

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 5, 2019 at 3:00 p.m.

1. [19-26520-E-13](#) COURTNEY WILSON MOTION TO EXTEND AUTOMATIC
[SDH-1](#) Scott Hughes STAY
10-22-19 [8]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, 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 Extend the Automatic Stay 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 Extend the Automatic Stay is granted.

Courtney Allyn Wilson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-25068-C-13C) was dismissed on August 21, 2019, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 18-25068-C-13C, Dckt. 53, September 6, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A),

the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she was unable to make plan payments. Debtor made payments in the last case for almost 9 months until she lost her job. Rather than trying to catch up, the debtor let the case be dismissed.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The previous plan was filed in an effort to avoid foreclosure. Said plan provided for payment of the mortgage and a cure of the arrearage. She had made her plan payments for about nine months. But then she lost her job at Sutter Hospital and was unable to make payments. The Current Case has been filed again in an effort to save her home the day before a foreclosure sale.

Debtor's circumstances seem to have improved. Debtor has recently found employment as a registered nurse with an estimated \$10,000 a month gross income, and an estimated \$7,000 after deductions. She also makes \$1,500 a month in military retirement income and is considering renting out a room in her residence for \$1,100 a month, if necessary, to help with plan payments. Debtor's income and potential additional rental income will allow Debtor to cover all her obligations and the proposed

schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent in plan payments.
- B. Debtor may not make sufficient income to pay her plan payments.
- C. Debtor failed to list a secured claim by the U.S. Department of Housing and Urban Development.
- D. Debtor fails the Liquidation Analysis.

DISCUSSION

Trustee’s objections are well-taken.

Delinquency

Debtor is \$2,000.00 delinquent in plan payments, which represents one month of the \$2,000.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor Fails Liquidation Analysis

Debtor’s plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor scheduled the value of the property at \$425,000.00 on Schedule A. After an exemption of \$175,000.00, Debtor has equity in the amount of \$260,556.72 and non-exempt equity in her real property in the amount of \$85,556.72. Yet, Debtor is proposing a 0% dividend to unsecured creditors.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to her Schedules, Debtor is employed as a Dental Assistant and also works as a Lyft driver. However, at the First Meeting of Creditors, Debtor admitted that she was no longer working as a Lyft driver. Debtor has not filed an amended Schedule I to reflect her actual income. Thus, Debtor may not make sufficient income to pay her plan payments.

Further, Trustee asserts that the plan is not feasible because Debtor failed to list the U.S. Department of Housing and Urban Development. On August 30, 2019, the U.S. Department filed a

secured claim for \$34,640.28 secured by Debtor's real property. This failure to disclose this debt alters the proposed plan and plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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.

3. [19-20429-E-13](#) TANYA HALL
[TJW-2](#) Timothy Walsh
11 thru 12

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS INC
10-2-19 [57]

APPEARANCE OF TIMOTHY WALSH, COUNSEL FOR DEBTOR REQUIRED FOR NOVEMBER 5, 2019 HEARING

TELEPHONIC APPEARANCE PERMITTED

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 2, 2019. By the court's calculation, 34 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 the Secured Claim of Real Time Resolutions, Inc.
("Creditor") is denied without prejudice.**

The Motion to Value filed by Tanya Dorene Hall ("Debtor") to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 60. Debtor is the owner of the subject real property commonly known as 338 Nevada Street, Vallejo, Solano County, California ("Property"). Debtor seeks to value the Property at a fair market value of \$518,000.00 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).

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 3 filed by Real Time Resolutions, Inc. appears to be the claim that may be the subject of the present Motion.

OPPOSITION

Creditor filed an Opposition on October 10, 2019. Dckt. 71. Creditor indicates that there is great likelihood that the value of the property is well over \$518,000 on the date the petition was filed, and requests an opportunity to have the property appraised before the court rules on the present Motion.

TRUSTEE'S RESPONSE

Trustee filed a Response to the Motion on October 22, 2019. Dckt. 76. Trustee argues that an evidentiary hearing might be necessary to sort out Debtor's reported value of the property at \$518,000.00 and Creditor's opposition to such valuation.

DISCUSSION

Review of the Motion and Supporting Pleadings

The Motion must state with particularity the grounds and the relief requested. Fed. R. Bankr. P. 9013. Here, the main points are stated as follows:

- A. Debtor seeks to have the court to value collateral of Real Time Resolutions, Inc.

- B. Creditor Real Time Resolutions, Inc. has filed a secured claim in the amount of \$62,437.70.
- C. The collateral is real property commonly known as 338 Nevada Street, Vallejo, Solano County, California.
- D. The Debtor has determined the value to be \$518,000.00.
- E. Debtor states a value of \$518,000 for the property.

The Motion then adds, stating with particularity, the following relief which is to be stated in the order granted pursuant to the Motion:

- A. The court determine the value of the real property at 338 Nevada Street, Vallejo, to be \$518,000.00
- B. The court to determine that the secured claim of creditor, Real Time Resolutions, Inc. on account of its second mortgage on said real property is a fully secured claim to be paid in class 7 of the chapter 13 plan.

The Motion then states that it is really based on, and apparently grounds are stated in: (1) the Declaration of the Debtor; (2) Exhibits filed with the Motion; and the Objection to Confirmation filed by Creditor. The Motion makes no reference to the specifics of such evidence, or testimony, or Opposition by Creditor. Rather, it appears to merely being Debtor's instruction to the court to wade through all of those documents and assemble for Debtor whatever the court might think would be beneficial grounds for Debtor.

As this court has repeatedly stated on many occasions for parties and attorneys who seek to assign advocacy work to the court - the court declines such work assignments.

Review of Debtor's Other Pleadings

Declaration Document

Debtor provides her Declaration in which she states that she is "familiar" with the "facts" as stated by her attorney and does hereby declare them to be true and correct. Declaration ¶ 1; Dckt. 60. However, Debtor does not provide specific testimony, but here gives her "blessing" to whatever is said in the Declaration. This includes that the Motion is based on a "bunch of other pleadings." Thus, is the Debtor testifying under penalty of perjury that she has personal knowledge of all the facts therein and does so testify under penalty of perjury? Such "whatever is in their" testimony is not proper. F.R.E. 601, 602.

Debtor, as the owner of the Property, expresses her personal owner's opinion that the Property has a value of \$518,000.00. Declaration ¶ 2, *Id.* This is proper.

