

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

November 5, 2019 at 2:00 p.m.

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1. [19-25501](#)-C-13 AGUSTIN HINOJOSA OBJECTION TO CONFIRMATION OF  
[DPC-1](#) Thomas O. Gillis PLAN BY DAVID P CUSICK  
10-16-19 [[16](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 16, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

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

- A. The Attorney Disclosure form indicates the flat fee for representation here will not includes services for relief from stay and lien avoidance actions. Local Bankruptcy Rule 2016-1 requires those services be included in a flat fee.

- B. The Debtor's tax returns show gross monthly income of \$156,767.09, which is greater than the monthly income of \$119,415.33 reported on Debtor's schedules.
- C. Debtor admitted at the Meeting of Creditors that several business assets are not listed on Debtor's Schedules.

**DISCUSSION**

Trustee argues that the employment terms within the Rights and Responsibilities (Dckt. 6) does not meet the requirements of Local Bankruptcy Rule 2016-1. However, Trustee does not cite to specific provisions that are problematic.

The Rights and Responsibilities states the following:

**AFTER THE CASE IS FILED, THE ATTORNEY AGREES TO:**

13. Timely respond to all motions filed by the chapter 13 trustee, and represent the Debtor in response to other motions filed in the case including, but not limited to, motions for relief from stay.

14. Where appropriate, prepare, file, serve, and set for hearing motions to avoid liens on real or personal property and motions to value the collateral of secured creditors as required by Local Bankruptcy Rule 3015-1(j).

15. Provide such other legal services as are necessary for the administration of the Debtor's case before the Bankruptcy Court.

Dckt. 6.

At the hearing, **xxxxxxxxxxxxxxxx**.

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

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

The Plan proposes to pay a 3 percent dividend to unsecured claims, which total \$147,504.00. While monthly income of \$119,415.33 reported on Debtor's schedules, Debtor's tax returns show gross monthly income of \$156,767.09.. Thus, the court may not approve the Plan. 11 U.S.C. § 1325(b)(2)

Additionally, the Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor admitted at the Meeting of Creditors that there are several business assets not listed on Debtor's Schedules. Without full disclosure of assets, Debtor has not shown that the plan meets the liquidation test. 11 U.S.C. § 1325(a)(4).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 22, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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**The Motion to Value Collateral and Secured Claim of Flagship Credit Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$12,300.00.**

The Motion filed by Janaya Marie Duke ("Debtor") to value the secured claim of Flagship Credit Corporation ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 27. Debtor is the owner of a 2016 Jeep Cherkoe ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$12,300.00 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).

**DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan

incurred on January 5, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$25,823.53. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$12,300.00, the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Janaya Marie Duke ("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 Flagship Credit Corporation ("Creditor") secured by an asset described as 2016 Jeep Cherokee ("Vehicle") is determined to be a secured claim in the amount of \$12,300.00, 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 \$12,300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 16, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the plan does not fully provide for priority claims.

**DISCUSSION**

Trustee argues the plan provides for payment on the IRS' claim in the amount of \$72,718.00. However, the IRS filed Proof of Claim, No. 4, asserting a secured claim in the amount of \$107,997.51.

The Debtor has not filed a motion seeking to value the secured and unsecured portions of the IRS' claim. Without providing for the full amount (or valuing the secured portion), the plan is not feasible. 11 U.S.C. § 1325(a) (6).

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

Objection is sustained, and the Plan is not confirmed.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 16, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The plan should require Debtor to provide into the plan tax refunds exceeding \$2,500.00.
- B. Debtor's Schedule I relies on a \$7,310.07 bonus where Debtor admitted at the Meeting of Creditor the highest bonus ever received was \$300.

**DEBTOR'S REPLY**

The debtor, Victoria Mahnke ("Debtor"), filed a Reply on October 25, 2019. Dckt. 23. Debtor consents to tax refunds exceeding \$2,500.00 being provided through the plan. AS to the overstated bonuses, Debtor's counsel states the Debtor assured him the bonuses would either be received, or expenses would be will be slashed.

Debtor identified the potentially reduced expenses to be the \$688 for utilities; \$600 for food and housing supplies; and \$250 for transportation.

## **DISCUSSION**

The current Chapter 13 Plan is a catch 22. It relies on \$7,310.07 in bonuses, where the Debtor has received a bonus as low as \$300 in the past 5 years. Declaration, Dckt. 21. Therefore, it is infeasible. 11 U.S.C. § 1325(a)(6).

