 2015 Chevrolet Cruz but has not filed a motion to value collateral. Debtor admitted at the 341 Meeting of Creditors he intends to surrender the vehicle. Trustee does not oppose confirmation so long as the plan is amended to reflect this claim being Class 3.

F. Debtor's plan lists Class 4 debt to Hawthorne Auto Square for a 2015 VW Jetta. Debtor admitted at the Meeting of Creditors he has approximately 3 years remaining to pay the balance of the amount owed. It appears the debt should be paid into Class 2 of the plan.

G. Debtor's plan fails to provide for Lakeside Community Owner's Association's judgement lien against real property known as 3904 Riverstone Lane, Elk Grove, California 95758.

Trustee's objections are well-taken.

Trustee asserts that Debtor is $2,235.19 delinquent in plan payments, which represents one month of the $2,235.19 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). While Debtor has provided some pay stubs, Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has mischaracterized or left the court to wonder about several claims. The secured claim of Townsgate Capital is listed as Class 2(B), but no motion to value collateral has been filed. The secured claim of Hawthorne Auto Square is treated as a Class 4, but will be paid off before the plan term ends. Finally, the judgement lien of Lakeside Community Owner's Association is not entirely provided for. Based on the aforementioned, it seems the proposed plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

26. 17-25094-E-13 MET-1 — DAVID/DOROTHY JONES — Mary Ellen Terranella — MOTION TO MODIFY PLAN — 8-22-18 [29]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 22, 2018. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

David Jones and Dorothy Mae Jones ("Debtor") seek confirmation of the Modified Plan to cure delinquency under the Confirmed Plan, which the Debtor explains occurred when Co-Debtor David Jones missed work due to illness. Dckt. 32. The Modified Plan calls for payments of $650 for 12 months and $850 thereafter for the term of the plan. Dckt. 30. The Modified Plan also addresses a claim filed by the Franchise Tax Board. *Id*. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on September 27, 2018. Dckt. 40. Trustee Objects to Confirmation on the basis that Debtor is delinquent $855 under the proposed Modified Plan. According to Trustee's calculations, $8,710.00 has become due and Debtor has paid $7,855.00.

Debtor has not provided any evidence demonstrating a payment was made.

Trustee also notes (without providing grounds for objection) that Debtor's plan indicates attorney's fees are $0.00 paid prior to filing and $1,425.00 paid through the Plan. Debtor's prior attorney Scott De Bie filed Rights and Responsibilities (Dckt. 7) indicating his initial fees in this case were $1,425.00.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on October 9, 2018. Dckt. 43. Debtor states the Trustee has confirmed receipt of Debtor most recent payment of $850.00 after Trustee filed his Opposition. Debtor notes the amount owing was $850.00 and not $855.00.

Debtor also Replies to Trustee stating Debtor's former counsel De Bie has not filed a motion seeking fees, and that Debtor's current counsel would file a motion seeking fees going forward.

DISCUSSION

From the facts presented, Debtor appears delinquent under the terms of the Modified Plan. The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by David Jones and Dorothy Mae Jones ("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.

27. **17-27297-E-13** **ARLEANER COLLINS** **OBJECTION TO CLAIM OF**
PGM-1 **Peter Macaluso** **SACRAMENTO COUNTY TAX**
COLLECTOR, CLAIM NUMBER 1-1
8-27-18 [38]

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 27, 2018. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 1 of the Sacramento County Tax Collector is overruled.

Debtor, Arleaner Collins ("Objector") requests that the court disallow the claim of the Sacramento County Tax Collector ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $30,127.05 .

Objector asserts that Creditor's claim should be reduced to $4,964.73. In support of this assertion, Objector states:

> The debtor in this case, is an elderly women whom has resided in the home since it's purchase in May of 1970, and has never been vacant. Some time in 2013/2014, the County's records reflect that various "City Codes" were inputted into the records which reflected the subject property, commonly known as 1828 Jamestown Dr., Sacramento, CA. 95815 ("Property") as vacant. Dckt. 38 at 1:23-28.
>
> In reviewing the Pre-Petition Sacramento County Secured Property Tax Bill 2012-2013, there are included referenced charges pursuant to "City Code 8.96.360

"Vacant Building Adm. Penalties" in the amount of $750.00, and "Code Enforcement Fees" of $1,600.00. And "Sacramento City Securement" of $983.60. *Id.* at 3:15-19.

In reviewing the Post-Petition Sacramento County Secured Property Tax Bill 2014-2015, there are included referenced charges pursuant to "City Code 8.96 in the amount of $20,000.00, for "Vacant Building Adm. Penalties", and City Code 1.28 in the amount of $1,000.00, for "Delinquent Administrative Penalties." *Id.* at 3:20-24.