Debtor then proceeds to review Creditor's Proof of Claim for the court and provides her statements of what she reads in the Proof of Claim, and then seeks to tell the court what the Proof of

Claim says. In saying she has “reviewed” the “claims,” she does not testify what this consists of, her ability to “review” the Proof of Claim and the documents attached thereto, and the time spent. It may be that she did conduct such a review, or merely that she signed a declaration that says she did - when she never spent any time reviewing the Proof of Claim sufficiently to tell the court what she heard the Proof of Claim say when she engaged in a thorough review of the Proof of Claim.

Debtor then provides the court with her personal finding of fact and her personal conclusion of law that there is no equity to “support a claim of security” (whatever that may mean, appearing to be a unique, made up legal term as part of Debtor’s legal conclusions) by Creditor.

Debtor, then goes from testifying in the Declaration to adding “prayers” for relief. Declaration ¶ 4; *Id.* She not only “prays” for relief in valuing the secured claim (based on her personal findings of fact and conclusions of law), but also to have the court pre-determine portions of a Chapter 13 plan.

The Debtor’s “testimony” is concerning to the court, it appearing to go well beyond personal knowledge testimony, but to also be dictation of findings of fact and conclusions of law, and then to be a secret, outside the Motion, inclusion of requests for relief.

Exhibit Document

Debtor has also filed a document in support of the Motion titled “Exhibits.” Dckt. 59. As with the Declaration, this is not merely a set of exhibits, but a carefully disguised multi-faceted document that does not comply with the Local Bankruptcy Rules.

The “Exhibit” begins with Debtor’s counsel stating that it is actually his Declaration and he is providing testimony under penalty of perjury. *Id.* at 1:19-21. Exhibits are not personal knowledge testimony documents. Counsel then seeks to authenticate the exhibits. To the extent necessary such declaration must be provided as a separately filed documents. (See discussion of Local Bankruptcy Rules below.)

For each “Exhibit,” Counsel’s Declaration then provide legal argument as to why the exhibit is being presented. No reference is made to these exhibits in the Motion (other than the general instruction to the court to “go out and read everything as instructed”). Thus this document is actually an Exhibit-Declaration-Motion-Points and Authorities Frankenstein document.

Debtor’s Counsel continues, presenting Exhibit 3, which is Creditor’s Objection to the Debtor’s First Amended Chapter 13 Plan. The Exhibit-Declaration-Motion-Points and Authorities document Counsel states that this is being presented to show that Creditor has previously relied on Debtor’s opinion as to value for the Property. *Id.* at 7-12.

Creditor takes this “reliance on what Debtor has said under penalty of perjury” as an assertion that Creditor has “admitted” the value of the Property to be that as stated by Debtor under penalty of perjury. Opposition, p. 2:20-27; Dckt. 71. While, in light of the “creative” pleadings filed by Debtor and Debtor’s Counsel fear of such non-expressly stated position might be raised, the court does not read such as being stated by Debtor, but only that Creditor, one moth in this case and facing a plan filed by the Debtor, “relied” on the value of the Property as stated or admitted by the Debtor, in opposing that Plan.

In reviewing the Objection to Confirmation, the court notes that the value of the Property and amount of secured debt stated under penalty of perjury by the Debtor was computed to show that there was at least \$16,000 of value for Creditor's secured claim, thereby the Debtor "admitting" that Creditor held a secured claim that needed to be provided for in the Plan. Objection, p. 1:27-28, 2:1-6; Dckt. 15.

The court notes that Debtor's Schedule D, which under penalty of perjury is to list all claims of creditor who assert a security interest in any property of the Debtor, lists only the senior in priority deed of trust securing a claim with a balance \$523,095.50 (as stated under Proof of Claim #5) secured by a recorded mortgage.

Opposition

Creditor asserts a second deed of trust secures a claim with a balance of approximately \$62,437.70, which was filed at Proof of Claim #3. Indeed, the claim is mentioned by Debtor's current motion but no amended Schedule D has been filed to list Creditor's claim, even though Debtor is now bringing this Motion to Value the secured claim.

In its Opposition, Creditor argues that Debtor is not an appraiser and that she lacks the expertise to value the property at \$518,000.00 and determine the property has no equity. *Id.* Creditor then refers to a Broker's Price Opinion ("BPO") Creditor obtained estimating that there is a substantial likelihood that equity existed in the Property on the date of the filing to partially secure Creditor's lien, therefore not allowing Debtor to avoid any part of Creditor's lien. *Id.* The BPO estimates the value of the Property at \$615,000. *Id.* Creditor understands that the BPO is not enough evidence to overcome its burden and that Creditor had unsuccessfully attempted to schedule an appraiser upon Debtor's filing of the present motion. *Id.* But requests an opportunity to appraise the property.

Request for Discovery

Creditor requests that the court continue the matter and apply Fed. R. Bank. P. 9014(c) to this contested matter by requiring Debtor's cooperation in allowing Creditor to obtain an interior appraisal. Rule 9014(c) incorporates 7016 dealing with discovery, which in turn incorporates Federal Rule of Civil Procedure 26.

Review of Opposition Pleading Document

Creditor has chosen to file a fifteen page opposition document, consisting of a combined Opposition and Points and Authorities (four pages), and Exhibits (eleven pages). Dckt. 71. Under the long established Local Bankruptcy Rules in this District, motions, oppositions, replies, declarations, exhibits, and other supporting documents must be filed as separate pleadings, not combined into one omnibus electronic document for the court to either wade through or separate in separate documents in attempting to review them. L.R.B. 9004-1(c), (d); 9014-1(d). The court is confident that Creditor will in the future comply with such Local Rules of this Court.

Denial of Motion Without Prejudice and Setting Conditions for Refiled Motion

Movant's pleadings are sufficient deficient, confusing, and laden with "traps" for the court, the court denies the Motion without prejudice. Filing pleadings in Federal Court is not an adventure into

how many rules can be ignored, how confusing the pleadings can be drafted, and what testimony can be avoided.

Attempting to amend the existing pleadings will only result in a larger mess.

For Creditor, knowing that a new motion will be forthcoming, Creditor can diligently get a 2004 examination of the Property scheduled and be ahead of the game.