To solve that problem, Debtor proposes reducing expenses. However, the expenses stated in Schedule J are the necessary expenses. Either reducing the stated expenses would cause Debtor to fall delinquent, or the stated expenses are overstated and more should be provided into the plan.

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

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

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

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

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

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

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

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Juan Pablo Mendoza ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a non-opposition on October 7, 2019. Dckt. 52. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 27, 2019, is confirmed. Debtor's Counsel shall prepare an

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 17, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. the Debtor did not appear at the Meeting of Creditors on October 10, 2019. The Meeting was continued to December 12, 2019.
- B. Debtor is delinquent \$100 in plan payments.

**DISCUSSION**

The Chapter 13 Trustee asserts that Debtor is \$100 delinquent in plan payments, which represents one month \$100 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C.

§ 1325(a) (6).

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a) (3). That is cause to deny confirmation. 11 U.S.C. § 1325(a) (1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (Pro Se) on October 7, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor is \$695 delinquent in plan payments, having paid nothing to date.
- B. The plan payment is insufficient to pay the \$15,657 in priority tax claims in 60 months.
- C. Debtor proposes paying no interest to Class 2 creditors.
- D. The Debtor has not provided proof of income for him or his non-filing spouse.

- E. Debtor did not provide a complete copy of Debtor's 2018 tax return, and only submitted 45 days' payments advices, and not the required 60 days.

## **DISCUSSION**

Here, the Trustee raises numerous grounds why the Debtor's proposed plan is not feasible. The Debtor has not commenced payments, has not demonstrated through evidence what Debtor's income is, does not propose paying any interest to Class 2 claims, proposes insufficient payments to complete the plan within 60 months. These are all grounds to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

**THRU #9**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 7, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

**The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended and corresponding Motion to Confirm on October 15, 2019. Dckts. 19 and 21. Filing a new plan is a de facto withdrawal of the pending plan. 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 Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the

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

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

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

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

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

**Sufficient Notice Not Provided.** The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 15, 2019. **By the court's calculation, 21 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).**

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

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

No opposition to the Motion was filed. However, as discussed above, insufficient notice was provided. Therefore, the Motion is denied without prejudice.

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

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

The Motion to Confirm the Chapter 13 Plan filed by

the debtor, Shauna Tara Jean ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 30, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The debtor, Lorenzo Jose Naranjo ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$4,239.90 for 60 months. Amended Plan, Dckt. 62. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 22, 2019. Dckt. 70. Trustee opposes confirmation on the following grounds:

1. The Amended Plan relies on valuing the secured claim of Portfolio Recovery Assets, LLC.
2. Debtor lists income of \$1,697 on Schedule I. However, at the Meeting of Creditors Debtor admitted to making \$10,000-\$12,000 monthly.

3. Given the proposed payment of \$575 a month on PPH Mortgage Services prepetition arrearage, it would take 68 months to pay the \$39,377.66 arrearage claim.
4. Debtor lists on Schedule I a deduction of \$142.21 for retirement loan repayment. However, it is not clear when Debtor will cease making loan repayments.
5. Debtor indicated at the Meeting of Creditors that the secured claim of Wells Fargo Bank will be provided for by surrendering the collateral—a 2012 Chevrolet Cruz. However, the Amended Plan is silent as to this treatment.

#### **DEBTOR'S REPLY**

Debtor filed a Reply on November 1, 2019. Dckt. 77. Much of the reply is not wholly responsive to the grounds for opposition. Debtor does not refute that his income is greater than scheduled, shows that repayment of retirement loans is not for the entire plan duration, and notes that Schedule D was amended to remove Wells Fargo Bank (rather than providing for that claim as a Class 3).

#### **DISCUSSION**

Debtor's Motion To Value set for hearing October 22, 2019, was continued to allow the parties to provide supplement evidence as to the value of the collateral.

However, the Debtor has additional problems that have not been addressed. The Debtor appears to be making income in an amount substantially greater than what was stated on Schedule I under penalty of perjury. Debtor does not deny that he misreported his income, and explains he returned to work in May—which is before filing of the case. Debtor further adds that he would provide proof of income "if requested."