The subject property was not vacant before the filing of case #14-32316, was not vacant during nor between this case and dismissal of the first case. *Id*. at 3:25-27.

The claimant Creditor has the affirmative burden of showing reasonableness as a matter of law. The objection, as here, need only note the absence of any such showing, and does not require evidence of support. *Id*. at 4:1-4.

In effect, the proof of claim to address an essential element of the substantive claim that the claimant asserts is favorable Rule 3001(f) evidentiary presumption regarding validity and amount that the basis of the fee includes charges for a "vacant" house which is obviously an error. *Id*. at 4:5-9.

Debtor's Declaration states under penalty of perjury "That I [Debtor] have lived in my home at 1828 Jamerstown Dr., Sacramento, CA 95815 since May of 1970 and the house has never been vacant." Dckt. 41.

CREDITOR'S OPPOSITION

Creditor filed an Opposition to Debtor's Objection on October 2, 2018. Dckt. 57. Creditor asserts that the City of Sacramento began an enforcement action against Debtor on or around April 2011 after site inspection prompted by a broken front door and window, and ajar side bedroom window and garage door. Creditor asserts further that Debtor was issued citations for numerous violation which she could have appealed at the City's assessment. Debtor did not contest the citations and the City placed liens on Debtor's property during the 2012-2013 fiscal year. While Debtor claims the property was not vacant, several inspection indicated otherwise. Furthermore, Creditor notes Debtor has an out of state address on record.

DEBTOR'S REPLY

Debtor filed a Reply to Creditor's Opposition on October 9, 2018. Dckt. 62. Debtor replies that Creditor failed to provide supporting evidence for any of its grounds within the Opposition.

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).

Debtor recites law that vaguely implies Creditor did not meet the requirements for filing a Proof of Claim and therefore has the burden of proof in this case. Without grounds pleaded indicating what the defect in the Proof of Claim is, the burden of proof remains on Debtor.

Here, Debtor's sole grounds for opposing the Creditor's secured claim is that Debtor was issued citations for a vacant house where Debtor was not actually vacant. As Creditor notes, the citations were appealable.

From the facts presented, it appears Debtor defaulted in the actions brought against her and her property. Debtor has not demonstrated what applicable law renders her default and thereby Creditor's claim invalid. Rather, it appears that the Debtor is seeking to have this court adjudicate an obligation for which the period for disputing the underlying obligation has expired.

Debtor has failed to meet its burden in objecting to Creditor's claim. The Objection to the Proof of Claim is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of The Sacramento County Tax Collector ("Creditor"), filed in this case by Debtor, Arleaner Collins ("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 1 of The Sacramento County Tax Collector is overruled.

28. **17-27297-E-13** **ARLEANER COLLINS** **OBJECTION TO CLAIM OF REVERSE MORTGAGE SOLUTIONS, INC., CLAIM NUMBER 2-1**
PGM-2 **Peter Macaluso** **8-27-18 [43]**

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 27, 2018. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 2 of Reverse Mortgage Solutions, Inc. is sustained and the pre-petition arrearage of $25,578.40 is disallowed in its entirety, without prejudice to Creditor filing an amended proof of claim on or before November 15, 2018, clearly stating the basis for a pre-petition arrearage in an amount that does not exceed $25,578.40.

Arleaner Collins, Chapter 13 debtor, ("Objector") requests that the court disallow the claim of Reverse Mortgage Solutions, Inc. ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $265,642.14.

The Objection as set forth by Objector is based on the following grounds:

> The debtor in this case, is an elderly women whom has resided in the home since it's purchase in May of 1970, and based on the Proof of Claim #2 ("POC"), filed by RMS obtained a Reverse Mortgage in April of 2012, although no deed of trust nor note is attached to the POC, claims to in default $25,578.40, when no payment is due. Dckt. 43 at 1:23-27.

As no payments are due, and Sacramento County has filed a Proof of Claim no "arrears" are actually owed although the debtor may have "outlived" the term of the reverse mortgage's projections and is not actually "arrears". *Id*. at 2:1-4.

Here, a review of what is attached to the POC is the "Loan Balance History" which fails to support any property tax nor insurance disbursements in order to support such a claim. While it can be noted that there are two reflections of payments made in the amount of $27,690.42 on October 5, 2015, and $13,114.85 on April 9, 2015, both have been negated on December 1, 2015 and June 19, 2015s. *Id*. at 3:2-8.

