UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 25, 2016, at 3:00 p.m.

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1. **16-25210-E-13** **MARCO SIERRA** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Pro Se** **PLAN BY DAVID P. CUSICK**
9-28-16 [44]

Case Dismissed 10/12/16

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled without prejudice as moot, the case having been dismissed.

2. **15-27111-E-13** **EDWARD/SUSAN CARDOZA** **MOTION TO MODIFY PLAN**
DBL-4 **Bruce Dwiggins** **9-2-16 [68]**

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

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

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

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

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

3. **15-26512-E-13 GW-3** | **MATTHEW CORSAUT** **Gerald White** | **MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTOR'S ATTORNEY** **9-27-16 [73]**

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor. Chapter 13 Trustee, and Office of the United States Trustee on September 27, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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 (14) 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.

Gerald White, the Attorney ("Applicant") for the Chapter 13 Debtor Matthew Corsaut ("Client"), makes a Second Interim Request for the Allowance of Fees and Expenses in this case. The First Interim Request for Allowance of Fees and Expenses was granted in part (providing for $2,340.00 to be paid) and the balance of the requested fees was denied without prejudice because the court expressed concern about Client creating a list of expenses that did not reflect "the true, current, expenses." Dckt. 39.

The period for which the fees are requested is August 17, 2015, through September 23, 2016. Applicant requests fees in the amount of $13,180.00. Applicant has incurred $15,180.00 in fees and $340.00 in costs. The court previously approved an allocation of $2,340.00 from the First Interim Fee Application. Dckt. 39. That leaves a balance of $13,180.00, which Applicant has requested now.

Applicant maintains a trust account for attorney's fees, which has been supplemented with $3,910.00 from Client as a retainer and $6,000.00 from the Trustee according to the confirmed Plan. After subtracting the $2,340.00 that the court approved as interim fees and expenses previously, $7,570.00 remains

in the trust. Taking into account the requested amount of $13,180.00, $5,610.00 would be due after application of the funds in the trust.

Applicant requests that $7,570.00 held in trust for Applicant's fees be used and the remaining $5,610.00 be paid from funds through the confirmed Chapter 13 Plan (Dckt. 45).

The Trustee entered a statement of non-opposition on October 11, 2016.

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparation of case, confirmation of plan, review of claims, adversary proceeding with Dawny Corsaut, and general case management. Debtor paid a retainer of $3,910.00 before the case was filed. The Civil Minute Order of October 27, 2015, applied $2,340.00 and left the remaining $1,570.00 in trust. The confirmed plan calls for the Trustee to supplement attorney's retainer by $6,000.00, which has been paid by Trustee to date. A trust account holds $7,570.00 currently.

The court recognizes that the attorneys' fees sought are attorneys' fees for resolving matters, as opposed to fomenting litigation. Though this case appears to have been "uneventful," the issues resolved by counsel are complex.

The court finds the services were beneficial to the Client and bankruptcy 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.

Preparation of Case: Applicant spent 19.25 hours in this category. Applicant assisted Client with reviewing assets and debts, identifying plan issues, and petition preparation.

Confirmation of Plan: Applicant spent 18.05 hours in this category. Applicant reviewed information from client regarding real estate transaction, appeared at the meeting of creditors, prepared liquidation test analysis, drafted opposition to Trustee's objection, and consulted with Client and the Trustee to resolve the objection.

Review of Claims: Applicant spent 3.35 hours in this category. Applicant reviewed claims filed by creditors and corresponded with creditors.

Adversary Proceedings: Applicant spent 3.55 hours in this category. Applicant reviewed the adversary proceeding filed against Debtor and corresponded with opposing counsel regarding the matter.

General Case Management: Applicant spent 6.40 hours in this category. Applicant corresponded with creditors to release levy against the Debtor, corresponded with creditor to prevent foreclosure of the Debtor's property, and corresponded with Client regarding all pending issues.

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**
Gary Gale, Attorney	47.30	$300.00	$14,190.00
Gerald White, Attorney	3.30	$300.00	$990.00
	0	$0.00	$0.00
Total Fees For Period of Application			$15,180.00

Pursuant to prior the Interim Fee Application, the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$2,000.00	$2,000.00
	$0.00	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$2,000.00	

FEES ALLOWED

Section 6.01 of the confirmed Plan states that "[i]f Attorney fees and costs are approved in excess of the retainer held in Attorney's trust account, then the excess fees and costs may be paid through the plan as an administrative expense, or directly by Debtor to Attorney outside of the plan, as approved by the Court." Dckt. 45.

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of $13,180.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $13,180.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Gerald White ("Applicant"), Attorney for the Chapter 13 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 Gerald White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald White, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $13,180.00,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that Applicant is authorized to withdraw $7,570.00 held in trust as payment for the attorney's fees allowed by this Order.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the $5,610.00 balance of fees allowed by this Order from the available funds of the Plan

in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

4.	**16-25515-E-13** **DPC-1**	**JENNIFER MUNOZ** **Mary Ellen Terranella**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-28-16 [19]**

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 28, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. Debtor cannot afford to make the payments or comply with the Plan. Debtor's plan relies on the Motion to Value Collateral of OneMain Financial, which was heard on October 4, 2016. If the Motion to value was not granted, Debtor's Plan would not have sufficient monies to pay the claim in full and therefore should be denied confirmation.

The court granted Debtor's Motion to Value of OneMain Financial and determined the claim of OneMain Financial secured by an asset described as a 1999 Nissan Maxima GLE as a secured claim in the amount of $1,095.00 with the balance being a general unsecured claim to be paid through the Plan. Dckt. 26. With the Debtor's Motion to Value being granted, there are sufficient monies in the Plan to pay the secured portion of the claim in full. The Trustee's 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 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Debtor's Chapter 13 Plan filed on August 20, 2016, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. 13-22820-E-13 EJS-4 | **KATHLEEN SINDELAR** **Eric Schwab** | **OBJECTION TO CLAIM OF PORTFOLIO RECOVERY ASSOCIATES, LLC, CLAIM NUMBER 8** **9-7-16 [72]**

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.

Correct 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 9, 2016. By the court's calculation, 48 days' notice was provided, 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to 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 (14) 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 Claim is overruled without prejudice.

Kathleen Sindelar, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Portfolio Recovery Associations, LLC ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $14,108.09. Objector asserts that Debtor was never liable for this account because she did not apply for the account with her former spouse, who had a card issued to Debtor without her knowledge or consent.

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 a 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).

Unless the objector introduces evidence as to the invalidity of the claim or the excessiveness of its amount, the claimant need not offer further proof of the merits of the claim. *Brown v. IRS (In re Brown)*, 82 F.3d 801 (8th Cir. 1996); *In re Hemingway Transp.*, 993 F.2d 915 (1st Cir. 1993); *In re Fullmer*, 962 F.2d 1463(10th Cir. 1992). When a party objects within the procedural guidelines of Rule 9014, that party carries the burden of going forward with evidence concerning the validity and the amount of the claim. *In re Fullmer*, 962 F.2d 1463(10th Cir. 1992); *In re Allegheny Int'l Inc.*, 954 F.2d 167 (3d Cir. 1992).

If the objector succeeds in overcoming the prima facie effect given to the claim, the ultimate burden ordinarily remains on the claimant to prove the validity of the claim by a preponderance of the evidence. *In re Harrison* 987 F.2d 677 (10th Cir. 1993); *In re Allegheny Int'l Inc.*, 954 F.2d 167 (3d Cir. 1992). The effect of this principle is to return the burden from the objecting party to the claimant. However, the Supreme Court in *Raleigh v. Illinois Department of Revenue* held that "the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." 530 U.S. 12, 21 (2000). If the claimant did not have the burden of proof outside of bankruptcy, then it does not have it in the bankruptcy case. According to the court, the ultimate burden of proof for a particular claim will be based on non-bankruptcy law. 4 COLLIER ON BANKRUPTCY ¶ 502.02[3][f] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

DISCUSSION

Here, the evidence provided by the Debtor is a declaration stating her testimony under penalty by that she seeks to provide the court with sufficient evidence to overcome the prima facie evidential value of the proof of claim itself. Her testimony consists of the following:

> "1. I am the Debtor in this case.
>
> 2. I object to the claim of Portfolio Recovery Associates, LLC, (Claim #8 in the claims registry). The basis of the objection is that **I was never liable for this account** as **I did not apply for the account with my former spouse**, **who had a**

> **card issued to me without my knowledge or consent**. The claim on file with this Court, provided as Exhibit A."