The Debtor also notes in his reply that he removed the secured claim of Wells Fargo Bank from Schedule D. That was done in response to the Trustee noting that claim was not provided for in the Plan. Rather than treating the claim as a Class 3, Debtor filed Amended Schedule D to state inaccurate information—under penalty of perjury.

The present Plan and case do not presently appear to have been filed in good faith and is not confirmable.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lorenzo Jose Naranjo ("Debtor") having been presented to the court, and upon review of the

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 5, 2019. By the court's calculation, 61 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a) (9); LOCAL BANKR. R. 3015-1(d) (1).

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

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

The debtor, Piotr Gabriel Reysner and Celestial Olivia Reysner ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for \$6,667.00 to be paid through September 2019, payments of \$960 through the remainder of the plan term, and for a 10 percent dividend on unsecured claims totaling \$161,745.00. Amended Plan, Dckt. 69. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on October 7, 2019. Dckt. 71. Trustee opposes confirmation on the grounds it is uncertain whether Debtor's 2018 tax returns were filed.

**DEBTOR'S REPLY**

Debtor filed a Reply on October 24, 2019. Dckt. 73. Debtor states that the 2018 returns were lost in the mail, but have now been confirmed as

received.

Debtor filed Debtor's Declaration and an IRS receipt of filing to show evidence that the returns were filed. Dckts. 74, 75.

#### **DISCUSSION**

Debtor has shown evidence that the 2018 tax returns were filed, addressing all grounds for opposition to confirmation.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Piotr Gabriel Reysner and Celestial Olivia Reysner ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 5, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

12. [19-25825](#)-C-13 JUSTIN/ELISABETH ERICKSON MOTION TO AVOID LIEN OF SIERRA  
[CK-1](#) Catherine King CENTRAL CREDIT UNION  
10-3-19 [[13](#)]

**THRU #13**

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 3, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Sierra Central Credit Union ("Creditor") against property of the debtor, Justin Leif Erickson and Elisabeth Grace Erickson ("Debtor") commonly known as 21106 Boyle Road, Redding, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,522.78. Exhibit B, Dckt. 16. An abstract of judgment was recorded with Shasta County on June 11, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$340,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens that total \$240,224.07 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C. Dckt. 1.

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

**ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Justin Leif Erickson and Elisabeth Grace Erickson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Sierra Central Credit Union, California Superior Court for Shasta County Case No. , recorded on June 11, 2019, Document No. 2019-0015957, with the Shasta County Recorder, against the real property commonly known as 21106 Boyle Road, Redding, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. [19-25825](#)-C-13 JUSTIN/ELISABETH ERICKSON MOTION TO AVOID LIEN OF SIERRA  
CK-2 Catherine King CENTRAL CREDIT UNION  
10-3-19 [[18](#)]

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 3, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Sierra Central Credit Union ("Creditor") against property of the debtor, Justin Leif Erickson and Elisabeth Grace Erickson ("Debtor") commonly known as 21106 Boyle Road, Redding, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$25,186.02. Exhibit B, Dckt. 21. An abstract of judgment was recorded with Shasta County on April 29, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$340,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens that total \$240,224.07 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore,

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

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

**ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Justin Leif Erickson and Elisabeth Grace Erickson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Sierra Central Credit Union, California Superior Court for Shasta County Case No. 18CV1154, recorded on April 29, 2019, Document No. 2019-0011295, with the Shasta County Recorder, against the real property commonly known as 21106 Boyle Road, Redding, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

14. [19-23327](#)-C-13 MATEO/EVA GALVAN  
[HDR-2](#) Harry Roth  
DEBTOR DISMISSED: 10/2/2019  
JOINT DEBTOR DISMISSED:  
10/2/2019

MOTION TO CONFIRM PLAN  
9-23-19 [[47](#)]

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

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

15. [11-34433](#)-C-13 AARON/JAYME RIX  
[JLB](#)-5 James Brunello

MOTION TO AVOID LIEN OF JEWELL  
RESTORATION, INC.  
10-8-19 [[108](#)]

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 8, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Jewell Restoration ("Creditor") against property of the debtor, Aaron Rix and Jayme Rix ("Debtor") commonly known as 2991 Richardson Circle, El Dorado Hills, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$26,571.80. Exhibit 1, Dckt. 111. An abstract of judgment was recorded with El Dorado County on May 26, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$278,500.00 as of the petition date. Dckt. 1. The unavoidable and senior liens that total \$407,430.89 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$11,900.00 on Amended Schedule C. Dckt. 107.