For any new motion filed to value the secured claim, no Telephonic Appearance Will Be Permitted for Debtor and Debtor's Counsel. Further, both Debtor and Debtor's Counsel are ordered to be in court, in person, for such hearing - No Telephonic Appearances Permitted. The court has determined this to be necessary in light of the far reaching "testimony" that Debtor gives, including her personal findings of fact and conclusions of law, as well as counsel's "creative" placement of grounds, legal authorities, testimony, and opaque legal assertions in various pleadings. Their attendance in open court may be necessary for the court to expeditiously address issues that may arise for which the testimony of either or both may be required, which may then allow the matter to be addressed that day.

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 Tanya Dorene Hall ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion is denied without prejudice.

IT IS FURTHER ORDERED that when the new Motion to Value the Secured claim of Bank of America, N.A., for whom Real Time Resolutions is the loan servicer/agent (Proof of Claim No. 3-2), Debtor Tanya Hall and Timothy Walsh, Esq., counsel for Debtor, and each of them shall personally appear at the hearing on said new Motion to Value - No Telephonic Appearances Permitted for the forgoing persons ordered to appear.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 2, 2019. By the court’s calculation, 34 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, -----.

The Motion to Value Collateral and Secured Claim of Ally Financial (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$13,350.00.

The Motion filed by Tanya Dorene Hall (“Debtor”) to value the secured claim of Ally Financial (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 65. Debtor is the owner of a 2016 Dodge Dart (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$13,350.00 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 June 22, 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 \$27,774.61. Proof of Claim, No. 2. 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 \$13,350.00, the value of the collateral. *See* 11 U.S.C. § 506(a). Indeed, Debtor concurs with Creditor's assessment and proposes to value the collateral at the same amount that Creditor states in their Proof of Claim as the secured amount. Thus, 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 Tanya Dorene Hall ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Financial ("Creditor") secured by an asset described as 2016 Dodge Dart ("Vehicle") is determined to be a secured claim in the amount of \$13,350.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$13,350.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

All other requests for relief, if any, (such as plan classification and payment terms) are 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee 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 -----

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The Objection to Confirmation of Plan is sustained.

U.S. Bank National Association (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan does not provide for the full value of Creditor’s claim. Debtor’s Plan proposes to provide \$50,000.00. Creditor filed a claim for \$53,215.68. Claim 4.
- B. Debtor’s Plan does not promptly cure Creditor’s pre-petition arrears. Creditor asserts \$53,215.68 in pre-petition arrears. Claim 4.
- C. Debtor’s Plan is not feasible because Debtor does not have sufficient income to fund the plan. Debtor list income contributions from a family member making the plan speculative without a reasonable likelihood of success.

DISCUSSION

Creditor's objections are well-taken.

Creditor has filed Proof of Claim 4-1, asserting a secured claim in the amount of (\$259,215.68), for which the pre-petition arrearage is stated to be (\$53,215.68). The amount stated in the Proof of Claim controls over what is stated in the Plan, absent the court having entered an order determining the amount of such claim. Plan ¶ 3.02, Dckt. 16.

As part of Proof of Claim 4-1 Creditor provides a statement of the currently monthly post-petition payment, stating it to be (\$1,372.66). Proof of Claim No. 4-1, p. 4 (consisting of \$821.98 P&I and \$550.68 monthly escrow).

Here, Debtor's have placed the amount of (\$50,000) as the arrearage for Creditor in Class 1 of the Plan. That slightly understates the actual amount stated in Proof of Claim No. 4-1. No order has been entered determining the amount of the claim to be less than stated in Proof of Claim No. 4-1.

Thus, the Plan provides for Creditor's claim, with the question being is it adequately funded. Creditor does not provide that analysis. The court can easily make that computation as follows:

Monthly Plan Payment.....	\$ 2,234.00
Chapter 13 Trustee Fee.....	(\$ 178.72) (Est. at 8%)
Creditor Monthly Post-Petition Mtg Pmt....	(\$1,372.66)
Creditor Monthly Arrearage Pmt.....	(\$ 886.93) (\$53,215.68 ÷ 60 Months)
	=====
Total Over/(Under) Funding of Plan.....	(\$ 204.31)

Thus, though "providing treatment for" Creditor's claim, Debtor has not adequately "provided funding" for the Plan.

The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's Plan list income that includes a contribution from a family member and a part-time job at Target for \$1,520.00. Dckt. 14. The Plan does not designate how much money the family member contributes. Dckt. 16. The unknown contribution from the family member may be the majority of the listed \$1,520.00. An amount that would be more than half of Debtor's \$2,234.00 Plan payment. Dckt.16. Debtor's need to rely on a family member to fund more than half of the Chapter 13 Plan suggest the plan is not feasible because Debtor cannot afford the payment. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(6)

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

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

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

The Objection to the Chapter 13 Plan filed by U.S. Bank National Association (“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.

6. [19-25329-E-13](#) **TERRY PARKER AND TONYA** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **TYUS-PARKER** **PLAN BY DAVID P CUSICK**
Pro Se **10-10-19 [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).

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 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 -----

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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 a serial filer. Debtor is unable to prosecute a Chapter 13 case. Debtor's recent Chapter 13 cases were dismissed on January 21, 2018 and on June 7, 2019 for failure to confirm a satisfactory plan.
- B. Debtor failed to appear at the October 3, 2019 meeting of the creditors.
- C. Debtor in delinquent \$2,234.00 in plan payments.
- D. Debtor failed to provide the Trustee with a tax return.
- E. Debtor failed to provide the Trustee with 60 days of employer pay advices.
- F. Debtor's plan is not feasible.
- G. Debtor has insufficient income and has not provided a declaration of family to determine how much income is from family and how much is from the second job.
- H. Debtor has an unrealistic budget because on Schedule J lines 6a – 6d. Debtor list \$0.0 for electricity and heat, \$0.00 for telephone, cell phone, internet, and \$0.00 for "other."
- I. Debtor mis-classified Capital One Auto Finance as a Class 4 creditor but should have listed the debt as a Class 2(B). Debtor should file a motion to value pursuant to 11 U.S.C. § 506(a).

DISCUSSION

Trustee's objections are well-taken.

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 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).