On January 29, 2017, RMS issued the debtor a Annual Year-End Statement, listing the "Loan Balance as of January 1, 2017: $253,896.56" and "Taxes Paid and added to mortgage balance; $0.00, Interest...added to mortgage balance; $6,642.48,...MIP...added to the loan balance; $1,287.64...monthly Servicing Fee...added to the loan balance; $360.00..Outstanding Mortgage Loan Balance as of December 31, 2017: $262,186.68...Current Principle Limit of $236,889.19, a NET PRINCIPLE LIMIT OF $28,114.26." A true and correct copy of the Annual Year-End Statement from RMS is attached hereto as an exhibit. See Exhibit #2. Here, the attached document is not reflect that any payment was, or is due in the history provided. What is provided merely reflects that the Mortgage Loan Balance exceeds the Net Principle Limit, and as no contract is provided in support of the debtor being in default any amount whatsoever. *Id*. at 3:9-18.

Under the plain language of Rule 3002.1(d), this type of Notice does not constitute prima facie evidence of validity under Rule 3001(f), and the creditor has not presented sufficient evidence to support it's claim.

Id. at 3:24-27.

Objector seeks the reduction of Creditor's claim from $25,578.40, to $0.00.

CREDITOR'S OPPOSITION

Creditor filed an Opposition to the Objection on October 2, 2018. Dckt. 59. Creditor asserts Objector has not rebutted the Proof of Claim's presumption of validity because (1) the note and deed of trust are attached to the Proof of Claim; (2) the Proof of Claim attaches sufficient supporting documentation, including a complete loan history spreadsheet, loan remittance spreadsheet, and disbursement spreadsheet; and (3) the Annual Year-End Statement Provided by Objector is consistent with the Proof of Claim.

OBJECTOR'S REPLY

Objector filed a Reply to Creditor's Opposition on October 9, 2018. Dckt. 60. Objector argues (1) the "Loan Balance History" attached to the Proof of Claim fails to support any property tax or insurance disbursements, the $27,690.42 on October 5, 2015, and $13,114.85 on April 9, 2015, payments both having been negated on December 1, 2015 and June 19, 2015, respectively; (2) the Mortgage Statement attached as Exhibit 1 does not reflect any payment was or is due; and (3) Proof of Claim No. 1 indicates taxes are owing and therefore were not paid [FN.1].

FN.1. Some of Objector's arguments are appearing for the first time in its Reply. In rendering its decision, the court looks to the grounds stated with particularity in the motion and not afterthoughts shoe horned into the Reply. *See* FED. R. BANKR. P. 9013.

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).

Here, the Proof of Claim is supported by the note, the deed of trust, the Mortgage Proof of Claim Attachment form, a complete loan history spreadsheet, loan remittance spreadsheet, and disbursement spreadsheet. Proof of Claim, No. 2. Creditor has met the requirements of Federal Rule of Bankruptcy Procedure 3001(c) in filing its Proof of Claim. Therefore, the burden falls on Objector to overcome the prima facie validity of a proof of claim.

The Attachment to Proof of Claim 2 states that there is $25,578.40 in pre-petition "principal and interest" due on this obligation. POC 2, p. 4. However, this attachment indicates that there is no interest on this claim, stating that it is "NA," that the principal obligation is $265,642.14 and that:

This is a Reverse Mortgage and the **debtor does not make any monthly payment**.

Id. On the attachment Creditor affirmatively states that there are no advances which have been made, nor are there any fees or costs incurred. *Id.*

While various documents are attached to Proof of Claim 2, it is affirmatively stated that there is no principal or interest that was or could be due from Debtor. Thus, the Proof of Claim is inconsistent with it being evidence of there being some principal or interest due from Debtor.

In the Opposition Creditor asserts that the Proof of Claim does show the basis for a principal and interest obligation. Dckt. 59. The transaction history attached to Proof of Claim 2, p. 24-29, lists some "principal" amount in 2014 for a line item stated as:

8/13/2014	Disb-Prop Chrg Pre D&P - Taxes	$ 4,902.97
7/31/2014	Disb-Prop Chrg Pre D&P - Hazard Ins	$ 951.00
. . .		
3/10/2014	Disb-Prop Chrg Pre D&P - Taxes	$ 4,743.61
. . .		
7/24/2013	Disb-Prop Chrg Pre D&P - Taxes	$ 3,601.00
. . .		
7/24/2013	Disb-Prop Chrg Pre D&P - Taxes	$ 24.00
. . .		

1/29/2013 Disb-Prop Chrg Pre D&P - Taxes	$ 3,588.02
. . .	
8/13/2012 Disb-Prop Chrg Pre D&P - Hazard Ins	$ 794.07
. . .	
6/20/12 Disb-Prop Chrg Pre D&P - Inspection	$ 20.00
. . .	
4.3.2012 Loan Setup - Advances (Principle)	$183,476.95

This detail then includes entries for interest, service fees, corporate advances, and MIP.

It is not clear from the pages and pages of attachments, what "Principal and Interest" obligation in the amount of $25,578.40 could exist.