After application of the arithmetical formula required by 11 U.S.C.

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

**ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Aaron Rix and Jayme Rix ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Jewell Restoration, California Superior Court for El Dorado County Case No. PCL 20090220, recorded on May 26, 2010, Document No. 2010-0023237-00, with the El Dorado County Recorder, against the real property commonly known as 2991 Richardson Circle, El Dorado Hills, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2019. By the court's calculation, 29 days' notice was provided. 35 days' notice is required.

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

**The Motion to Incur Debt is denied without prejudice.**

Gary D. Duerner ("Debtor") seeks permission to incur debt in an amount of \$154,000.00 in order to make a balloon payment coming due on his mortgage, and to make two missed plan payments.

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

Here, the Debtor is seeking prospective relief, and has not actually procured financing. As stated, *supra*, a motion to incur debt must be accompanied by a copy of the agreement, and a summary of all the material provisions. The court cannot authorize financing without knowing any of the terms.

Therefore, the Motion is denied without prejudice.

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

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

The Motion to Incur Debt filed by Gary D. Duerner ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 20, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor is delinquent \$985.37 in plan payments.
- B. Debtor testified at the Meeting of Creditors that her non-filing spouse passed away in September 2019, and Debtor therefore may not be receiving the same income as she listed on Schedule I.

**DISCUSSION**

The Chapter 13 Trustee asserts that Debtor is \$985.37 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the

Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Additionally, Debtor testified at the Meeting of Creditors that her non-filing spouse passed away in September 2019, and going forward her income may not be the same as reported on Schedule I. Without an accurate picture of the Debtor's financial reality the plan is not confirmable. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

18. [19-25053](#)-C-13 EMILIA CAOAGAS AND  
[FF-1](#) RODRIGO DONES  
Gary Fraley

MOTION TO VALUE COLLATERAL OF  
ONE MAIN FINANCIAL GROUP LLC  
9-30-19 [[20](#)]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on September 30, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion was served on the Chapter 13 Trustee and the U.S. Trustee. The Motion was also served on the creditor at the following address:

One Main Financial  
Attn: Officer  
PO Box 3251  
Evansville, IN 47731-3251

Dckt. 24. A cursory review of the California Secretary of State website demonstrates that the Creditor's address for service of process is not the above PO box. Additionally, service at a PO box is not sufficient to serve an officer of the Creditor. Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously").

**The Motion to Value Collateral and Secured Claim is denied without prejudice.**

Based on the foregoing discussion of service, the Motion is denied without prejudice.

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

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

The Motion to Value Collateral and Secured Claim

filed by Emilia Labaoig Caoagas and Rodrigo Rivera Dones ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 16, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor did not provide Trustee a list of assets and accounting statements for Debtor's businesses, or a written statement that no such documentation exists.
- B. Debtor admitted at the Meeting of Creditors that not all assets have been listed on their Schedules.
- C. Debtor lists a vehicle on Schedule B, which Debtor admitted was surrendered prepetition.
- D. Debtor admitted at the Meeting of Creditors that he is receiving monthly income of \$810 from his daughter, which is not listed on Schedule I.

- E. Debtor's most recent tax return indicated a refund of \$7,210.00. Trustee requests the order confirming any plan require Debtor pay into the plan any refund exceeding \$2,000.00.
- F. While Debtor is relying on a contribution from his daughter, without supporting evidence in the form of a written declaration this contribution has not shown to be reliable.

## **DISCUSSION**

Debtor has not provided Trustee with Trustee a list of assets and accounting statements for Debtor's businesses. Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521. Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The plan is also not confirmable because it is unclear what Debtor's income will be going forward, and because Debtor has not accurately completed his Schedules. 11 U.S.C. § 1325(a)(4) and (6).

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

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

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

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

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

**THRU #21**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of FCI Lender Services, Inc. ("Creditor") is **XXXX**.**

**PROCEDURAL HISTORY**

The court granted Debtors' Motion to Value Collateral and Secured Claim on April 27, 2019. Order, Dckt. 30. The creditor, Partners For Payment Relief DE III, LLC, the lender for which Creditor acts as a loan servicer (collectively "Creditor"), filed its Motion to Vacate the Court's Order on April 29, 2019. Lender asked the court to reconsider its decision to grant Debtors' Motion to Value because it mis-calendared the opposition deadline for Debtors' Motion to Value. Dckt. 31 at p. 2:27-29. The court granted the Motion for Reconsideration on May 21, 2019, vacated is April 27 Order, and set a hearing on Debtors' Motion to Value for 2:00 p.m. on June 25, 2019. Parties filed additional briefs to address the merits of Debtors' Motion to Value.