Debtor is \$2,234.00 delinquent in plan payments, which represents one month of the \$2,234.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, U.S. Bank

National Association as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust has filed an Objection to Confirmation, stating a secured claim of \$259,218.89, with pre-petition arrears in the amount of \$53,215.68. Debtor's Plan does not propose the claim in full. Second, Debtor's list U. S. National Association in care of Specialized Loan Servicing on Schedule D as secured against the Debtor's real property in the amount of \$69,000.00 of the Plan with "No Payment" and states "Disputed as Bank of America has forgave the debt." Dckt. 16. Creditor filed a claim, Claim 3, stating their claim is secured by Debtor's real property in the amount of \$165,061.77, and lists the same amount as pre-petition arrears.

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.

7. [19-25329-E-13](#) **TERRY PARKER AND TONYA** **OBJECTION TO CONFIRMATION OF**
[STH-1](#) **TYUS-PARKER** **PLAN BY FIRST FRANKLIN**
MORTGAGE LOAN TRUST
Pro Se **10-9-19 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee 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 -----
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The Objection to Confirmation of Plan is sustained.

First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FFC, U.S. Bank National Association, as Trustee, successor in interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan fails to cure the default on the Creditor’s claim. Debtor’s have provided for \$0.00 in arrears.

- B. The Plan fails because Debtor proposes a Plan payment of \$2,234.00 for 60 months but this amount will be insufficient to fund the plan once the arrears on Creditor’s claim are added to the plan.

- C. Creditor is an over secured creditor.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$104,503.68 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Here, Debtor's Plan is not feasible because once Creditor's claim above is added to her plan, Debtor will not have sufficient income to support the potential proposed plan payments. According to Debtor's Schedules, Debtors have a monthly net income of \$2,234.00. The current proposed Plan calls for monthly payments of \$2,234.00 for 60 months. These amounts leave no room for the additional \$1,174.73 Creditor claims will have to be added to the monthly plan payments in order for Debtors to cure the arrears on Creditor's secured claim. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$165,061.77 in this case, including \$104,503.68. Debtor's Schedule D estimates the amount of Creditor's claim as \$69,000.00 and indicates that it is secured by a second deed of trust on Debtor's residence but that the loan was "forgiven." The Plan does not provide for treatment of this claim.

Debtor has not filed an objection to this Creditor's claim. Debtor is not funding an adequate protection or bond fund under the plan for any litigation over Creditor's claim. Debtor's Plan does not include the adjudication of Creditor's claim. Rather, it merely states that the claim is disputed and alleged to have been forgiven. Plan, Class 2 Creditors, ¶ 3.08; Dckt. 16.

No provision is made in the Plan to adjudicate the contention that no obligation is owed. No provision is made for adequately protecting Creditor's rights and interests if it is later determined that the automatic stay or plan stay improperly enjoined Creditor from exercising its rights.

It appears that in this bankruptcy case Debtor seeks to just ignore Creditor's claim, use the automatic stay as a perpetual injunction, and summarily have the rights of Creditor (to the extent they exist) vitiated.

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 First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FFC, U.S. Bank National Association, as Trustee, successor in interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee (“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.

8. [19-25634-E-13](#) **DONALD/KATHRYN GOODWIN** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Catherine King** **PLAN BY DAVID P CUSICK**
10-16-19 [12]

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

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

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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. Debtors failed to appear at the Mandatory Meeting of Creditors.
- B. Debtors failed to provide 521 documents including: tax returns and pay advices.
- C. Debtors failed to properly complete Schedules B, D, and I and attach required documentation as applicable.
- D. Debtors filed two Chapter 13 plans under one docket entry.

DISCUSSION

Trustee's objections are well-taken. There are serious feasibility concerns regarding Debtors' Plan. Debtors seem not to have taken the bankruptcy process seriously and failed to meet the minimum of standards when submitting their petition.

First and foremost, Debtors have filed two Chapter 13 Plans. Dckt. 2. Further, Trustee objects and notes that Debtors have failed to provide 521 documents, failed to properly fill out and Schedule B and D and failed to complete information under Class 2(A). Additionally, Debtors failed to properly complete Schedule I, specifically the employment and income information related to Debtor 2, Mrs. Kathryn Goodwin. Debtors list a net income of \$995.00 from a business but failed to attach the required documents in support of gross income and expenses. It is not clear whether Debtors own a business. Finally, Debtors failed to attend the Mandatory Meeting of Creditors.

Confirmation of a plan is not ripe because there is no plan and if there were there is no documentation to support 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.

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 -----

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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 relies on a motion to value collateral that Debtor has failed to file.

DISCUSSION

Trustee's objection is well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of First Tech Federal Credit Union. The secured claim is on Debtor's 2016 Nissan Rogue SV. Debtor has failed to file a Motion to Value the Secured Claim of First Tech Federal Credit Union, however. Without the

court valuing the claim, 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.

10. [19-21344-E-13](#) **ANNE FORD** **MOTION TO SELL**
[BLG-2](#) **Chad Johnson** **10-15-19 [49]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Anne Klein Ford, Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1688 Duluth Lane, Suisun City, California, 94585 (“Property”).

The proposed purchaser of the Property is Jordan M. Gaul, and the terms of the sale are:

- A. Terms of Sale include: a purchase price of \$515,000.00, with a 6% Realtor commission at an estimated \$30,900.00, property to be sold “As Is.”

NON OPPOSITION

On October 18, 2019, Trustee David P. Cusick filed a Non-Opposition to Debtor’s Motion to Sell. Dckt. 54. Additionally, on October 29, 2019, Creditor Caliber Home Loans, Inc., holder of the first priority deed of trust over the Property, filed a Non-Opposition to Debtor’s Motion to Sell Real Property. Dckt. 56.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor was able to find a buyer at a reasonable price who counter-offered with an additional \$50.00; the sale price will provide for Creditor Caliber Home Loans, Inc.’s with secured claim #6; and, per Debtor’s declaration, the net proceeds due to her will be contributed to her plan to go towards the allowed general unsecured claims.

Movant has estimated that a 6.0% percent broker’s commission from the sale of the Property will equal approximately \$30,900.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6.0% percent commission.

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

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

The Motion to Sell Property filed by Anne Klein Ford, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Anne Klein Ford, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jordan M. Gaul or nominee (“Buyer”), the Property commonly known as 1688 Duluth Lane, Suisun City, California, 94585 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$515,000.00, on the

terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 52, and as further provided in this Order.

- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 6.0% percent of the actual purchase price upon consummation of the sale. The 6.0% percent commission shall be paid to Chapter 13 Debtor's Realtor, Eric Pangllinan with Re/Max Gold and may be divided with the Buyer's Realtor/agent as provided in the Purchase Agreement.