The Opposition does not show what "principal and interest" obligation could exist as a pre-petition arrearage on this Reverse Mortgage. The Opposition does not (or cannot) simply state that a pre-petition obligation of "principal and interest" is owed for . . . . . .

While a proof of claim will have prima facie value, such must facially present the basis for the claim. Here, Proof of Claim No. 2 has been filed, with the underlying obligation being stated to be a reverse mortgage. Creditor goes further to affirmatively state that Debtor has no obligation to make principal and interest payments. The Proof of Claim then goes to assert a pre-petition arrearage of $25,2578.40.

Creditor has not presented a proof of claim for which there is prima facie evidence of a pre-petition arrearage. Creditor states under penalty of perjury that there is no obligation of Debtor to pay principle or interest. At best, Proof of Claim No. 2 presents an internally inconsistent, conflicting asserted claim for a pre-petition arrearage – not one of *prima facie* evidentiary value that such a claim exists.

Debtor has put that alleged pre-petition arrearage claim at issue, with Creditor having the burden of proof to show it exists.

Rather than the parties continuing to stumble forward based on an internally inconsistent proof of claim form, the court sustains the objection without prejudice to Creditor filing an amended proof of claim on or before November 15, 2018, which clearly and accurately states any asserted pre-petition claim, the basis therefore, and Debtor's obligation to pay.

Allowing a reasonable time to file the amended claim will allow Creditor to better focus its claim and Debtor to clearly state an objection if any. This will save Debtor, Creditor, and their respective counsel from trying to collectively re-state Creditor's claim.

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 Reverse Mortgage Solutions, Inc. ("Creditor"), filed in this case by Arleaner Collins, Chapter 13 debtor, ("Objector") having been

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

IT IS ORDERED that the Objection to Proof of Claim Number 2 as to the pre-petition amount of $25,578.40 is sustained and said amount not allowed in its entirety, without prejudice to Reverse Mortgage Solutions, Inc. filing an amended proof of claim on or before November 15, 2018, stating clearly the basis for a pre-petition arrearage in an amount that shall not exceed $25,578.40.

29. **18-22497-E-13 RSM-2** | **ROBERT MAC BRIDE** **Pro Se** | **OBJECTION TO CLAIM OF DEUTSCHE BANK NATIONAL TRUST, CLAIM NUMBER 3** **9-17-18 [61]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor on September 17, 2018 [FN.1]. By the court's calculation, 29 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

FN.1. In addition to failing to meet the time period for notice, no proof of service has been filed with the Motion. The court notes the Debtor is in Pro Se, and has substantially complied with other requirements. The Notice of hearing is signed by Debtor. Dckt. 66.

In this case, the Creditor whose claim is subject of the Motion presented an Opposition, indicating notice was received. No prejudice to any party in interest appearing, the court waives the defect.

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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 3 of Deutsche Bank National Trust Company, as trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-HE3 Mortgage Pass-through Certificates, Series 2007-HE3 ("Creditor") is overruled.

Robert Stuart Mac Bride, Debtor in Pro Se ("Objector") requests that the court disallow the claim of Deutsche Bank National Trust Company, as trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-HE3 Mortgage Pass-through Certificates, Series 2007-HE3 ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $399,488.32. Objector alleges that Creditor failed to provide evidentiary support for various costs and expenses asserted in their Proof of Claim. Objector's arguments are as follows:

5. Pursuant to 11 U.S.C. section 506(b) a secured creditor is allowed "any reasonable fees, costs, or charges provided for under the agreement or state statute under which such claim arose."

6. At Page 6, line 16 of its Proof of Claim, Deutsche Bank has provided no documentation to support its claim for Review of Plan/Notice of Appearance on September 19, 2016 for $300.00 nor to support its claim for Review of Plan/Notice of Appearance on November 30, 2016 for $300.00 at Page 6, line 23. Additionally, Debtor maintains that only one Notice of Appearance was filed in case no. 16-24396.

7. Deutsche Bank should provide copies of the invoices or the expenses should not be allowed because this Court is not able to determine if it is reasonable without the information.

8. At Page 8, line 12 of the Proof of Claim, Deutsche Bank has provided no document to support its claim for adversary proceeding cost of $100.00 incurred on October 6, 2017, other than what appears as a payment advice (page 28 of the Proof of Claim). However, no adversary proceeding was filed in case no. 17-22283.

9. Deutsche Bank should provide a copy of the invoice or the expense should not be I allowed because this Court is not able to determine if it is reasonable without the information.

10. At Page 7, line 32 of the Proof of Claim Deutsche Bank has provided no I documentation to support its claim for Review of Plan/Notice of Appearance on May 15, 2017 for $400.00.

11. Deutsche Bank should provide a copy of the invoice or the expense should not be I allowed because this Court is not able to determine if it is reasonable without the information.