## **DEBTOR'S INITIAL MOTION:**

Initially on March 26, 2019, Leonid Banar and Lyudila Banar ("Debtors") filed their Motion to value the secured claim of FCI Lender Services, Inc. ("Creditor"). The Motion was accompanied by Debtor's amended declaration. Debtors are the owners of the subject real property commonly known as 8219 Villaview Drive, Citrus Heights, California ("Property").

## **CREDITOR'S OPPOSITION**

On May 31, 2019, Creditor filed its Opposition to Debtors' Motion to Value Collateral. Dckt. 43. Creditor dispute Debtors' valuation of the subject Property. Where Debtors allege that the Property is worth \$255,000.00, Creditor asserts that the Property is actually worth \$282,500.00, providing \$27,500.00 of equity over the senior lien holder for Creditor's lien to attach. Declaration, Dckt. 44 at Exhibit 3. In addition, Creditor raises objection to Debtors' proposed valuation. Creditor argues that Debtors are employed, respectively, as a Cobbler and a Housekeeper, and have no real estate experience upon which to base their proposed valuation. Creditor asked the court to deny Debtors' Motion to Value, or order a final hearing on the matter to allow Creditor to perform its own valuation on the Property.

In support of Creditor's stated valuation, the Creditor submits a Broker's Price Opinion ("BPO") dated April 10, 2019 valuing the property at \$282,500.00. Creditor attempts to authenticate the BPO providing a sworn statement from Creditor's employee that the attached BPO is the report that the company ordered. However, no sworn statements are provided to authenticate the truth of the contents of the BPO.

## **DEBTOR'S RESPONSE**

On June 7, 2019, Debtors filed their Response to Creditor's Opposition to Debtor's Motion to Value Collateral. Dckt. 49. Debtors' Counsel responded that because Debtors' have superior personal knowledge of the Property, Debtors' opinion of the Property's value is more reliable than Creditor's Broker's opinion.

Debtors' Counsel also takes issue with the BPO presented as evidence in support of Creditor's valuation, noting no declaration was filed by its author, and no information is provided as to the qualifications of its author. Additionally, Debtors' Counsel points out multiple defects with the Property that would ostensibly have an adverse effect on its valuation. The defects include abnormal wear and tear caused by Debtors' eight children, non-permitted alterations to the Property, and needed repairs to the Property's roof and water pipes. According to a contractor's estimate submitted as evidence by Debtors' Counsel, repairing the roof and water pipes alone would cost at least \$20,195.00. Dckt. 51 at Exhibit A. The expense of remedying these defects, argue Debtors' Counsel, would exceed the \$24,237.29 of equity Lender claims based on its proposed valuation of the Property.

## **NO PROOF OF CLAIM FILED**

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the

claim to be valued.

**DEBTORS' STATUS REPORT:**

On August 6, 2019, Debtor filed a Status Report. Dckt. 65. The Report states that:

1. Creditor sent an appraiser to Debtor's home on August 3, 2019.
2. Debtors retained Steve C. Baker who conducted and in home inspection and produced a report.
3. Debtor's counsel e-mailed Creditor to obtain a status report swap.

Debtor's counsel states that at the time of the Status Report filing, no response has been received from Creditor.  
SEPTEMBER 17, 2019 HEARING

At the September 17, 2019 hearing the hearing was again continued to allow further discovery.

**DISCUSSION**

The parties offer conflicting evidence as to the value of the Property. Debtors seek to value the Property at a fair market value of \$255,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

At the hearing, **xxxxxxxxxxxxxxxx**.

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

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

The Motion to Value Collateral and Secured Claim filed by Leonid Banar and Lyudila Banar ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Value Collateral and Secured Claim of FCI Lender Services, Inc. ("Creditor") is **xxxx**.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

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

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

Partners For Payment Relief DE III, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor does not provide for Creditor's claim and Debtor has failed to provide evidence that Creditor is completely unsecured.
- B. Creditor alleges that Debtor will not be able to afford the Plan. Debtor's Schedules show disposable income of \$150.00 and a monthly plan payment of \$150.00. Confirmation of the Plan would be impossible in the event Creditor's claim is included in the plan.