Declaration, Dckt. 74 [emphasis added]. Though given the opportunity to provide the court with testimony, prepared in the cool and calm of her attorney's office, this is the best evidence Debtor could provide the court.

Claimant's Proof of Claim No. 8 includes an account summary showing that a credit card account with Chase Bank USA, N.A. was opened in 1987. The Proof of Claim includes an account statement for the period October 25, 2012, through November 25, 2012. That statement names Debtor and Frank L Sindelar (who the court presumes is Debtor's ex-spouse). The claimant has provided evidence that Debtor knew—or should have known—that her name was attached to a credit account that was incurring interest on unpaid credits.

Additionally, Debtor has not provided any information about a dissolution of marriage with Frank L Sindelar. The court does not know when the dissolution occurred. On the Statement of Financial Affairs, Debtor states that she transferred real property to Frank L. Sindelar sometime within the two years prior to the commencement of this case pursuant to a marital settlement agreement. But the required "date" of the transfer is not disclosed to (or withheld from) the court. Statement of Financial Affairs Question 10., Dckt. 1 at 27. However, in response to Statement of Financial Affairs Question 4, Debtor states that she was not a party to any legal proceeding in the twelve months prior to the commencement of this case. *Id.* at 25.

Attached to Proof of Claim No. 8 is a copy of a credit card statement for the period October 26, 2012, through November 25, 2012. The address area on the statement has the names Frank L. Sindelar and Kathleen J. Sindelar. The statement just shows a balance due, with no new charges for the period. Also attached to Proof of Claim No. 8 is a document titled "Account Summary." This appears just to be a summary of information prepared by Claimant and not a document from the original creditor. No credit agreement or other documents identifying the Debtor as having signed a contract for the credit or using a credit card obtained by Frank L. Sindelar have been provided.

The problem for Debtor arises that in being parsimonious in presenting her testimony, her testimony is pregnant with a possible admission that even though she did not "apply for the credit," she states that her former spouse had "a card issued to me." She does not clearly testify that: (1) she never received a credit card for this account, (2) she never used a credit card for this account, and (3) she never obtained any credit for this account. While Debtor testifies that her former spouse had the "card issued to me without my knowledge or consent," she never testifies that she didn't use the card once she got it.

Debtor does not provide any testimony about this debt and whether it is a community debt (Cal. Fam. Code § 902), whether Debtor has community property that is liable for the debt (Cal. Fam. Code § 910(a)), and whether it is a debt for which property of the estate is a source for payment.

Quite possibly Debtor believed that it was so obvious to her that she never knew of this account, never had a credit card, and never obtained any credit through this account, that it had to be obvious to everyone else. Unfortunately, it is not, and Debtor's testimony does not provide sufficient evidence to overcome the prima facie evidence of an obligation for credit obtained by Debtor.

In light of there not being an opposition and there being no contract or statement of charges made by Debtor, the court overrules the objection without prejudice. Debtor can proceed with a new objection, providing clear testimony to provide the court with evidence to disallow this 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 Portfolio Recovery Associates, LLC, Creditor filed in this case by Kathleen Sindelar, Chapter 13 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 objection to Proof of Claim Number 8 of Portfolio Recovery Associates, LLC is overruled without prejudice.

6. **13-22820-E-13** **KATHLEEN SINDELAR** **OBJECTION TO CLAIM OF FIRST TECH FEDERAL CREDIT UNION, CLAIM NUMBER 3**
EJS-5 **Eric Schwab** **9-7-16 [67]**

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.

Correct 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 9, 2016. By the court's calculation, 48 days' notice was provided, 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to 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 (14) 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 Claim is overruled without prejudice.

Kathleen Sindelar, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of First Tech Federal Credit Union ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $9,219.47. Objector asserts that the account is based on a debt obligation belonging solely to Debtor's spouse.

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 a 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).

Unless the objector introduces evidence as to the invalidity of the claim or the excessiveness of its amount, the claimant need not offer further proof of the merits of the claim. *Brown v. IRS (In re Brown)*, 82 F.3d 801 (8th Cir. 1996); *In re Hemingway Transp.*, 993 F.2d 915 (1st Cir. 1993); *In re Fullmer*, 962 F.2d 1463(10th Cir. 1992). When a party objects within the procedural guidelines of Rule 9014, that party carries the burden of going forward with evidence concerning the validity and the amount of the claim. *In re Fullmer*, 962 F.2d 1463(10th Cir. 1992); *In re Allegheny Int'l Inc.*, 954 F.2d 167 (3d Cir. 1992).

If the objector succeeds in overcoming the prima facie effect given to the claim, the ultimate burden ordinarily remains on the claimant to prove the validity of the claim by a preponderance of the evidence. *In re Harrison* 987 F.2d 677 (10th Cir. 1993); *In re Allegheny Int'l Inc.*, 954 F.2d 167 (3d Cir. 1992). The effect of this principle is to return the burden from the objecting party to the claimant. However, the Supreme Court in *Raleigh v. Illinois Department of Revenue* held that "the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." 530 U.S. 12, 21 (2000). If the claimant did not have the burden of proof outside of bankruptcy, then it does not have it in the bankruptcy case. According to the court, the ultimate burden of proof for a particular claim will be based on non-bankruptcy law. 4 COLLIER ON BANKRUPTCY ¶ 502.02[3][f] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

DISCUSSION

The Objection to Claim states the grounds for the objection in the following detail:

> "2. The basis for the objection to the claim is that the account is based on the debt obligation solely belongs to debtor's spouse."

Objection, Dckt. 67. Nothing more is alleged in the Objection. This is a legal conclusion, as opposed to stating grounds. It is the equivalent to stating in a complaint that "defendant is liable to plaintiff because defendant is liable to plaintiff."

In her declaration, Debtor is equally stingy with her testimony. Her testimony to provide evidence for the court to make the necessary factual findings and then proper conclusions of law consists of:

> "The claim on file with this Court, provided as Exhibit A, shows that it is based on a loan agreement without my signature."

Declaration, Dckt. 69. Debtor fails to testify that she did not sign a loan agreement or that she never agreed to be obligated to pay (such as signing a guaranty) this debt. Rather, she narrowly states that the Exhibit A is not one that has her signature (which may indicate that such a loan agreement exists, but just not attached as an exhibit to this proof of claim).

Debtor does not provide any testimony about this debt and whether it is a community debt (Cal. Fam. Code § 902), whether Debtor has community property which is liable for the debt (Cal. Fam. Code § 910(a)), and whether it is a debt for which property of the estate is a source for payment.

Creditor's Proof of Claim No. 3 includes "Line of Credit Loan Request" showing that a $10,000.00 loan for travel expenses was applied for on May 24, 1994. The application lists Debtor's name and information under a section for "Spouse's Information." The credit application is signed only by Frank L. Sindelar and the "co-applicant" space is left blank.

Quite possibly Debtor believed that it was so obvious to her that she never knew of this account, never had a credit card, and never obtained any credit through this account, that it had to be obvious to everyone else. Unfortunately, it is not, and Debtor's testimony does not provide sufficient evidence to overcome the prima facie evidence of an obligation for credit owed by Debtor.

In light of there not being an opposition and there being no contract or statement of charges made by Debtor, the court overrules the objection without prejudice. Debtor can proceed with a new objection, providing clear testimony to provide the court with evidence to disallow this 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 First Tech Federal Credit Union, Creditor filed in this case by Kathleen Sindelar, Chapter 13 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 objection to Proof of Claim Number 3 of First Tech Federal Credit Union is overruled without prejudice.

7. 13-36120-E-13 GEORGE GRAHAM MOTION TO MODIFY PLAN
SJD-3 Susan Dodds 9-9-16 [62]

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 9, 2016. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. Debtor states that his initial plan provided monthly payments of $100.00 with a 0% disbursement to general unsecured creditors. Dckt. 65. Now, Debtor proposes to pay $200.00 per month with at least a 5% disbursement to general unsecured creditors.