12. At Page 11 of the Proof of Claim, under Deutsche Bank's Fees Breakdown, Deutsche Bank claims payment for two title searches—one invoice dated January 5, 2016 for $962.00 and one invoice dated December 28, 2015 for $962.00. Deutsche Bank, at Page 5, line 14, indicates that it paid $962.00 on January 8, 2016 and that it paid another $962.00 on October 26, 2017, yet two title searches were requested within a thirty day period.

13. While Deutsche Bank provided what appears to be an invoice from Premium Title for a title search invoice date January 5, 2016 (page 12 of the Proof of Claim), Premium Title invoiced Deutsche Bank for a "Title Search Fee to PTS". At Page 13 of the Proof of Claim, Deutsche Bank provides a payment advice indicating that the payment for a title search is for a "service date of 12/28/2015". Therefore, Deutsche Bank should provide copies of the actual title search documents or the expense should not be allowed because this Court is not able to determine if it is reasonable without additional supporting documentation.

14. Deutsche Bank has provided no documentation to support its claim for Notice of Sale for $105.00 on April 13, 2018, listed at page 8 of the Proof of Claim, line 25.

15. Deutsche Bank should provide copies of the invoice or the expense should not be allowed because this Court is not able to determine if it is reasonable without additional II supporting documentation.

16. Deutsche Bank has provided no documentation to support is claim for Trustee Fee for $220.00 on April 25, 2018, listed at page 8 of the Proof of Claim, line 29.

17. Deutsche Bank should provide copies of the invoice or the expense should not be allowed because this Court is not able to determine if it is reasonable without additional supporting documentation.

18. Deutsche Bank has provided no documentation to support its claim for statutory mailings for $192.01 on April 25, 2018, listed at page 8 of the Proof of Claim, line 30.

19. Deutsche Bank should provide copies of the invoice or the expense should not be allowed because this Court is not able to determine if it is reasonable without additional supporting documentation.

20. Deutsche Bank has provided no documentation to support its claim for posting for $192.01 on May 9, listed at page 8 of the Proof of Claim, line 32.

21. Deutsche Bank should provide copies of the invoice or the expense should not be II allowed because this Court is not able to determine if it is reasonable without additional I supporting documentation.

22. Deutsche Bank has provided no documentation to support its claim for publication for $210.00 on May 9, 2018, listed at page 8 of the Proof of Claim, line 33.

23. Deutsche Bank should provide copies of the invoice or the expense should not be allowed because this Court is not able to determine if it is reasonable without additional supporting documentation.

24. While Deutsche Bank has provided what appears to be nine invoices from Altisource for property inspections (pages 14 through 22 attached to its Proof of Claim), these documents appear suspect. Each of the nine invoices for property inspection is for $13.25 for a total of 119.25. At vendor information of the alleged invoices, Altisource's street address is "NA" and Altisource is located in Alabama. The subject property is located in California. Also, under Purchase Order Information of the alleged invoices, there is reference to a "created date."

25. Deutsche Bank should provide copies of the actual invoices or the expenses should not be allowed because this Court is not able to determine whether the service actually occurred.

26. At page 4 of the Proof of Claim, Part 3: Arrearage as of the Date of the Petition, Deutsche Bank has a sum of $1,838.03 "on hand." A monthly mortgage payment is $1,848.65, $1,465.19 is attributable to principal and interest and $383.46 to escrow for property taxes pursuant to the alleged Loan Modification at page 42 of the Proof of Claim, paragraph 3d. The amount of $1,465.19 should be applied to Debtor's mortgage account.

Dckt. 61.

CREDITOR'S OPPOSITION

Creditor filed an Opposition to Debtor's Objection on October 2, 2018. Dckt. 75. Creditor argues that Federal Rule of Bankruptcy Procedure 3001(c) requires the proof of claim to include an itemized statement of any interest, fees, expenses or other charges, which Creditor has provided. *Id.* Specifically, Creditor asserts:

1. Review of Plan/Notice of Appearance Fees of $300.00.

The fees are itemized on page 6 of the Proof of Claim. The fees were incurred while the Debtor's first bankruptcy case was pending. The Debtor filed an initial plan and an amended plan in his first bankruptcy case. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

2. Adversary Proceeding Fees in the amount $100.00.

The fees are itemized on page 8 of the Proof of Claim and a receipt for said fees is provided on page 28. This fee was incurred while the Debtor's second bankruptcy case was pending. Although it was categorized as an "Adversary Proceeding" fee on the receipt, the Order Type is listed as a "Supplemental Proof of Claim." Upon information and belief, this fee was incurred in connection with filing a supplement to the proof of claim that Creditor filed in the Debtor's second bankruptcy case. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