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 (*pro se*) 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 -----

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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 failed to attend mandatory Meeting of Creditors.
- B. Debtor filed the wrong plan form.
- C. Debtor's proposed Plan fails the Liquidation Analysis.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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 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).

Wrong Plan Form

Trustee asserts that Debtor filed Official Form 113. Debtor should have filed plan form EDC 003-080. The Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of November 9, 2018. Thus, the Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that according to the Plan filed Debtor's has a non-exempt equity in the amount of \$126,640.00, yet proposed to pay the unsecured creditors a zero percent (0%) dividend. As such, Debtor's lack of providing for unsecured creditors even though Debtor has non-exempt equity fails the Liquidation Analysis.

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.

12. [19-25359-E-13](#) ANTHONY MOSELEY
[AP-1](#) Mark Wolff
22 thru 23

**OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
9-19-19 [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).

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 19, 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. At the hearing -----

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The Objection to Confirmation of Plan is overruled.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor must clarify funding for escrow payments and property taxes.

DISCUSSION

Creditor's objections are well-taken. Beginning with Debtor's proposed Chapter 13 Plan, the treatment of Creditor's secured claim is provided for as a Class 2(A) Claim. Plan ¶ 3.08; Dckt. 2. The amount of the secured claim is stated to be (\$35,701.05). This is slightly more than the (\$34,122.91) stated by Creditor in Proof of Claim 2-1. Creditor identifies a pre-petition arrearage of (\$1,608.13) in the Proof of Claim (this appears to be one monthly payment) and that the interest rate is 7.5%.

The attachment to Proof of Claim No. 2-1 states that the monthly payment for principal,

interest and monthly escrow payment is (\$1,406.18), which is comprised on (\$978.83) principal and interest, and (\$427.34) for the monthly escrow. Proof of Claim 2-1, p. 4.

Using Debtor's slightly higher \$35,701.05 and an interest rate of 7.5% interest rate, using the Microsoft Excel Simple Loan Calculator, the court computes with a monthly interest payment of \$1,400.00, then this secured claim will be paid in 24 months.

The Plan then states that an additional \$419.26 will be paid Creditor as the impound account for taxes and insurance. (As the court reads the plan.) Then, when Creditor's claim is paid in full, Debtor shall make the taxes and insurance payments directly, with the \$1,400.00 a month that had been the payment to Creditor going into the pot for creditors with unsecured claims. However, the Plan also separately provides for the payment of apparently future property taxes in Class 4, stating that they will be paid through the impound account. While attempting to clarify, the Class 4 treatment incorrectly lists future, not yet owed property taxes as a pre-petition Class 4 Claim. It may be that Debtor is attempting to be very precise, knowing that a portion of the property taxes, while not yet due is for a pre-petition period of time after the June 2019 property tax payment.

Creditor's "Opposition" requests that this treatment be clarified to insure that both Creditor and Debtor will fulfill their obligations for the timely payment of the property taxes and insurance. The court will so do in the order confirming the Plan.

The order confirming the Plan will "confirm" the payment of these amounts and include the following language:

IT IS FURTHER ORDERED that the Class 2(A) and Additional Provisions treatment of the Secured Claim of Wells Fargo Bank, N.A. ("Creditor") (Proof of Claim 2-1) require a monthly disbursement of \$1,400.00 a month to be applied to the principal and interest on the Claim and \$427.34 for the impound account maintained by Creditor for payment of property taxes and insurance for the property securing its claim. During the term that Creditor is receiving payment on its Secured Claim through the Plan, Creditor shall timely pay the property taxes and insurance with the monies paid into the impound account. Upon payment in full of Creditor's Secured Claim, Creditor shall disburse to Debtor any monies remaining in the impound account remaining after Creditor having timely made for property taxes and insurance. No additional or other payment is provided for in the stated Class 4 treatment of property taxes.

The Plan, as clarified, 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 Wells Fargo 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

clarify the proposed plan payments as they relate to Creditor's escrow account.

DISCUSSION

The court has addressed this issue in resolving the Objection to Confirmation filed by Wells Fargo Bank, N.A. The issue having been resolved, the court overrules the Trustee's objection.

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

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled.

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 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 failed to make his first plan payment and has paid \$0.00 into the Plan to date.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$2,850.00 delinquent in plan payments, which represents one month of the \$2,850.00 plan payment. The next scheduled payment of \$2,850.00 was due on October 25, 2019. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the

twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. As of November 1st, 2019, the delinquency has not been cured. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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 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 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 in Plan payments.
- B. Plan relies on a pending Motion to Avoid Lien.
- C. Debtor failed to provide tax return or a written statement that no such return exists.

DISCUSSION

Trustee’s objections are well-taken.

Delinquency

Debtor is \$2,115.00 delinquent in plan payments, which represents one month of the \$2,115.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid \$0.00 into the Plan to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Reliance on Motion to Avoid Lien

A review of Debtor's Plan shows that it relies on the court granting a Motion to Avoid Lien of the National Collection Agency. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Motion to Avoid the Lien was granted on October 22, 2019. Dckt. 28. The lien was avoided in its entirety. Thus, this objection has been resolved in favor of the Debtor.

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). At the First Meeting of Creditor Debtor admitted that she is not required to file tax returns. Debtor has failed to provide a written statement that this documentation does not exist. 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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 21, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Christian Edward Lazo (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 19-23291-C-13C) was dismissed on July 31, 2019, after Debtors were unable to come to an agreement regarding the remittance of the plan payments. *See* Order, Bankr. E.D. Cal. No. 19-23291, Dckt. 27, July 31, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he and his now ex-wife could not come to an agreement on the plan payment and she failed to attend two meeting of creditors.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The now Debtor's previous plan was filed with a co-debtor, who is now his ex-wife, in an effort to address all of their debts within the same bankruptcy case. After the filing, Debtors could agree to the amount each individual would contribute towards the proposed plan payments. Further, the then co-debtor missed two meetings of creditors.

Debtor's situation has changed. There has been a substantial change in Debtor's personal affairs since the dismissal of the previous case. A divorce decree was issued for Debtor and former co-debtor. Declaration, Dckt. 10. Debtor believes that he will be able to succeed in making payments now that he does not need to depend on his ex-wife for the plan payments.