Debtor states that in the past he used his tax refund to perform repairs on his truck and home, but after communicating with his attorney and with the Trustee, he understands that he will not use those funds for such repairs. Debtor states that he has adjusted his budget to account for any unforeseen repairs, and if he does not have enough budgeted, he will not use tax refunds but instead submit a modified plan to the court.

TRUSTEE'S RESPONSE

The Trustee filed a Response on October 11, 2016. Dckt. 68. The Trustee states that he does not oppose the Second Modified Plan.

The Trustee notes that Debtor is in the thirty-fourth month of a sixty month plan, he is proposing to double plan payments from $100.00 to $200.00, and he will pay any received tax refunds into the Plan.

The Trustee states that the prior proposed plan was denied confirmation because of improper use of tax refunds, increase of home maintenance, and charitable expense. Now, the proposed Plan calls for any tax refunds to paid to the Trustee, home maintenance expenses have increased from $40.00 to $60.00, and charity expenses remain at $70.00 listed as monthly tithing.

DISCUSSION

No opposition to the Motion was filed by creditors. The modified Plan increases monthly payments by 100% and provides that no less than 5% will be paid to general unsecured creditors. 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 9, 2016, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

8. **16-25321-E-13 AP-1** **JAY COHEN** **Steele Lanphier** **OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL, LLC 9-29-16 [20]**

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the U.S. Trustee on September 29, 2016. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is sustained.

Ditech Financial, LLC, a creditor holding a secured claim ("Creditor"), opposes confirmation of the Plan on the basis that Debtor lacks sufficient monthly disposable income to fund the Plan. Debtor's Plan calls for payments of $2,868.22 per month (even though the Plan lists $2,556.00 as the monthly plan payment), but Debtor's Schedule J indicates a monthly disposable income of only $2,556.00.

Creditor's objection therefore is two-fold. First, Creditor objects that Debtor will need to add $312.22 per month to plan payments to cover the following Plan terms related to Creditor:

A. $500.00 for administrative expenses;

B. $1,860.00 for monthly contract installments; and

C. $508.22 for an arrearage dividend.

Second, Creditor objects that the amount Debtor should actually be paying in plan payments—$2,868.22—is more than listed on Debtor's Schedule J for monthly disposable income—$2,556.00.

On October 10, 2016, Debtor filed an Amended Plan and accompanying Motion to Confirm Amended Plan. Dckt. 26, 31. The hearing on the Motion is set for 3:00 p.m. on November 22, 2016. Debtor

also filed an Amended Schedule J that shows a new monthly disposable income amount of $2,653.00. Dckt. 30. Debtor's Amended Plan calls for the following payments to Creditor:

A. $0.00 for administrative expenses;

B. $1,860.00 for monthly contract installments; and

C. $508.22 for an arrearage dividend.

The Creditor's objection is well-taken. Additionally, the Debtor filing a new plan acts as a de facto withdrawal of the original plan filed on August 12, 2016. Therefore the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, and the August 8, 2016 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 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 Objection to confirmation the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

9. **16-25321-E-13** **JAY COHEN** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Steele Lanphier** **PLAN BY DAVID P. CUSICK**
9-28-16 [16]

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 28, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. According to the Trustee's calculations, the Plan will complete in 70 months as opposed to 60 months as proposed due to the $5,824.19 priority tax claim filed by the IRS.

B. Debtor's plan proposes to pay $500.00 in attorney's fees and reports Debtor paid counsel $4,500.00 prior to filing. The Disclosure of Compensation of Attorney For Debtor and Rights and Responsibilities reports Debtor's attorney's fees totaling $6,000.00 and Debtor paying $2,000.00 prior to filing. Debtor's Statement of Financial Affairs also reports that Debtor paid $2,000.00 to counsel prior to filing.

C. The Debtor has failed to provide the Trustee with all Business Documents requested by the Trustee, including: a copy of his 2014 Tax Return; bank statements for the six months prior to filing; profit and loss statements for the six months prior to filing each month separated; and proof of license and insurance or written statement of no such documentation exists.

On October 11, 2016, Debtor filed an Amended Plan and accompanying Motion to Confirm Amended Plan. Dckt. 26, 31. The hearing on the Motion is set for 3:00 p.m. on November 22, 2016.

The Trustee's objections are well-taken. Additionally, the Debtor filing a new plan acts as a de facto withdrawal of the original plan filed on August 12, 2016. Therefore the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, and the August 8, 2016 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 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 the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

10. **16-24229-E-13** **RANJIT BAINS** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Richard Sturdevant** **8-25-16 [20]**

Case Dismissed 10/12/16

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

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

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

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

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

11. **12-34839-E-13** **JAMES/SHARON PETTAY** **MOTION TO MODIFY PLAN**
JSO-3 **Jeffrey Ogilvie** **9-21-16 [32]**

Final Ruling: No appearance at the October 25, 2016 hearing is required.

James Pettay and Sharon Pettay ("Debtor") having filed a "Withdrawal of Motion," which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on October 20, 2016, Dckt. 46; no prejudice to the responding party appearing by the dismissal of the Motion; the Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Trustee; the Ex Parte motion is granted, the Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Modify Plan filed by the Debtor having been presented to the court, the Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 46, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Debtor's Motion to Modify Plan is dismissed without prejudice, and the bankruptcy case shall proceed.

12. **16-25441-E-13** **AVELINO SANTOS,** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Chad Johnson** **PLAN BY DAVID P. CUSICK**
9-28-16 [34]

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 28, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. The Debtor has made no plan payments to date. The first plan payment of $3,451.00 was due September 25, 2016.

B. The Debtor failed to appear at the First Meeting of Creditors held on September 22, 2016. The Meeting has been continued to 1:30 p.m. on October 20, 2016.

C. The Debtor's Plan does not disclose any treatment intended for Ocwen Loan Servicing LLC, Scheduled with a secured lien against Debtor's residence. The Trustee cannot determine if the Debtor can make the payments as proposed under the Plan where the intended treatment of this creditor is not disclosed. The Statement of Financial Affairs shows only $1,520.08 paid in the last ninety days to this creditor, which appears to match the monthly rental or mortgage expense on Schedule J. Based on this, the Debtor appears to be two payments delinquent on the mortgage, and if the Debtor is intending to relocate, no evidence has been presented of moving expenses.

D. Misclassified Claim, Interest May Be Too Low

1. Debtor lists Franklin Credit Management Corp, secured by a Second Deed on real property at 912 Sapphire Circle, Vacaville, California, in Class 1 of the Plan paying $120,000.00 in arrears at $2,000.00 per month but lists no ongoing monthly payment.

2. On Schedule D, the lender is reported with a balance of $120,000.00. It appears the Debtor's intent is to pay the claim in full during the life of the Plan. If this is the Debtor's intent, the claim would be properly classified in Section 2.09—Class 2 of the Plan, which calls for all secured claims that are modified by this Plan or that have matured or will mature before the Plan is complete. Where the Plan provides for no interest and appears to provide for the entire balance, the claim appears entitled to receive interest.

E. Post-petition Taxes

1. The Debtor may not be able to make the payments under the Plan or comply with the Plan. Debtor may not have an adequate amount of taxes withheld or set aside for future tax liabilities.

2. On Schedule I, Debtor reports gross income of $6,985.00 per month and deductions for taxes of only $100.60 per month. Debtor also receives a pension payment of $1,631.00 per month. Debtor lists in Class 5 $18,646.79 in priority tax owed to the Franchise Tax Board. Debtor's 2015 Return indicates Debtor's yearly total tax is $10,959.00 on his gross income of $107,230.00.

3. Debtor's recent pay stubs for June through August 2015 reveal that Debtor has no deductions for state and federal taxes. According to the pay stubs, the only tax withheld is Medicare. The Trustee is concerned the Debtor is not deducting sufficient tax and may be creating new debt post-petition.

DEBTOR'S RESPONSE

Debtor filed a Response on October 6, 2016. Dckt. 40. Debtor states that he has filed an Amended Plan and corresponding Motion to Confirm. A review of the docket shows that Debtor filed an Amended Plan and accompanying Motion to Confirm Amended Plan, set for hearing at 3:00 p.m. on November 22, 2016. Dckt. 42, 45.