3. Review of Plan/Notice of Appearance Fee of $400.00.

The fees are itemized on page 6 of the Proof of Claim and a receipt for said fees is provided on page 27. The fees were incurred while the Debtor's second bankruptcy case was pending. The Debtor filed a Chapter 13 Plan in his second bankruptcy case. Creditor filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges in the Debtor's second bankruptcy case and such fees are reflected in this notice. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

4. Title Search Fees of $962.00.

The fees are itemized on page 5 and 8 of the Proof of Claim. Receipts for said fees are provided on pages 12 and 13 of the Proof of Claim. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

5. Notice of Sale Fee of $105.00.

The fees are itemized on page 8 of the Proof of Claim and a receipt for said fees is provided on page 25. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

6. Trustee Fee of $220.00.

The fees are itemized on page 8 of the Proof of Claim and a receipt for said fees is provided on page 26. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

7. Statutory Mailing Fee of $192.01.

The fees are itemized on page 8 of the Proof of Claim and a receipt for said fees is provided on page 26. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

8. Posting Fee of $192.01.

The fees are itemized on page 8 of the Proof of Claim. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

9. Publication Fee of $210.00.

The fees are itemized on page 8 of the Proof of Claim and a receipt for said fees is provided on page 29. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

10. Property Inspection Fees of $13.25.

The fees are itemized on pages 4 through 8 of the Proof of Claim and a receipt for said fees is provided on pages 14 through 22. The Debtor has failed to present any evidence demonstrating that such fees are invalid.

Dckt. 75.

Creditor also asserts it has not misapplied mortgage funds as Debtor claims, that Part 3 of Page 4 of the Proof of Claim indicates that funds in the amount of $1,838.03 were being held by Creditor on the date of the petition, and that it is unclear as to why the Debtor is alleging that the funds have been misapplied.

APPLICABLE LAW

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).

Where a creditor's claim includes interest, fees, expenses, or other charges incurred before the petition was filed the proof of claim must include an itemized statement demonstrating the interest, fees, expenses, or other charges. FED. R. BANKR. P. 3001(c)(2)(A).

DISCUSSION

Creditor's arguments are well-taken.

The brunt of Objector's argument is that Creditor failed to provide documentation supporting various fees and charges. However, as Creditor asserted in its Opposition, the requirement for a claim including interest, fees, expenses, or other charges incurred is the filing of an itemized statement. Coincidentally, Objector seems to be relying on the itemized statement for each objection.

Objector also disputes the reasonableness of a few fees and charges. 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. No evidence having been provided to the court, Objector failed to meet his burden of proof.

As to the "misapplied" payment of $1,838.03, Objector seems to have misunderstood the calculation within the Proof of Claim. Part 3 of the Mortgage Proof of Claim Attachment states that arrearages for the Creditor's claim are "Less funds on hand 1,838.03." While Creditor is keeping the funds on hand, it has applied the payment as a credit in its calculation of amounts owed. Creditor also applies the Credit in its calculation of the total debt, Part 2 of the Mortgage Proof of Claim Attachment.

The Objection to the Proof of Claim is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Deutsche Bank National Trust Company, as trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-HE3 Mortgage

Pass-through Certificates, Series 2007-HE3 ("Creditor"), filed in this case by Robert Stuart Mac Bride, Debtor in Pro Se ("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 3 of Deutsche Bank National Trust Company, as trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-HE3 Mortgage Pass-through Certificates, Series 2007-HE3 ("Creditor") is overruled.

FINAL RULINGS

30.	**18-24026-E-13** **PGM-1**	**MICHELLE LUND** **Peter Macaluso**	**MOTION TO CONFIRM PLAN** **9-10-18 [24]**

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

- - - - - - - - - - -

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and Office of the United States Trustee on September 10, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

Michelle Lund ("Debtor") seeks confirmation of the Amended Plan, no plan having been confirmed in this case. Dckt. 24. The Amended Plan suspends all missed payments through August 2018, acknowledges that Debtor has paid $1,700.00 into the Plan through August 2018, and calls for $850.00 to commence on September 25, 2018 and continue for the remaining 57 months of the Plan. Dckt. 26. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

David Cusick ("the Chapter 13 Trustee") filed a Response to the Motion on September 27, 2018. Dckt. 38. The Trustee argues that the language of the Plan in its additional provisions indicates a Plan term of 59 months, not the proposed 60 months. The Trustee does not oppose adding language in an order confirming the Plan correcting the Plan term to 60 months.

Debtor filed a Reply to Trustee's Response on October 8, 2018. Dckt. 42. Debtor's Reply concurs that the plan term is 59 months by the terms, and requests the court permit the language to be corrected in an order confirming the Plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Michelle Lund ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 10, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan incorporating language correcting the length of the 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.