**DISCUSSION**

Creditor asserts a claim of \$97,106.81 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$98,406.73 and indicates that it is secured by a second deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a \$0.00 monthly dividend on account of the claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. See 11 U.S.C. § 1325(a)(6).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of FCI Lender Services, Inc. Debtor has filed a Motion to Value the Secured Claim of FCI Lender Services, Inc. Dckt. 8. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The hearing on this Objection has been continued to track the outcome of Debtor's Motion To Value. Dckt. 8.

**At the hearing -----**

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

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

The Objection to the Chapter 13 Plan filed Partners For Payment Relief DE III, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the hearing on the Objection to Confirmation of Plan is **XXXX**.

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 2, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

**The Motion to Incur Debt is granted.**

Tanya Michelle Norfles ("Debtor") seeks permission to make payments as part of a trial loan modification.

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

The Motion summarizes the terms as follows:

1. 3 trial period payments to begin October 1, 2019.

2. The payment shall be \$1,168.18, which includes principal and interest.

The court finds that the proposed trial modification, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Tanya Michelle Norfles ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the trial loan payments as provided in Exhibit A (Dckt. 30) are authorized.

**IT IS FURTHER ORDERED** that the Debtor is authorized to make the trial loan modification payments to the Creditor directly for the months through and including December 1, 2019, with such payment to be treated as if paid through the Trustee.

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

**THRU #24**

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
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Local Rule 9014-1(f) (1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 1, 2019. By the court's calculation, 1 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of L. Douglas Thompson as trustee ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Randell Dee Comstock and Maria Elvira Comstock ("Debtor") to value the secured claim of L. Douglas Thompson as trustee ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 18. Debtor is the owner of the subject real property commonly known as 6380 Hemlock Way, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of \$270,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See FED. R. EVID. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

11 U.S.C. § 506(a) instructs the court and parties in the

methodology for determining the value of a secured claim.

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

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

#### **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$284,085.90. Schedule D, Dckt. 1. Creditor's third deed of trust secures a claim with a balance of approximately \$7,793.00. *Id.* Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Randell Dee Comstock and Maria Elvira Comstock ("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 L. Douglas Thompson as trustee ("Creditor") secured by a third in priority deed of trust recorded against the real property commonly known as 6380 Hemlock Way, Rocklin, 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 \$0.00 and is encumbered by a senior lien securing a claim in the amount of \$284,085.90, which exceeds the value of the Property that is subject to Creditor's lien.

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 1, 2019. By the court's calculation, 1 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of mPower ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Randell Dee Comstock and Maria Elvira Comstock ("Debtor") to value the secured claim of mPower ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 18. Debtor is the owner of the subject real property commonly known as 6380 Hemlock Way, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of \$270,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See FED. R. EVID. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

## **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$284,085.90. Schedule D, Dckt. 1. Creditor's second deed of trust secures a claim with a balance of approximately \$28,700.00. *Id.* Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Randell Dee Comstock and Maria Elvira Comstock ("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 mPower ("Creditor") secured by a third in priority deed of trust recorded against the real property commonly known as 6380 Hemlock Way, Rocklin, 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 \$0.00 and is encumbered by a senior lien securing a claim in the amount of \$284,085.90, which exceeds the value of the Property that is subject to Creditor's lien.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 25, 2019. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a) (5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d) (2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is ~~XXXXX~~.**

The debtor, Michael Phillip Tharp and Carrie Kay Tharp ("Debtor") seek confirmation of the Modified Plan to provide for JP Morgan Chase Bank, N.A.'s claim as a Class 3 due to the collateral being in a collision. Declaration, Dckt. 87. The Modified Plan provides 19,025.50 paid through September 22, 2019, and payments of \$777 per month starting September 25, 2019. Modified Plan, Dckt. 89. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 21, 2019. Trustee argues that payments of \$6,439.14 already made to secured creditor JP Morgan Chase Bank, N.A. are not authorized by this plan.

**DISCUSSION**

Trustee argues that payments of \$6,439.14 already made to secured creditor JP Morgan Chase Bank, N.A. are not authorized by this plan.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Michael Phillip Tharp and Carrie Kay Tharp ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on September 25, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 17, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor's plan does not provide for escrow payments on the mortgage.
- B. The Debtor's plan proposes interest on creditor's secured claim of only 3.829%.
- C. Because the escrow and increased interest are not provided for, the plan is not feasible.