Debtor states that he intends to attend the October 20, 2016 Meeting of Creditors and will be able to address the Trustee's concerns with Debtor's tax deductions.

Debtor requests that the court deny the Motion to Confirm now that an Amended Plan has been filed.

DISCUSSION

The Trustee's objections are well-taken. Additionally, the Debtor filing a new plan acts as a de facto withdrawal of the original plan filed on August 17, 2016. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, and the August 17, 2016 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 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 is sustained, and the proposed Chapter 13 Plan is not confirmed.

13. 16-24358-E-13 DPC-1 | **SHARON HICKMAN** / **Sally Gonzales** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-17-16 [13]**

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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, and the matter is removed from the calendar.**

14. 16-25462-E-13 DPC-1 | **DAN/MEGHAN MILLER** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-29-16 [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 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 29, 2016. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. Dan Miller and Meghan Miller's ("Debtor") Plan is not the Debtor's best efforts. Debtor is below median income and proposes a sixty month Plan paying $2,500.00 per month with a 0% dividend to unsecured claims. It appears Debtor may have additional disposable income that has not been committed to the Plan.

1. On Schedule J, Debtor deducts $480.00 per month for payment on a vehicle. On the Statement of Financial Affairs, Debtor reports making payments of $480.00 per month to James Miller (Debtor's father) toward a "regular conduit payment for car (leaf) to creditor ($480 per month)." The balance is reported as both $18,000.00 and $15,000.00 in the Statement of Financial Affairs. It appears based on the reported balances and the amount of the monthly payment that the auto loan will pay off during the sixty-month life

of the Plan. The Debtor reports having possession of his father's 2015 Nissan Leaf. The plan payments should increase by $480.00 upon payoff of the loan.

2. On Schedule I, Co-Debtor Meghan Miller reports a deduction of $115.20 as a repayment of a retirement loan. Debtor failed to report when the loan will pay off or to propose an increased plan payment when paid off.

B. The Debtor cannot make the payments under the Plan or comply with the Plan. At the Meeting of Creditors, Debtor explained that there are deductions for health insurance not reported on the Schedules. The Trustee is unable to determine if the Debtor can afford the Plan without a correct and complete picture of the Debtor's income and expenses.

Pay stubs for Co-Debtor Meghan Miller reveal a large deduction titled "Voluntary Deduction" that average $904.63 per month. This deduction is not reported on Schedule I.

The Trustee's objections are well-taken.

The Trustee offers evidence that the Plan is not Debtor's best efforts. Debtor proposes a sixty month Plan with a 0% dividend to unsecured creditors. Because the Plan does not fully pay all claims, it must devote all of Debtor's disposable income to pay unsecured creditors. 11 U.S.C. § 1325(b)(1). The Debtor's Schedule J shows that Debtor deducts $480.00 per month for a payment on a vehicle. Based on the reported balances and monthly payment, the auto loan will be paid off during the Plan term. There should be a step up in plan payments of $480.00 upon payoff of the vehicle loan. Additionally, Debtor's Schedule I reports a deduction of $115.20 as a repayment for a retirement loan. There is no payoff date indicated for this loan. If the loan will be paid off during the life of the Plan, there should be an increase in plan payments of $115.20. As Debtor's Plan fails provide for such increases in payments, it cannot be confirmed.

The 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 to having deductions for health insurance not reported on the Schedules. Further, Co-Debtor Meghan Miller's pay stubs show a deduction averaging $904.63 per month labeled "Voluntary Deduction." This deduction is not reported on Debtor's Schedule I. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the objection is sustained.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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 is sustained, and the proposed Chapter 13 Plan is not confirmed.

15.	**16-23267-E-13 DRE-2**	**GEORGE NJENGE AND RACHEL EKINDESONE** **D. Randall Ensminger**	**OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 2** **8-12-16 [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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2016. By the court's calculation, 74 days' notice was provided, 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim of Internal Revenue Service, Claim No. 2 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 (14) 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 Claim of Internal Revenue Service, Claim No. 2 is overruled.

George Njenge and Rachel Ekindesone, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of the Internal Revenue Service ("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 $159,513.77; priority unsecured in the amount of $5,174.07; and unsecured in the amount of $497,604.44 for an aggregate amount of $662,292.28. Objector objects to the claim on the following basis:

A. Secured Portion of the Claim

1. The tax debts encompassed by the secured portion of the claim all relate to FUTA and WT-FICA taxes incurred by CAMROCK CO, Inc.

2. Objector states that CAMROCK CO, Inc is a California corporation in which Co-Debtor George Njenge held a 10% interest and Co-Debtor Rachel Ekindesone held no interest.

3. These corporate tax debts arose in 2010, 2011, and 2012. Objector asserts that $24,000.00 of this debt was paid by CAMROCK CO. Inc. in 2011.

4. The Objector argues that liability should be limited to the 10% share held by Co-Debtor George Njenge.

B. Priority Unsecured Portion of the Claim.

1. This portion of the claim relates to taxes allegedly owed by Co-Debtor Rachel Ekindesone. The claim notes that this tax is pending examination. Objector expects that when the pending examination is promptly concluded, an adjustment will be asserted.

2. The Objector continues to assert that there is no tax debt owed by Co-Debtor Rachel Ekindesone for this 2014 tax year. Objector has attached a copy of Co-Debtor Rachel Ekindesone's 2014 income tax return. Exhibit 2, Dckt. 36.

C. General Unsecured Portion of the Claim

1. This claim is comprised of $300.00 in partnership tax debts owed for the years 2010, 2011, and 2012, and $497,304.44 in personal income taxes, interest, and penalties allegedly owed by Co-Debtor George Njenge for tax years 2009–2012.

2. Objector asserts that all of these unsecured tax debts were discharged in Debtor's prior Chapter 7 case (Case No. 15-25260).

D. Debtor states that beginning with the 2011 Tax Return, the Co-Debtors each filed married-but-separate tax returns. Since that time Co-Debtor Rachel Ekindesone's tax returns have consistently shown refunds due and Co-Debtor George Njenge's returns have shown no tax due. However, the returns for years 2013, 2014, and 2015, will be amended as a result of some inadvertently claimed exemptions. Objector expects minimal tax, if any, to be due even with the amendments

E. Objector also indicates that Creditor has received large payments from the Debtor in the months leading up to the filing of this bankruptcy, including levies against the Debtor's bank accounts that exceeded $4,000.00. Objector states that Creditor withheld personal income tax refunds owed to Co-Debtor Rachel Ekindesone and

applied the refunds to the corporate employment tax allegedly owed, but no accounting for these payments have been provided as part of the Claim filed by Creditor.

Objector asserts that sufficient questions have been raised to challenge the validity of the claim.

Section 502(a) of the Code 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). If the objector succeeds in overcoming the prima facie effect given to the claim, the ultimate burden ordinarily remains on the claimant to prove the validity of the claim by a preponderance of the evidence. *In re Harrison*, 987 F.2d 677 (10th Cir. 1993); *In re Allegheny Int'l Inc.*, 954 F.2d 167 (3d Cir. 1992).

CREDITOR'S OPPOSITION

The Internal Revenue Service ("Creditor") filed an Opposition to Debtor's Objection to Claim of the Internal Revenue Service (Claim 2) on October 11, 2016. Dckt. 58. The Creditor opposes the Objection on the following grounds:

A. Secured Claims

1. Creditor asserts that the Debtor is liable for the secured tax debts as outlined in the Proof of Claim. Creditor states that it appears the entity at issue is actually a general partnership thus, as assessment against the general partnership is deemed a sufficient assessment against the general partner. Creditor indicates that to the extent Debtor is a responsible person for a corporation, Debtor may also be liable for the trust fund portion of any unpaid employment taxes. Creditor's attachment to Proof of Claim 2 shows a tax lien against CAMROCK CO, a Partnership, Ndile G Njenge as a General Partner with respect to the secured debt.

2. Creditor indicates that it will need to take discovery to further respond to Debtor's contentions regarding the secured claims.