31. **18-24928-E-13 DPC-1** | **MARVIN/GINA DOMINGUEZ** **Mark Wolff** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-11-18 [21]**

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

David Cusick (the "Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on August 6, 2018, is confirmed.

Counsel for Marvin and Gina Dominguez ("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.

32. **17-20748-E-13 MRL-1** **GREGORY GOLDBERG** **Mikalah Liviakis** **MOTION TO MODIFY PLAN** **8-17-18 [16]**

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 17, 2018. By the court's calculation, 60 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Gregory Goldberg ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a statement of non-opposition on September 27, 2018. Dckt. 21. 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 Gregory Goldberg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

33. **18-23379-E-13 DNL-3** | **WILLIAM BATTILANA, II** **Gerald White** | **MOTION FOR COMPENSATION FOR SUSAN K. SMITH, CHAPTER 7 TRUSTEE** **9-6-18 [64]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2018. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Susan Smith, the former Chapter 7 Trustee, ("Applicant") for the Estate of William Rudolph Battilana, II ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period May 30, 2018, through August 3, 2018.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also*

Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio), 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include Applicant performed customary duties of the Trustee, including opening the case and entering it into a case management system, reviewing the Petition and Schedules, reviewing mail, preparing for and conducting the Meeting of Creditors, and examining claims and assets; investigated the estate's interests; employed counsel; recorder a certified copy of debtor's petition; employed a broker to sell property of the estate; assisted Trustee's counsel in preparing an application for fees; and communicated with Trustee's counsel regarding all the aforementioned. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 2.7 hours in this category. Applicant performed customary duties of the Trustee, including opening the case and entering it into a case management system, reviewing the Petition and Schedules, reviewing mail, preparing for and conducting the Meeting of Creditors, and examining claims and assets; investigated the estate's interests; employed counsel; recorder a certified copy of debtor's petition; employed a broker to sell property of the estate; assisted Trustee's counsel in preparing an application for fees; and communicated with Trustee's counsel regarding all the aforementioned.

Asset Analysis and Recovery: Applicant spent 3.9 hours in this category. Applicant investigated the assets of the estate and employed a broker to sell property of the estate.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**

Susan Smith	6.6	$350.00	$2,310.00
Total Fees for Period of Application			$2,310.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $134.64 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Record Certified Copy of Petition (including postage, petition, and recording costs)	$134.64	$134.64

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,310.00 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 13 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

COSTS & EXPENSES ALLOWED

First and Final Costs in the amount of $134.64 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

RULING

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

Fees	$2,310.00
Costs and Expenses	$134.64

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

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

The Motion for Allowance of Fees and Expenses filed by Susan Smith, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Susan Smith is allowed the following fees and expenses as a professional of the Estate:

Susan Smith, the former Chapter 7 Trustee

Fees in the amount of $$2,310.00
Expenses in the amount of $134.64,

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available Plan funds in a manner consistent with the order of distribution under the confirmed Plan.

34. **18-23379-E-13 DNL-4** **WILLIAM BATTILANA, II** **Gerald White** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & FOR J. CUNNINGHAM ATTORNEY(S) 9-6-18 [69]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2018. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

.

The Motion for Allowance of Professional Fees is granted.

Desmond, Nolan, Livaich, & Cunningham the Attorney ("Applicant") for Susan Smith, the former Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 12, 2018, through August 5, 2018. The order of the court approving employment of Applicant was entered on July 26, 2018. Dckt. 27. Applicant requests fees in the amount of $2,665.00 and costs in the amount of $20.72.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include reviewing debtor's voluntary petition, schedules, and statement of financial affairs; assisting generally in asset investigation; advising the Trustee regarding the estate's interests on assets; assisting the Trustee in preparing listed documents for the property of the estate; preparing an application to employ a broker, filing motions to employ and for fee application, and advising the Trustee regarding debtor's conversion claim. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Asset Investigation, Analysis, and Disposition: Applicant spent 2 hours in this category. Applicant reviewed debtor's voluntary petition, schedules, and statement of financial affairs; assisted generally in asset investigation; advised the Trustee regarding the estate's interests on assets; assisted the Trustee in preparing listed documents for the property of the estate; prepared an application to employ a broker.

Claims and Conversion Litigation: Applicant spent 1.4 hours in this category. Applicant advised the Trustee regarding debtor's conversion motion.

Employment Applications: Applicant spent 3.1 hours in this category. Applicant prepared the application to employ counsel and a broker.