Further, Debtor declares that he has been able to provide the necessary information and documentation that has enabled Counsel to complete all the required Schedules. Declaration, Dckt. 10. Additionally, Debtor argues that by providing the required documents and information Counsel has been able to prepare a Chapter 13 Plan that will ensure adequate protection for all secured claims. Motion, Dckt. 8. The docket reflects that all required petition documents and a Chapter 13, subject to confirmation, have been filed. It seems that Debtor in all likelihood will succeed in completing the bankruptcy process this time around.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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 Extend the Automatic Stay filed by Christian Edward Lazo (“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 automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

17. [19-25382-E-13](#)
[PPR-1](#)

VINESH/SNITA SAMI
Mikalah Liviakis

**OBJECTION TO CONFIRMATION OF
PLAN BY SIERRA PACIFIC
MORTGAGE CO.
9-12-19 [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 Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is overruled.

Sierra Pacific Mortgage Co. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor fails to provide for pre-petition arrearage.
- B. Debtor incorrectly classified Creditor's claim.
- C. Plan provides for an incorrect post-petition amount.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has not filed a proof of claim but asserts an estimated \$2,306.80 in pre-petition arrearage. The Plan does not propose to cure those arrearage.

On October 21, 2019, Creditor filed its proof of claim, which states that the pre-petition arrearage is \$1,048.90. Proof of Claim No. 12. This is stated to be a "projected escrow shortage." It is not clear from Proof of Claim No. 12 whether this is a pre-petition arrearage or merely future payments that are due and Creditor is attempting to have future payments paid as an arrearage and get the timely post-petition payments (thereby doubling the payments).

Proof of Claim No. 12 is not consistent with the Objection to Confirmation. The Objection does not provide any explanation of how the alleged arrearage is computed. Creditor has failed to provide any testimony of the alleged \$2,306.80 arrearage.

Incorrect Claim Classification

Debtor classified Creditor's claim as a Class 4 claim, which provides for post-petition payments to be made directly by Debtor. Creditor argues that due to the pre-petition arrearage, the claim should be a Class 1 claim. However, Creditor does not provide the court with a scintilla of explanation of what the alleged arrearage consists of in this case.

Incorrect Post-Petition Amount

The Plan proposes to pay Creditor \$1,916.00, instead of the amount of \$1,916.18. Creditor argues that this discrepancy of \$0.18 is a modification of Secured Creditor's claim.

The contract terms control and are not modified. The plain language of the plan expressly provides that Class 4 treatment does Not Modify the Plan:

3.10. Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, **and are not modified by this plan.** These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Plan ¶ 3.10, Dckt. 2 (emphasis added).

It appears that Creditor has not read the Plan in concluding that there was a confirmation denying \$0.18 "modification."

Creditor has not provided the court with a basis to deny confirmation. Creditor chose not to file evidence in support of the Objection. The Proof of Claim filed does not identify the alleged pre-petition arrearage and appears to assert that future payments to be made are asserted as a pre-petition default. Then Creditor asserts grounds that are in clear conflict with the plain language of the Plan.

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 Sierra Pacific Mortgage Co. (“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 overruled, and the proposed Chapter 13 Plan is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 -----

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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. Plan is not feasible because it will take well over 60 months to complete.
- B. There is discrepancy in the amount to be paid for attorneys fees.
- C. Debtor’s Plan is not Debtor’s Best Effort.

DISCUSSION

Trustee’s objections are well-taken.

Plan Term is More Than 60 Months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will take approximately 135 months to complete

the Plan, as opposed to the 60 months proposed. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Attorneys' Fees and Names

Trustee asserts that there is a discrepancy pertaining to the amount in attorneys fees. Debtor's Petition, the Rights and Responsibilities, and Disclosure of Attorney Compensation confirm the Attorneys received \$1,000 each. However, the Plan specifically states \$1,500.00 were paid, with a balance of \$2,500.00 to be through the Plan. Further, the Petition and the Disclosure list Sansha F. Ganju as the Attorney of Record, while the Rights and Responsibilities lists Yasha Rahimzadeh as the Attorney of Record. Clarification is needed.

Plan is Not Debtor's Not Best Effort

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

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

Debtor's monthly net income listed on Schedule J totals \$1,873.82. Debtor's proposed monthly plan payments are \$1,689.79. There is \$200 a month of projected disposable income not being paid 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.

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 **xxxxxxx, and the hearing is continued to **xxxxxxx**.**

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

- A. Debtor failed to appear at the mandatory Meeting of Creditors.
- B. Debtor is delinquent \$1,363.00 in Plan payments.

DEBTOR’S RESPONSE

Debtor filed a response to Trustee’s Objection on October 30, 2019. Dckt. 17. Debtor’s counsel states that Debtor mis-calendared the date for the First Meeting of Creditors. Further, that due to Debtor being out of town it is requested that the continued meeting be continued 30 to 60 days.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). Trustee states that the meeting has been continued to November 7, 2019 at 12:00pm. As it stands, Debtor's failure to appear is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

In her Response, Debtor apologized for missing the meeting as she believed the meeting to be on a different date. Dckt. 17. She requests the hearing currently scheduled for November 5, 2019 for the present Motion be continued for 30 to 60 days to allow Debtor to reschedule the meeting of creditor for a time after November 13, 2019. *Id.*

Delinquency

Debtor is \$1,366.00 delinquent in plan payments, which represents one month of the \$1,366.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid \$0.00 into the Plan to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan be continued to **xxxxxxxxx**.

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 -----

-----.

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. Plan will not complete within 60 months.
- B. Debtor is delinquent in Plan payments.
- C. Debtor failed to appear at the mandatory Meeting of Creditors.

DISCUSSION

Trustee’s objections are well-taken.

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, an Internal Revenue Service has a filed a priority claim,

(Claim #7), for \$10,942.47 which will prevent the plan from completing in 60 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Delinquency

Debtor is \$1,140.00 delinquent in plan payments, which represents one month of the \$1,140.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid \$0.00 into the Plan to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Appear at 341 Meeting

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 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).

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. Debtor improperly classified a secured claim.
- B. Debtor’s proposed Plan is not a best effort as Debtor may have additional disposable income.

DISCUSSION

Trustee’s objections are well-taken.

Improper Classification of a Debt

Trustee argues that Debtor may have improperly classified Hughes Federal Credit Union (“HFCU”) in Class 2(A) when it should be in Class (B) of the Plan, as it appears that the debt was

incurred more than 910 days ago.