B. Unsecured Priority Claims

1. Creditor indicates that the audit of Co-Debtor Rachel Ekindesone's 2014 tax return has not concluded yet, but Creditor intends to amend the proof of claim to reflect the conclusion of the audit. Creditor anticipates the conclusion of the audit will result in Co-Debtor Rachel Ekindesone having an outstanding liability of approximately $5,471.00 in tax, as well as associated penalties and interest for this tax year.

2. Creditor states that to the extent that Debtor does not accept the results of the Audit, Creditor will need to take discovery to further respond to Debtor's contentions regarding the unsecured claims.

C. Unsecured General Claims

1. Creditor argues that Debtor may not litigate the dischargeability of these debts with an objection to claim contested matter and must raise these disputes in an adversary proceeding under Federal Rule of Bankruptcy Procedure 7001(6). Creditor denies that these debts were discharged and asserts that they were excepted from discharge pursuant to 11 U.S.C. § 523(a)(1) and/or (7), or other applicable provisions.

D. Accounting of Payments Received

1. Creditor contends that Debtor points to no authority requiring the requested account transcript be submitted for a proof of claim to be considered valid. Further, there is no indication that Debtor has even asked for an account transcript.

2. Creditor requests for discovery deadlines and anticipates that the parties may be able to resolve this contention of the Debtor informally through discovery.

The Creditor requests that should this Chapter 13 case not otherwise be dismissed, and Debtor not be required to litigate contentions through an adversary proceeding, that the hearing date be used to set a discovery period and an evidentiary hearing date, and to apply Federal Rule of Bankruptcy Procedure 7016 and Federal Rule of Civil Procedure 26(a)(1)–(3) to this contested matter.

DISCUSSION

Based on the evidence before the court, the Creditor has proved the validity of the claim by a preponderance of the evidence. The secured claim is based on taxes owed by a partnership, in which Debtor was listed as a general partner and was therefore liable under agency principles for the liabilities of the partnership. Debtor's unsecured tax debts from 2009, 2010, 2011, and 2012 were not discharged in Debtor's prior bankruptcy case because those debts are nondischargeable under 11 U.S.C. § 523(a)(7). The creditor's claim is allowed in its entirety. The Objection to the Proof of Claim 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 Claim of the Internal Revenue Service, Creditor filed in this case by George Njenge and Rachel Ekindesone, Chapter 13 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 Objection to Proof of Claim Number 2 of the Internal Revenue Service is overruled.

16.	**16-25070-E-13 HLG-2**	**JOHN COYLE AND ERIKA MADSEN-COYLE Kristy Hernandez**	**MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 9-26-16 [29]**

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 27, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral 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 (14) 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 secured claim of Wells Fargo Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by John Coyle and Erika Madsen-Coyle. ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4401 Pittsfield Way, Mather, California ("Property"). Debtor seeks to value the Property at a fair market value of $304,953.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 5 filed by Wells Fargo Bank, N.A. is the claim that may be the subject of the present Motion.

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $355,384.94. Creditor's second deed of trust secures a claim with a balance of approximately $109,490.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by John Coyle and Erika Madsen-Coyle ("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 Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 4401 Pittsfield Way, Mather, California , California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $304,953.00 and is encumbered by a senior lien securing a claim in the amount of $355,384.94, which exceeds the value of the Property that is subject to Creditor's lien.

17. 16-25070-E-13 HLG-3 | **JOHN COYLE AND ERIKA MADSEN-COYLE**
Kristy Hernandez | **MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION**
9-27-16 [37]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 27, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $19,773.00.

The Motion filed by John Coyle and Erika Madsen-Coyle ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Acura TSX Tech Wagon ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $19,773.00 as of the petition filing date. As the owner, the 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 in April 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $22,466.46. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $19,773.00. *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 for Valuation of Collateral filed by John Coyle and Erika Madsen-Coyle ("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 Golden 1 Credit Union ("Creditor") secured by an asset described as a 2011 Acura TSX Tech Wagon ("Vehicle") is determined to be a secured claim in the amount of $19,773.00, 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 $19,773.00, and is encumbered by a lien securing a claim that exceeds the value of the asset.

18. 16-25070-E-13 HLG-4 | **JOHN COYLE AND ERIKA MADSEN-COYLE** Kristy Hernandez | **MOTION TO VALUE COLLATERAL OF REDWOOD CREDIT UNION** 9-27-16 [42]

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.

Correct 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 27, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Redwood Credit Union("Creditor") is granted, and Creditor's secured claim is determined to have a value of $13,730.00.

The Motion filed by John Coyle and Erika Madsen-Coyle ("Debtor") to value the secured claim of Redwood Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Infiniti G37 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $13,730.00 as of the petition filing date. As the owner, the 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 April 24, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,196.85. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $13,730.00. *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 for Valuation of Collateral filed by John Coyle and Erika Madsen-Coyle ("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 Redwood Credit Union ("Creditor") secured by an asset described as a 2008 Infiniti G37 ("Vehicle") is determined to be a secured claim in the amount of $13,730.00, 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 $13,730.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

19. 16-26070-E-13 STEPHANIE RUSCIGNO
PGM-1 Peter Macaluso

CONTINUED MOTION TO IMPOSE AUTOMATIC STAY
9-26-16 [15]

Final Ruling: The Motion to Impose Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Local Rule 9014-1(f)(3) Motion—Final Hearing.

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2016. By the court's calculation, 29 days' notice was provided. 8 days' notice was required by the court. Dckt. 21.

The Motion to Impose Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. ‘’

The court set the Motion for final hearing, with written opposition to be filed and served by October 19, 2016. No opposition was presented at the hearing. The Defaults of the non-responding parties are entered by the court.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Impose Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the two prior

cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 16-20570 and 16-25568) were dismissed on August 18, 2016, and September 12, 2016, respectively. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect in this case.

Here, Debtor's prior cases were dismissed when she did not take further action to confirm a plan (No. 16-20570) and when the Debtor did not timely file documents (No. 16-25568).

Debtor argues that good cause exists for imposing the automatic stay as to all creditors because she has rebutted the presumption of bad faith. Debtor's petition was accompanied by all statements, schedules, and a Chapter 13 plan that Debtor believes is confirmable. Debtor states that she filed the instant case to cure pre-petition arrears on her primary residence. Debtor proposes to make monthly plan payments of $1,390.00.

OCTOBER 4, 2016 HEARING

At the hearing, DFI Funding, Inc. ("Creditor") appeared and argued that while efforts had been made to put in place a stipulation, it had not been completed. Creditor further argued that though it has tried to reach an agreement with Debtor previously, she has been unwilling or unable to agree to any terms. Dckt. 23.

Counsel for Debtor stated that Debtor suffers from PTSD, which adds a challenge to the prosecution of this case. However, counsel and Debtor stated that they are working on obtaining either a refinance of this loan through programs available for veterans or allow the property to be foreclosed in six months. During that time, Debtor will make adequate protection payments to Creditor.

Creditor notes that it has been and is willing to work with the Debtor, and in fact, the foreclosure sale was scheduled for before the week before the hearing, but Creditor did not conduct the sale, even in the absence of an automatic stay.

The court continued the hearing to allow the parties to focus on the Debtor's issues to see if an agreement can be documented or if the Debtor can actively pursue a confirmable plan.

The court ordered the first adequate protection payment in the amount of $1,390.00 to be made to the Creditor directly from the Debtor on or before October 13, 2016.

The court imposed the automatic stay on an interim basis through October 28, 2016, at noon and ordered the parties to file and serve any opposition to the instant Motion by October 19, 2016.

DISCUSSION

No opposition has been filed by any party. The Debtor states in the Declaration for the Motion to Confirm Amended Plan that she did make the $1,390.00 adequate protection payment for October 2016. Dckt. 31.

Debtor has filed an Amended Plan and Motion to Confirm. Dckt. 27, 29. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by the Debtor. Dckt. 27, 31. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon the Debtor's personal knowledge. Fed. R. Evid. 601, 602.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to file documents without offering a "substantial excuse." *Id.* at § 362(c)(4)(D)(i)(II). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(4)(D). Mere inadvertence or negligence is not a "substantial excuse," unless caused by the negligence of the debtor's attorney. *Id.* at § 362(c)(4)(D)(i)(II).