Fee Applications: Applicant spent 9.8 hours in this category. Applicant prepared this Motion and the application for Susan Smith's fees.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
J. Russell Cunningham	2.3	$425.00	$977.50
Nicholas L. Kohlmeyer	7.5	$225.00	$1,687.50
Total Fees for Period of Application			$2,665.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $20.72 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Photocopies	$0.10	$11.60
Postage	$9.12	$9.12
Total Costs Requested in Application		$20.72

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,665.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of $20.72 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$2,665.00
Costs and Expenses	$20.72

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich, & Cunningham ("Applicant"), Attorney for Susan Smith, the former Chapter 7 Trustee ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Desmond, Nolan, Livaich, & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich, & Cunningham, Professional employed by the former Chapter 7 Trustee,

Fees in the amount of $2,665.00
Expenses in the amount of $20.72,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the former Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

35. **18-24688-E-13 DEF-2** | **ELIZABETH/ELRICO MOORE** | **MOTION TO CONFIRM PLAN**
David Foyil | **8-23-18 [22]**

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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 23, 2018. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Elizabeth and Elrico Moore ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on September 26, 2018. Dckt. 35. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Elizabeth and Elrico Moore ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on August 23, 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.

36. 18-24688-E-13 DPC-1 — ELIZABETH/ELRICO MOORE — David Foyil — OBJECTION TO DISCHARGE BY DAVID P. CUSICK — 9-13-18 [31]

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, and Office of the United States Trustee on September 13, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Elizabeth and Elrico Moore's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on November 7, 2014. Case No. 14-31054. Debtor received a discharge on February 17, 2015. Case No. 14-31054, Dckt. 14.

The instant case was filed under Chapter 13 on July 26, 2018.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on February 17, 21015, which is less than four years preceding the date of the filing of the instant case. Case No. 14-31054, Dckt. 14. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-24688), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-24688, the case shall be closed without the entry of a discharge.

37. **18-22497-E-13** **ROBERT MAC BRIDE** **OBJECTION TO CLAIM OF CALIFORNIA DEPARTMENT OF FEE AND TAX ADMINISTRATION, CLAIM NUMBER 4**
RSM-3 **Pro Se** **9-17-18 [65]**

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 on September 14, 2018 [FN.1]. By the court's calculation, 29 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

FN.1. In addition to failing to meet the time period for notice, no proof of service has been filed with the Motion. The court notes the Debtor is in Pro Se, and has substantially complied with other requirements. The Notice of hearing is signed by Debtor. Dckt. 66.

In this case, the Creditor whose claim is subject of the Motion presented an Opposition, indicating notice was received. No prejudice to any party in interest appearing, the court waives the defect.

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 of the California Department of Tax and Fee Administration ("Creditor") is overruled as Moot, Creditor having concurred with Objector's valuation of the claim and filed an amended proof of claim.

Robert Stuart Mac Bride, Debtor in *Pro Se* ("Objector") requests that the court disallow the claim of the California Department of Tax and Fee Administration ("Creditor"), Proof of Claim No. 4 ("Claim"),

Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $8,408.00 Objector asserts that he is in the process of filing a redetermination of tax liability with Creditor, and lists his disputed amounts owed as follows:

Period of Tax Liability	Creditor's Determination of Tax Liability	Debtor's Determination of Tax Liability
7/1/17 through 9/30/17	$1,860	$551.00
10/1/17 through 12/31/17	$1,860	$0.00
1/1/18 through 3/31/18	$1,860	$0.00
4/1/18 through 6/30/18	$1,860	$0.00
Total	$7440 (plus interest and penalty fees resulting in a total of $8,408.00)	$551.00

Dckt. 65. Objector appears to request the claim be revalued, as no request for disallowance of Claim is stated.

OPPOSITION OF CREDITOR
& AMENDED PROOF OF CLAIM

Creditor filed an Opposition to this Motion on September 28, 2018. Dckt. 71. Creditor states its prior claim determination was based on estimates, in part because Objector did not file 2017 or 2018 tax returns.

Creditor filed an Proof of Claim No. 4-2 on September 20, 2018, amending the original proof of claim to state the value of the claim to be $2,810.06.

DISCUSSION

The Creditor having concurred with Objector's valuation of the claim and filing an Amended Proof of Claim, No. 4-2, the Objection is dismissed as moot.

While the Amended Proof of Claim states an amount greater that the amount asserted by Objector, Creditor explained the difference is based on amounts not addressed within the Objection.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of the California Department of Tax and Fee Administration ("Creditor"), filed in this case by Robert Stuart Mac Bride, Debtor in *Pro Se* ("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 of the California Department of Tax and Fee Administration ("Creditor") is overruled as Moot, Creditor having concurred with Objector's valuation of the claim by filing Amended Proof of Claim No. 4 in the amount asserted in the Objection.

38. 18-24688-E-13 ELIZABETH/ELRICO MOORE
David Foyil

CONTINUED ORDER TO SHOW CAUSE -FAILURE TO PAY FEES
8-31-18 [29]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 2, 2018. The court computes that 38 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $79.00 due on August 27, 2018.

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

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

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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