Further, there is a discrepancy between the information Debtor listed as a debt to HFCU and the Proof of Claim filed by HFCU. They differ on date, amounts, and value. Though listed under different dates, either one is more than 910 days before the filing date of August 28, 2019. Thus, HFCU's claim should be classified as a Class2(B).

Debtor's Plan May Not Be Debtor's Best Effort

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

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

Trustee alleges that Debtor's Schedule J includes unexplainable deductions that, if not allowed, would leave Debtor with a disposable income of \$674.76. Debtor includes a continuing charity expense of \$500 that is not included in the last two years of the Statement of Financial Affairs, and public transportation expense of \$217.00 without an explanation. Additionally, there seems to be a discrepancy between Debtor's car payment expense of \$450.00 on Line 17A and the \$375.00 monthly payment listed under Class 2A that Debtor admitted at the Meeting of Creditor were the same. Lastly, Trustee contends that Debtor admitted at the meeting that her transportation expense had lessened due to her job relocating. Debtor has failed to file an Amended Schedule J to reflect this change.

These issues go to the feasibility of the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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).

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 18, 2019. By the court’s calculation, 18 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, -----.

The Motion to Value Collateral and Secured Claim of Nissan Motor Acceptance Corporation (“Creditor”) is denied without prejudice.

The Motion filed by Maria Fatima Delgado Ibasan (“Debtor”) to value the secured claim of Nissan Motor Acceptance (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 17. Debtor is the owner of a 2014 Nissan 370Z Touring (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$21,542.00 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 Motion alleges that in the Debtor’s opinion the Vehicle has a fair market value of \$21,542.00 at the time this case was filed. According to the Proof of Claim, Creditor’s secured claim is \$24,368.00. Proof of Claim, 2. The declaration states that in Debtor’s opinion the Vehicle has a fair market value of \$21,542.00 based on the condition and mileage. Declaration, 17. Debtor states that there are 15,000 miles on the Vehicle. *Id.*

However, the Motion was not filed with sufficient notice to Creditor. This Motion was filed on October 18, 2019. Local Rule 9014-1(f)(1) requires 28 days. Thus, the Motion was 10 days deficient regarding notice and the motion is denied.

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

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

The Motion to Value Collateral and Secured Claim filed by Maria Fatima Delgado Ibasan (“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.

23. [19-25193-E-13](#) **DAMON TURNER** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Scott Hughes** **PLAN BY DAVID P. CUSICK**
10-10-19 [\[21\]](#)

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

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

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

- A. Debtor failed to provide timely business documents related to four active businesses.
- B. Debtor failed to properly list business income for Debtor and non-filing spouse.
- C. Debtor failed to properly complete Schedule B and C.

OCTOBER 15 FILINGS

On October 15, 2019 Debtors filed the following:

- A. Schedules I and J (Dckt. 25)
- B. Business Income and Expenses (Dckt. 26)
- C. Schedules A/B and C (Dckt. 27)
- D. Statement of Financial Affairs (Dckt. 30)

DISCUSSION

Trustee’s objections are well-taken.

Failure to Timely Provide Business Documents

Debtor has failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Business Income and Expenses

Debtors’ Schedule has several inconsistencies.

Schedule B

Trustee contends that though Schedule B is marked No as to business related property, he is uncertain all assets of the business have been listed.

Schedule C

According to Schedule C, there is no exempted business property.

As it stands, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). At the hearing, **XXXXXXXXXXXXX**.

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 **XXXXXXX**.

FINAL RULINGS

24. [19-25508-E-13](#) IESHA NICKERSON **OBJECTION TO CONFIRMATION OF**
[DPC-2](#) Richard Jare **PLAN BY DAVID P CUSICK**
10-17-19 [32]

Final Ruling: No appearance at the November 5, 2019 Hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, 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.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Iesha Shaney Nickerson, (“Debtor”) failed to appear at the meeting of the creditors scheduled for October 10, 2019.
- B. Debtor is delinquent in the monthly \$177.00 plan payment and has paid \$0.00 into the plan.

DISCUSSION

Trustee’s objections are well-taken.

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 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).

Debtor filed an Amended Plan and Motion to Confirm on October 12, 2019, for which a hearing is set on November 26, 2019. Dckts. 22, 19. The filing of the Amended Plan is a *de facto* withdrawal of the current 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 27, 2019. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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, Cody William Goldthrite (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on October 22, 2019. Dckt. 38. 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, Cody William Goldthrite (“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 27, 2019, is confirmed. Debtor’s Counsel

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 Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, 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)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Natalie Ann Liquori-Phill (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on October 10, 2019. Dckt. 38. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Chapter 13 Plan filed on 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 Chapter 13 Trustee will submit the proposed order to the court.

28. [19-24921-E-13](#) **CARRIE NOAH** **OBJECTION TO DISCHARGE BY**
[DPC-1](#) **Bruce Dwigginis** **DAVID P. CUSICK**
9-18-19 [18]

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 Debtor and Debtor’s Attorney, on September 18, 2019. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Discharge is sustained.

David P. Cusick, the Chapter 13 Trustee / the United States Trustee / Official Committee of Creditors Holding General Unsecured Claims, (“Objector”) objects to Carrie Lynn Noah’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on March 3, 2019. Case No. 19-21319. Debtor received a discharge on June 17, 2019. Case No. 19-21319, Dckt. 16.

The instant case was filed under Chapter 13 on August 5, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on June 17, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 19-21319, Dckt. 16. Therefore,

pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-24921), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-24921, the case shall be closed without the entry of a discharge.

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 Debtor, Debtor’s Attorney, Chapter 13 Trustee, Official Committee of Creditors Holding General Unsecured Claims / creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on October 10, 2019. By the court’s calculation, 26 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Objection To Confirmation 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 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 Plan and corresponding Motion to Confirm on October 28, 2019. Dckts. 29, 27. 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 Financial Services Vehicle Trust (“Creditor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

30. [19-25222-E-13](#) [DPC-1](#) PAMELA AMBUNAN
Peter Macaluso **OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
10-10-19 [19]**

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 Debtor and Debtor’s Attorney, on October 10, 2019. By the court’s calculation, 26 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Objection To Confirmation 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 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 Plan and corresponding Motion to Confirm on October 28, 2019. Dckts. 29, 27. 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.