The court finds that Debtor has provided convincing evidence to rebut the presumption of bad faith. Debtor has timely filed all documents in this case and has demonstrated her ability to make the ongoing plan payments. Debtor has filed an amended plan, negotiated with Creditor, and is prosecuting her case in good faith. The Motion is granted, and the automatic stay is imposed as to all creditors to continue beyond the interim period established by the court at the October 4, 2016 hearing. *See* 11 U.S.C. § 362(d)(4)(c).

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

> Finding of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Impose Automatic Stay provided by 11 U.S.C. § 362(a) is granted, and the automatic stay is imposed as to all persons and for all purposes until the stay is terminated by operation of law or further order of this court.

20. **16-24481-E-13** **MARCO/MONICA ROMO** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **W. Steven Shumway**
8-25-16 [20]

Final Ruling: No appearance at the October 25, 2016 hearing is required.

The Chapter 13 Trustee having filed a Supplemental Ex Parte Motion to Dismiss the pending Objection on October 19, 2016, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the Objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by the Debtor; the Ex Parte motion is granted, the Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation of the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Trustee's Objection to Confirmation of the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed.

21. **16-24481-E-13 SW-1** | **MARCO/MONICA ROMO** **W. Steven Shumway** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ALLY FINANCIAL** **8-9-16 [17]**

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 9, 2016. The United States Trustee was not served with notice. By the court's calculation, 42 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Confirmation is Sustained.

Ally Financial ("Creditor") opposes confirmation of the Plan on the basis that the Plan's proposed interest rate fails to provide the present value of the Creditor's claim. Creditor requests that the court amend Debtors' Plan to reflect a 6.25% interest rate, which is the national prime rate of 3.25% at the time of Debtor's petition date plus 3%.

DEBTOR'S RESPONSE

Marco Romo and Monica Romo ("Debtor") filed a Response to Creditor's Objection to Confirmation on September 1, 2016. Dckt. 26. The Debtor's Response states that the contract interest rate was omitted from the Plan due to a clerical error. The Debtor will stipulate that Creditor's claim shall accrue interest at the contract rate of 5.59% as stated in the loan agreement entered into by the Debtor. The Debtor asks to be allowed to correct the interest rate in the order confirming.

STIPULATION

The parties submitted a Stipulation Resolving Objection on September 15, 2016. Dckt. 28. The parties agree that Debtor shall provide for a collateral value of the vehicle in question (2012 Honda Crosstour, ending in Vehicle Identification Number 4322) of $18,000.00 at 5.59% interest with monthly payments of $650.00 beginning with the effective date of the Plan, and shall reflect the above terms in an Amended Plan, or in the alternative, in the Order Confirming Debtor's Chapter 13 Plan.

Subject to the stipulation being approved, Creditor withdraws its Objection.

INSUFFICIENT NOTICE PROVIDED

Federal Rule of Bankruptcy Procedure 9034(i) requires that any entity filing an objection to confirmation of a plan serve that objection on the United States Trustee. Federal Rule of Bankruptcy Procedure 5005(b)(1) specifies that such objection "be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending."

Here, the United States Trustee was not served with Creditor's Objection.

SEPTEMBER 20, 2016 HEARING

At the hearing, the court continued the hearing on the matter to 3:00 p.m. on October 25, 2016, and required that Debtor file and serve on the U.S. Trustee and the Chapter 13 Trustee on or before September 30, 2016, a Notice of Proposed Amendment to Proposed Plan that sets forth the agreed upon changes to Creditor's plan treatment.

DISCUSSION

11 U.S.C. § 1323(a) allows the Debtor to modify a plan prior to confirmation. Debtor has failed to file a Notice of Proposed Amendment to Proposed Plan as required by the court. Creditor cured the notice defect to the U.S. Trustee on September 21, 2016. Dckt. 30.

Though the Creditor cured the service issue, Debtor has failed to file and serve a Notice of Proposed Amendment to Proposed Plan. The court issued an order continuing the hearing to avoid any confusion, with the order expressly stating:

> "IT IS FURTHER ORDERED that Debtors shall file and serve on the U.S. Trustee and the Chapter 13 Trustee on or before September 30, 2016, a Notice of Proposed Amendment to Proposed Plan that sets for the agreed changes to Creditors plan treatment."

Order, Dckt. 36.

Here, Debtor has failed to comply with this basic notice requirement for confirmation of the plan and clearly notifying the Chapter 13 Trustee and the court of the various amendments to the Plan.

The Objection 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 the Chapter 13 Plan filed by the 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 hearing on the Objection to Confirmation of Plan is sustained.

22. 12-27182-E-13 LISA BENNETT MOTION TO MODIFY PLAN
MAC-3 Marc Caraska 9-6-16 [98]

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2016. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by creditors.

TRUSTEE'S RESPONSE

The Trustee filed a Response on October 11, 2016. Dckt. 107. The Trustee states that Debtor proposes a feasible plan with monthly payments increased by $306.16, paying almost the same as the original confirmed plan. Accordingly, the Trustee has no opposition to the proposed Plan.

DISCUSSION

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 6, 2016, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. **15-21082-E-13** **STEVEN/MARIA PETERSON** **MOTION FOR COMPENSATION FOR**
PLC-4 **Peter Cianchetta** **PETER CIANCHETTA, DEBTORS' ATTORNEY**
9-15-16 [60]

No Appearance of Counsel for Debtor Required If He Concurs In Court's Computation of Fees Requested

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

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

Below is the court's tentative ruling.

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

Correct 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 15, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion for Compensation 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 (14) 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 Compensation is granted.

Peter Cianchetta, the Attorney ("Applicant") for Steven Peterson and Maria Peterson, the Chapter 13 Debtor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period February 5, 2015, through September 15, 2016. Debtor's counsel opted out of no look fees. Debtor's Plan, Dckt. 5, Section 2.06. Applicant requests fees in the amount of $4,050.00 and costs in the amount of $415.48. Applicant was paid $500.00 from the Debtor prior to filing the case.

TRUSTEE'S RESPONSE

The Trustee filed a Response on September 28, 2016. Dckt. 65. The Trustee states that he has no opposition and notes two things:

A. Debtor's Counsel opted out of no look fees in Section 2.06 of the Confirmed Plan. Dckt. 5, and

B. Before the case, Counsel received $500.00 from Debtor.

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparation of the Petition, Plan, Motions to Value Collateral, a Motion to Confirm an Amended Plan, and other items. The court finds the services were beneficial to the Client and bankruptcy 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.

General Case Administration: Applicant spent 7.6 hours in this category. Applicant assisted Client with preparing the bankruptcy petition, schedules, and Plan; meeting with clients for review and signing of the petition; and attending the Meeting of Creditors.

Motions to Confirm: Applicant spent 2.2 hours in this category. Applicant drafted a Motion to Confirm Plan and reviewed the Trustee's Objection to Confirmation.

Motions to Value/Avoid Liens: Applicant spent 1.2 hours in this category. Applicant prepared two Motions to Value.

Motion for Fees: Applicant spent 2.5 hours in this category. Applicant prepared the Motion for Fees and Costs.

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**
Peter Cianchetta	13	$350.00	$4,550.00
Time Not Charged	.5	$0.00	$0.00
Total Fees For Period of Application			$4,550.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $415.48 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Filing Fee		$310.00

Credit Reports		$66.00
Printing and Postage		$39.48
Total Costs Requested in Application		$415.48

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. Fees in the amount of $4,050.00 are authorized to be paid by the Trustee from the available Plan funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs and Expenses

The Costs in the amount of $415.48 are approved and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $4,050.00
Costs and Expenses $415.48

pursuant to this Application 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 Peter Cianchetta ("Applicant"), Attorney for the Chapter 13 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 Peter Cianchetta is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Cianchetta, Professional Employed by Chapter 13 Debtor

Fees in the amount of $4,050.00
Expenses in the amount of $415.48,

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

24. 15-28690-E-13 BLG-2 | **LISA SLEDGE** | **Chad Johnson** | **MOTION TO MODIFY PLAN** | **8-3-16 [42]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 3 2016. By the court's calculation, 83 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan 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 (14) 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 Confirm the Modified Plan is denied.

Lisa Sledge ("Debtor") filed a Motion to Confirm Modified Plan on August 3, 2016. Dckt 42.