**DISCUSSION**

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 3.829%. Creditor's claim is secured by Debtor's residence. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

Here, the interest rate proposed is insufficient.

Additionally, the Debtor does not provide in the Plan, or as an expense on Schedule J, payments for insurance and taxes on the Debtor's residence. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by JP Morgan Chase Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**THRU #28**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 17, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan relies on valuing the secured claim of Ally Bank.

**DISCUSSION**

On November 5, 2019, the court granted Debtor's Motion To Value the secured claim of Ally Bank.

The Trustee's grounds for Objection have been resolved.

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

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

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

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

**IT IS ORDERED** that the Objection is overruled, and Jamar Amon Robinson's ("Debtor") Chapter 13 Plan filed on August 30, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the November 18, 2019, hearing is required.  
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Local Rule 9014-1(f) (1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on September 18, 2019. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Jamar Amon Robinson ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$9,500.**

The Motion filed by Jamar Amon Robinson ("Debtor") to value the secured claim of Jamar Amon Robinson ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 14. Debtor is the owner of a 2014 Lincoln MkZ ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,500.00 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).

#### DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on February 4, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of

approximately \$15,448.16. Proof of Claim, No. 7. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$9,500.00, the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Jamar Amon Robinson ("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 Jamar Amon Robinson ("Creditor") secured by an asset described as 2014 Lincoln MkZ ("Vehicle") is determined to be a secured claim in the amount of \$9,500.00, 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 \$9,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.  
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Local Rule 9014-1(f) (1) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Danielle Nicole Delgado ("Debtor") seeks confirmation of the Modified Plan to increase payments, making up \$2,000 in tax refunds that were supposed to be provided into the plan, but were diverted to pay emergency expenses. Declaration, Dckt. 56. The Modified Plan provides for payments of \$420 for 12 months and \$480 for 48 months. Modified Plan, Dckt. 60. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 21, 2019. Dckt. 66. Trustee opposes confirmation on the basis that Debtor is delinquent \$840 in plan payments, and Debtor's modified plan relies on a monthly contribution of \$60 from Debtor's son that has not been supported by evidence.

**DISCUSSION**

The Trustee's opposition here is that the plan is not feasible. The Debtor is delinquent in plan payments. Additionally, the plan relies on contributions from Debtor's son, and no written declaration from the son has been provided in support of the contribution

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 22, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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**The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$22,000.00.**

The Motion filed by James Edward Shaw and Mary Elizabeth Morris Shaw ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2017 GMC Terrain ("Vehicle").

The lien on the Vehicle's title secures a purchase-money loan incurred in June 2018, which is fewer than 910 days prior to filing of the petition. Declaration, Dckt. 10.

Debtor requests that the loan held by Creditor be determined to be secured in the amount of \$22,000 and that the negative equity carried into the loan from the vehicle trade-in be determined to be an unsecured claim.

A review of the Retail Installment Contract filed as Exhibit A shows that the total amount financed by Debtor was \$34,564.77. There was a net trade-in of (\$10,000). Essentially, the total amount financed is two separate loans, one for negative equity arising from the trade-in and another for the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 29% of the amount financed, and the remaining 71% is new financing secured as a purchase money security interest in the new Vehicle. Applying those percentages to the amount claimed by Creditor, \$20,729.16 of the amount financed is secured by the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired fewer than 910 days prior to the filing that prevents Debtor from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), Debtor is only seeking to value the portion of the financing that was for negative equity arising from the trade-in, not the actual purchase of the Vehicle.

In the Ninth Circuit, negative equity is not considered as part of the price for a new vehicle and is not included in the purchase money security interest. *AmeriCredit Fin. Servs. v. Penrod (In re Penrod)*, 611 F.3d 1158, 1161-62 (9th Cir. 2009), *reh'g denied*, 636 F.3d 1175 (2011), *cert. denied* 565 U.S. 822 (2011). Debtor may value that portion of the secured claim relating to the negative equity financed in addition to the purchase price.

The definition of a "purchase money security interest" is determined by state law. *Id.* California Commercial Code § 9103 "does not provide a precise, encapsulated definition of a purchase money security interest, but rather a string of connected definitions." *Id.* at 1161; CAL. COM. CODE § 9103.