31. [19-25324-E-13](#) **BETHANY SANDERS-JOHNSON** **OBJECTION TO DEBTOR'S CLAIM OF**
[DPC-2](#) **Peter Macaluso** **EXEMPTIONS**
10-8-19 [26]

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 Debtor, Debtor’s Attorney, on October 8, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemption is disallowed in its entirety.

The Chapter 13 Trustee, David Cusick (“Trustee”) objects to Bethany Elaine Sanders-Johnson’s (“Debtor”) claimed exemptions under California law because Debtor does not meet the requirements under the code since:

- (1) Debtor does not meet the age requirements,
- (2) Debtor is employed, and
- (3) Debtor does not list any disability income.

California Code of Civil Procedure § 704.730 (3) allows for a Homestead Exemption of \$175,000.00 under three circumstances:

A. A person is 65 years of age or older;

B. A person is physically or mentally disabled; and,

C. A person is 55 years of age or older with a gross income of \$25, 000 or less for a single person.

Debtor has not provided the court with any information that she does meet any of the qualifications listed. The Trustee argues that at the meeting of the creditors Debtor's age was ascertained and she does not qualify. Debtor is working independently and does not receive disability income. Further, according to Debtor's Schedule I, Debtor is single and receives a gross annual income of more than \$25,000.00.

Debtor has not opposed this motion. Debtor fails to provide any facts allowing for the Homestead Exemption under California Code of Civil Procedure § 704.730 (3) to be applied in this case. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Contrary Information Provided by Debtor

Debtor is filing and prosecuting this case with the assistance of experienced bankruptcy counsel. On Schedule C, which Debtor has signed under penalty of perjury, she claims the \$175,000.00 homestead exemption. On Schedule I Debtor lists having income of \$3,659.81 (including alimony/support payments and family support). On Schedule J Debtor lists having two children under two years of age, two children under ten years of age, and one child in his late teens. It does not appear that Debtor is more than fifty-five (55) years of age. Debtor has not provided any information of a disability for which the \$175,000 homestead exemption can be claimed and that provision of the California Code of Civil Procedure is not identified.

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

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

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, 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 Objection is sustained, and the claimed exemptions for the Homestead Exemption under California Code of Civil Procedure § 704.730 are disallowed in their entirety.

32. [19-25440-E-13](#) **RICHARD MENA** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Mohammad Mokarram** **PLAN BY DAVID P CUSICK**
10-16-19 [16]

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

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on August 29, 2019, is confirmed.**

Counsel for the debtor, Richard Charles Mena (“Debtor”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

The Objection to Confirmation is dismissed without prejudice.

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on October 29, 2019, Dckt. 20; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; **the Ex Parte Motion is granted, the Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on August 29, 2019, is confirmed.**

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

33. [19-25955-E-13](#) **TYRONE WEST** **MOTION TO EXTEND DEADLINE TO**
[RJ-2](#) **Richard Jare** **FILE SCHEDULES OR PROVIDE**
REQUIRED INFORMATION
10-21-19 [22]

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

The Motion was previously granted and an order was issued on October 24, 2019 (Dckt. 25)and this Matter is removed from this Calendar.

34. [19-25174-E-13](#) **CHRISTOPHER/NIKESHIA** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **KIESSLING** **PLAN BY DAVID P CUSICK**
 Chad Johnson **10-7-19 [17]**

Final Ruling: No appearance at the November 5, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors 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.

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on December 10, 2019.

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

A. Debtor’s proposed plan relies on a motion to value not yet filed.

DEBTORS’S OCTOBER 30 RESPONSE AND AMENDED RESPONSE

On October 30, 2019 Debtors filed a Response asserting that a Motion to Value Secured Claim was set to be filed the next day, October 31, 2019 and set to be heard on December 10, 2019. Further, Debtors assert that they are current on the plan payments with a last payment of \$600.00 received on October 28, 2019. Response, Dckt. 20. Further, Debtors request that the present Objection be continued to December 10, 2019, the same day as the hearing date set for the Motion to Value the Secured Claim. *Id.*

On the same day, Debtors filed an Amended Response. Dckt. 23. The Amended Response corrected the name of Co-Debtor, Nikeshia Marie Kiesslering.

DISCUSSION

The Debtors filed Motion to Value the Secured Claim on October 30. Dckt. 34. The court shall continue the hearing on this Motion to December 10, 2019, to be heard alongside the Debtor’s Motion to Value.

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 hearing on the Motion to Dismiss is continued to 3:00 p.m. on December 10, 2019.

35. [17-26897-E-13](#) **CARLOS/CLAUDIA BARAJAS** **CONTINUED MOTION TO DISMISS**
[DPC-2](#) **Thomas Gillis** **CASE**
35 thru 36 **8-27-19 [43]**

Final Ruling: No appearance at the November 5, 2019 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, and Office of the United States Trustee on August 27, 2019. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied, Debtor the court having sustained Debtor’s Objection to the claim that was the basis of this Motion.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the proposed plan filed by debtors, Carlos Barajas and Claudia Barajas (“Debtors”), will complete in 98 months due to unsecured claims being \$59,278.38 greater than scheduled.

The Trustee notes Proof of Claim, No. 20, asserting a claim of \$79,558.71 was filed on September 20, 2018, after the bar date but has not been objected to.

DEBTOR’S RESPONSE

Debtor filed a Response on September 11, 2019. Dckt. 47. Debtor states Debtor will file an objection to claim no. 20.

DISCUSSION

The Debtor filed an Objection To Claim on September 19, 2019. Dckt. 49. The court continue the hearing on this Motion to November 5, 2019, to be heard alongside the Debtor's Objection.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to November 5, 2019.

Final Ruling: No Appearance at the November 5, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 20 of AES is sustained, and the claim is disallowed in its entirety.

Carlos Barajas and Claudia Barajas, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of AES ("Creditor"), Proof of Claim No. 20 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$79,558.71. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is February 14, 2018. Notice of Bankruptcy Filing and Deadlines, Dckt. **xx**.

DISCUSSION

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

Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was February 14, 2018. Creditor's Proof of Claim was filed on September 20, 2018.

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

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

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

The Objection to Claim of AES ("Creditor") filed in this case by Carlos Barajas and Claudia Barajas, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 20 of AES is sustained, and the claim is disallowed in its entirety.