David Cusick, the Chapter 13 Trustee, filed an Opposition to the Instant Motion on October 11, 2016. Dckt. 61. The Trustee opposes confirmation on the basis that:

A. The Debtor is delinquent $3,446.00 under the terms of the proposed plan. The September 2016 payment of $3,446.00 has not been received, and the next payment of $4,482.00 is due on October 25, 2016.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee opposes confirmation offering evidence that the Debtor is $3,446.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. § 1325(a)(6).

The modified Plan complies 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 Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

25. 16-25290-E-13 DANA STAHR
DPC-1 Ronald Holland

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
9-26-16 [16]

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 26, 2016. By the court's calculation, 29 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) 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 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on September 29, 2016. Dckt. 16.

The Objector argues that Dana Paula Stahr ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on August 14, 2015. Case No. 15-26474. The Debtor received a discharge on November 23, 2015. Case No. 15-26474, Dckt. 14.

The instant case was filed under Chapter 13 on August 12, 2016.

The Debtor filed a Declaration of Non-Opposition to the Trustee's Motion on September 28, 2016. Dckt. 20.

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, the Debtor received a discharge under 11 U.S.C. § 727 on November 23, 2015, which is less than four years preceding the date of the filing of the instant case. Case No. 15-26474, Dckt. 14. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

The objection is sustained. Upon successful completion of the instant case (Case No.16-25290), 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 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 16-25290, the case shall be closed without the entry of a discharge.

26. 16-25292-E-13 DPC-2 | **PRANEE AREND** Mark Wolff | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 9-29-16 [31]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 29, 2016. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor cannot make the payments under the proposed Plan. At the Meeting of Creditors, Debtor advised the Trustee that her income has dramatically changed since filing. Debtor said her rental income changed from $1,250.00 to $800.00 and her alimony income of $600.00 may be ending.

On Schedule I, the spouse's income is reported to be $2,888.00 from Social Security, which is apparently inaccurate. The Debtor testified that her non-filing spouse's income includes $900.00 from Social Security, and the balance of this income is from a pension. The Trustee requests that Debtor file an Amended Schedule I reporting her current income for the Trustee and the court to determine her ability to make payments.

The Trustee's objections are well-taken. The Debtor has filed an Amended Schedule I with the following changes:

Item	Original Schedule I	Amended Schedule I	Net Change
Net income from rental property and from operating a business, profession, or farm	$1,250.00	$800.00	($450.00)
Debtor 1 Social Security	$481.00	$292.00	($189.00)
Debtor 1 Alimony	$600.00	$0.00	($600.00)
Debtor 1 Monthly Income	$2,676.00	$1,437.00	($1,239.00)
Combined Monthly Income	$5,564.00	$4,325.00	($1,239.00)

The Amended Schedule I has not corrected the amounts listed for the spouse's Social Security and Pension. According to the Debtor's testimony at the Meeting of Creditors, the information is inaccurate. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the objection is sustained.

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

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

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

27. **16-25494-E-13** **SAMANTHA MYERS** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Matthew Eason** **PLAN BY DAVID P. CUSICK**
9-28-16 [14]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 25, 2016 hearing is required.

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, and the matter is removed from the calendar.**

28. 16-21099-E-13 MAC-3 | **KWAJHALIEN DORN-DAVIS** **Marc Carpenter** | **CONTINUED MOTION TO CONFIRM PLAN** **8-24-16 [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 9014-1(f)(1) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2016. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the 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). 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 without prejudice.

Kwajhalien Dorn-Davis filed the instant Motion to Confirm First Amended Plan on August 24, 2016. Dckt. 43.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition to the Debtor's Motion to Confirm First Amended Plan on September 20, 2016. Dckt. 50. The Trustee objects on the basis that the Debtor may not be able to make the payments under the Plan or comply with the Plan. Debtor's Motion to Confirm advises the Trustee, creditors, and the court that she is in the trial period of a loan modification where her ongoing payment will decrease.

Debtor indicates that her First Deed and Note is an adjustable loan, which caused her ongoing mortgage payment to increase post-petition. No additional information regarding the loan modification has been provided and a Motion to Approve Loan Modification has not yet been filed with the court.

The Trustee states that Debtor's Plan is feasible and completes timely, but the Trustee is concerned about the Debtor being able to afford plan payments if the loan modification is denied.

OCTOBER 4, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 25, 2016, to allow the Debtor to file amendments to the proposed Plan. Dckt. 57. The court required the Debtor to file and serve on the Chapter 13 Trustee any proposed amendments to the Plan.

SUPPLEMENTAL FILING

The Debtor filed a "Supplemental Information" document and a Declaration on October 18, 2016. Dckt. 63, 64. Debtor proposes to amend Plan Sections 2.08 and 2.11 by adding Section 6.01 that will state the following:

> "Debtor intends to refinance her residence as soon as permitted by the Court. Debtor has entered a trial loan modification with Nationstar Mortgage ("Lender") pursuant to which Debtor shall make three (3) monthly trial loan payments to Lender each in the amount of $1,565.14 ("Modified Payment"). The last trial loan payment is due to Lender no later than November 1, 2016. Lender and the Modified Payment have been listed in Class 4 of the Amended Plan.
>
> Upon completion of the refinance with Lender, Debtor will file a modified Chapter 13 Plan to adjust payments in the event that the amount of final refinanced mortgage payment to Lender is greater than the Modified Payment and/or Debtor will provide for Lender to be paid directly."

Debtor states that the proposed loan modification terms are as follows:

A.	Lender:	NATIONSTAR MORTGAGE
B.	Collateral:	5021 Sky Parkway, Sacramento, CA 95823
C.	Interest Rate:	3.125%
D.	Term:	30 years
E.	Loan Amount:	$291,496.56 (current loan amount)
F.	Proceeds to Debtor:	-0-
G.	Monthly Payment:	$1,565.14
H.	Escrow Amount:	$221.16 approximately

Debtor requests that the court confirm Debtor's First Amended Chapter 13 Plan with the proposed language for Section 6.01 included in the order confirming and authorize Debtor to enter into and complete a trial loan modification agreement with Nationstar Mortgage according to the terms stated above.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee's objection is well taken. The court finds that the Plan relies on a loan modification that has yet to be approved by the court. The court's review of the docket reveals that no Motion to Approve Loan Modification has been filed in the instant case to date, despite the court continuing the hearing on this matter to allow Debtor to propose amendments to her Plan, such as by filing a Motion to Approve Loan Modification. The Debtor's Supplemental Declaration indicates that Debtor began a trial loan modification–without court approval–on September 1, 2016. However, Debtor will not receive a loan modification agreement unless the Debtor has made all of her trial period payments on time, with the last payment being due November 1, 2016. Unfortunately, no such modification (trial or final) has been approved.

Debtor seeks to classify the claim of Nationstar Mortgage, LLC as a Class 4 secured claim under the Chapter 13 Plan. However, this claim fails on two counts to qualify as a Class 4 Claim. First, to qualify for Class 4 Claim treatment, the secured claim must be one of the type as expressly stated in the Plan (Section 2C, ¶ 2.11) [emphasis added]:

> "**Class 4 claims** mature after the completion of this plan, **are not in default**, and **are not modified by this plan**. . .Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Proof of Claim No. 2 filed by Nationstar Mortgage, LLC lists a pre-petition delinquency on this claim of $58.76. While small, it is a default.

Second, the proposed plan terms modify the pre-petition obligation due Nationstar Mortgage, LLC and reduce the payments to the amounts of the non-authorized post-petition trial loan modification. Debtor seeks to have such "modification" authorized by the Chapter 13 Plan itself. This violates the provisions of 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by the Debtor's residence.

The Plan terms as stated in the Supplemental Document (Dckt. 63) filed by Debtor only provide for the Debtor to make the three "modified payments" of $1,565.14. No further payments are required. Debtor does say that she will amend the plan in the future, to provide for higher payments, if the future final loan modification provides for higher payments. Conspicuously absent is a corresponding obligation for Debtor to modify the Plan, and increase the Plan payments, if some future modification lowers the payments on the Nationstar Mortgage, LLC obligation.