In *Penrod*, the Ninth Circuit Court of Appeals quoted the plain language of the California Commercial Code, stating,

"Purchase money collateral' means goods or software that secures a purchase money obligation." CAL. COM. CODE § 9103(a)(1). "'Purchase money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." CAL. COM. CODE § 9103(a)(2).

611 F.3d at 1161.

The California Commercial Code defines the term "goods" to be,

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in

such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

CAL. COM. CODE § 9102(44). Physical "things" are included in the definition, but contracts, claims, instruments, letters of credit, and other non-physical "things" are not included.

## **DISCUSSION**

As discussed by the court in *Penrod*, creditors are given some extraordinary rights for purchase money finance and a purchase money lien. While extraordinary rights are given, the California Legislature carefully circumscribed the obligations that would be protected.

Therefore, based on the foregoing, Creditor's secured claim is determined to be in the amount of \$22,000 (the amount requested by the Debtor, which is a slightly higher amount than what is based on purchase money debt). See 11 U.S.C. § 506(a). The remaining claim is determined to be a general unsecured claim arising from negative equity arising from the trade-in. 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 James Edward Shaw and Mary Elizabeth Morris Shaw ("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 Travis Credit Union ("Creditor") secured by an asset described as 2017 GMC Terrain ("Vehicle") is determined to be a secured claim in the amount of \$22,000, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

**Final Ruling:** No appearance at the November 5, 2019, hearing is required.  
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Local Rule 9014-1(f)(1) Motion-No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 24, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Becky Ensley and Michael William Ensley ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on October 21, 2019. Dckt. 124. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Becky Ensley and Michael William Ensley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and

good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on September 24, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 9, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the plan relies on valuing the secured claim of Prog Leasing, LLC dba Progressing Leasing.

**DEBTOR'S REPLY**

The Debtor filed a Reply on October 26, 2019. Dckt. 32. Debtor asserts the Motion To Value was granted on October 22, 2019, making the plan feasible.

**DISCUSSION**

On October 22, 2019, the court granted Debtor's Motion To Value the secured claim of Prog Leasing, LLC dba Progressing Leasing. Civil Minutes, Dckt. 34.

All the Trustees grounds for objection have been addressed.

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

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

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

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

**IT IS ORDERED** that the Objection is overruled, and Erika Renee Williams's ("Debtor") Chapter 13 Plan filed on August 18, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 9, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the plan relies on valuing the secured claim of First Investors Servicing Corporation MC-1.

#### **DEBTOR'S REPLY**

Debtor filed a Reply on October 26, 2019. Dckt. 32. Debtor states that the Motion To Value was heard October 22, 2019 and granted.

#### **DISCUSSION**

On October 22, 2019, the court granted Debtor's Motion To Value the secured claim of Prog Leasing, LLC dba Progressing Leasing. Civil Minutes, Dckt. 34.

All the Trustees grounds for objection have been addressed.

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

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

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

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

**IT IS ORDERED** that the Objection is overruled, and Edward Jay Vint's ("Debtor") Chapter 13 Plan filed on September 4, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 10, 2019. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan proposes valuing the secured claim of Santander Consumer USA, Inc., but no motion has been filed for that purpose.

Without the court granting a motion valuing the secured claim at the amounts stated in the plan, the plan is not feasible. 11 U.S.C. § 1325(a) (6).

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

35. [19-25297](#)-C-13 JOSHUA/SAMANTHA JARRELL OBJECTION TO CONFIRMATION OF  
[JHW](#)-1 August Bullock PLAN BY TD AUTO FINANCE LLC  
9-13-19 [[14](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 13, 2019. By the court's calculation, 53 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is ~~XXXXXX~~.**

Creditor TD Auto Finance LLC ("Creditor"), opposes confirmation of the Plan on the basis that the Plan provides for zero interest on Creditor's Class 2 claim.

#### **DEBTOR'S REPLY**

Debtor filed a Reply on October 22, 2019. Debtor states that a stipulation was reached resolving this Objection, and a proposed order submitted to the Trustee.

#### **DISCUSSION**

Debtor states that a stipulation has been entered which resolved the Objection.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor TD Auto Finance LLC ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, and Edward Jay Vint's ("Debtor") Chapter 13 Plan filed on August 23, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.