Broader Review of Documents Filed by Debtor

Being presented with the without-authorization-obtained credit (loan modification) and plan for future, unauthorized modifications, the court has reviewed the financial underpinning of what is being

proposed. Under the proposed Chapter 13 Plan, Debtor's monthly payment is $128.00 a month, to be paid for sixty (60) months. Dckt. 45. After paying Debtor's counsel's fees of $2,250.00 and the Chapter 13 Trustee fees (estimated to be $8.96), Debtor provides for there to be a 10% dividend to creditors holding general unsecured claims.

To get to the $128.00 a month payment, Debtor computes her monthly reasonable and necessary expenses to be $3,387.97. Amended Schedule J, Dckt. 49. These expenses include a monthly mortgage payment of $1,565.14, the desired loan modification, not the actual payment. From looking at Amended Schedule J, it appears doubtful that Debtor will be able to actually make such payments. Several questionable expenses include the following:

A. Home Maintenance and Repairs.....$0.00

It is questionable that for a period of sixty months Debtor will have no maintenance and repairs to the property: no lawn to be mowed, no light bulbs to replace.

B. Food and Housekeeping Supplies.....$350

While Debtor may be able to maintain a survival food and cleaning supplies level with $350.00 a month, nothing exists for maintenance and care of the home. Debtor provides $0.00 for personal care products and services, so these will have to be paid out of the food budget.

C. Clothing and Laundry.....$25

This appears questionable as to whether a person really only needs to spend $300.00 a year for clothing and laundry for a five-year period. Debtor's ability to fund the Plan is dependant on her continuing to be employed by the State of California. Though the "Occupation" field on the Amended Schedule I is left blank, the court will presume (the court taking judicial notice that the 450 N. Street address listed on Amended Schedule I is the address for the California State Board of Equalization) that it is an office job with the State for which Debtor must have the appropriate office attire. *Id.* One office attire outfit could exhaust the annual clothing budget.

D. Transportation Expense.....$150

The court questions how Debtor could have license, registration, repairs, maintenance, and gas of $150.00 a month for Debtor's vehicle. On Schedule B, Debtor lists owing a 2010 Lexus with 64,000 miles. Dckt. 1. While not an "old" car, neither is this a new vehicle. It will require repairs and maintenance. Allowing a modest $20 per month for maintenance and $20 per month for registration, that leaves $110 a month for gas. Assuming $2.65 per gallon (not a safe assumption over a five-year period), that would be 40 gallons of gas per month. At 18 miles to the gallon, Debtor could drive 720 miles a month, which averages 24 miles a day for a thirty-day month. It appears that during the five years of the Plan, Debtor will never be driving, or otherwise traveling, outside of the immediate Sacramento Area. Using the Google Maps application, it reports that the shortest distance from Debtor's home to work round trip is 19 miles per day. That leaves an extra 5 miles per day for non-work travel.

E. Auto Installment Payment.....$521

On Schedules B and D, Debtor lists this vehicle having a value of $18,356.00, but being subject to a lien securing an obligation of $34,503.30. Debtor fails to disclose on Schedule D when this $34,503.30 debt to Financial Partners was incurred. *Id.* Debtor provides to continue making this $521.00 per month payment, without any modification, as a Class 4 Claim in the Plan. Dckt. 45.

No proof of claim has been filed by Financial Partners. Debtor has not explained to the court why the Plan provides for paying a $34,503.30 secured claim for an eight-model-year-old vehicle worth only $18,356.00.

F. Schedule I, Voluntary Retirement Contribution.....$250.

In addition to the mandatory contribution as a State Employee of $325.00 a month for her CalPERS retirement (listed on Schedule B as having a cash value of $106,602.83, if Debtor were to elect to not take the lifetime-defined benefit retirement plan payments), Debtor is making a voluntary retirement contribution of $250 per month—which equals $3,000.00 per year. Debtor has not explained why, in light of her CalPERS benefits, such additional contribution is reasonable and necessary in light of only being able to make a 10% dividend to creditors holding general unsecured claims. It also appears questionable, on a good faith basis, in light of Debtor seeking to prefer Financial Partners and pay almost double the value of the collateral to keep the 2010 Lexus.

It does not appear that the Plan is based on reasonable financial projection or actual expenses. Rather, it appears that the Debtor has chosen to maintain a certain lifestyle, prefer certain creditors, and generate financial information designed to show a minimal projected disposable income. However, in doing so, Debtor has shown that such a "financial plan" is not feasible.

Contractual Loan Modification as Part of a Plan

The use of a Chapter 13 Plan to facilitate a debtor seeking a contractual loan modification post-petition is not met with uniform acceptance in this District. This court does allow what is commonly known as the "Ensminger Additional Loan Modification Provisions" for a bankruptcy plan that provides adequate protection payments to be made pending the approval or rejection of a loan modification. The adequate protection payments are made through the Plan pending the debtor negotiating and then obtaining approval for a loan (trial, if necessary, and then final loan modification). After the court approves the trial and final loan modification, the debtor can amend the plan (often times an ex parte motion with the consent of the Trustee) to make the approved final loan modification payments as a Class 4 claim.

Some judges reject the use of the Ensminger Additional Provisions, instead forcing debtors to choose: (1) make the full, current mortgage payment and the necessary cure payment or (2) surrender the collateral. These judges believe that any plan that pays less than the full amount of the current monthly installment (even if they are adequate protection payments) works a modification that violates 11 U.S.C. § 1322(b)(2).

Though this court does allow the Ensminger Additional Provisions, the adequate protection payments must be denominated as such, the plan must provide for how the claim will be treated if the modification is denied, and not create an open-ended transaction in which the rights of the parties under the plan are left in limbo.

Termination of Automatic Stay

The court also notes that the Plan, as proposed, immediately terminates the automatic stay for Nationstar Mortgage, LLC. With that termination in hand, if the loan modification is not approved, this Creditor would have the ticket in its hand to proceed with a foreclosure.

Denial of Motion

The Motion is denied on several grounds. First, it constitutes an impermissible modification of the Creditor's rights. 11 U.S.C. § 1322(b)(2). Second, Debtor has not obtained court authorization for post-petition credit in the form of a trial loan modification, and as proposed, the Plan does not require Debtor to obtain authorization for (or even disclose) the actual, true final loan modification terms (if any).

The Plan impermissibly provides for treatment of the Nationstar Mortgage, LLC secured claim as a Class 4 Claim, notwithstanding Debtor attempting to modify the pre-petition rights. Further, the Plan provides that payments may be made in such non-specific amounts as may be further determined by Debtor (in any final loan modification).

Though not used as a basis for denying confirmation (in light of the Chapter 13 Trustee concluding that the plan is otherwise), the Plan also does not appear feasible or in good faith. Debtor appears to under state expenses, leaving in doubt the ability to actually perform such a plan for five years. Debtor also wants to pay an under-secured claim (for which no proof of claim has been filed) payments for more than double the value of the collateral without explanation. (The information on Schedule D is incomplete, and the court cannot tell when the transaction was entered into or why the 2010 vehicle is so over-encumbered.)

On the income deduction side, Debtor is withholding from the Plan $250.00 per month in voluntary retirement contributions, in addition to her monthly required contributions into her CalPERS-defined benefit retirement plan. No explanation is provided as to why or how such additional diversion of monies to Debtor, in light of her 10% dividend to creditors holding general unsecured claims is reasonable and in good faith.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor 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 Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

29.	**16-25208-E-13 DPC-2**	**WILLIAM MARKLEY AND SANDRA GORDON-MARKLEY Len ReidReynoso**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-21-16 [18]**

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 21, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 Objection to Confirmation of Plan is overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that William Markley and Sandra Markley ("Debtor") failed to appear at the First Meeting of Creditors held on September 15, 2016. Debtor's counsel advised the Trustee on or around August 19, 2016, that he would be out of town and would be unable to attend the Meeting of Creditors. The meeting was continued to 11:00 a.m. on October 13, 2016.

OCTOBER 18, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 25, 2016. Dckt. 31.

DISCUSSION

The Trustee filed a report on October 17, 2016, stating that Debtor appeared at the Continued First Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Accordingly, with the Trustee's objection being satisfied, the Objection to Confirmation of Plan is overruled.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Debtor's Chapter 13 Plan filed on August 8, 2016, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.