UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 24.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–23, attempting to first address the items in which short argument is anticipated.

November 7, 2017, at 3:00 p.m.

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1. **17-25701-E-13** **IGNACIO BARRAZA** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Mikalah Liviakis** **10-4-17 [13]**

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 4, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

A. The First Meeting of Creditors was not concluded, and

B. Ignacio Barraza ("Debtor") is delinquent.

The Chapter 13 Trustee's objections are well-taken. The First Meeting of Creditors was held on September 28, 2017, and the Chapter 13 Trustee's Report indicates Debtor appeared. Debtor has not been fully questioned by the Chapter 13 Trustee, however.

The Chapter 13 Trustee asserts that Debtor is $1,600.00 delinquent in plan payments, which represents one month of the $1,600.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

2. **17-25722-E-13** **MICHELLE TROTTER** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Gary Fraley** **PLAN BY DAVID P. CUSICK**
10-4-17 [15]

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 4, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

A. Michelle Trotter ("Debtor") is delinquent in plan payments;

B. Debtor did not provide her tax transcript or a copy of her Federal Income Tax Return; and

C. Debtor did not provide Trustee with sixty days of employer payment advises.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $739.46 delinquent in plan payments, which represents one month of the $739.46 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month

beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In addition, Debtor has not provided the Chapter 13 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). Also, the Chapter 13 Trustee argues that 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); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Finally, the Chapter 13 Trustee notes that Section 6 of the Plan has additional provisions indicating that Class 5 is to be paid starting in month two, but Section 2.13 lists no Class 5 debts. The Chapter 13 Trustee requests that those provisions be deleted.

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

3.	**17-25834-E-13** **DPC-1**	**BRANDON HEATON** **Gabriel Liberman**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **10-11-17 [15]**

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 11, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Brandon Heaton ("Debtor") is delinquent in plan payments;

B. Debtor failed to appear at the Meeting of Creditors; and

C. Debtor failed to provide the Chapter 13 Trustee with tax returns.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $4,260.00 delinquent in plan payments, which represents one month of the $4,260.00 plan payment. Before the hearing, another plan payment will be due.

According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for

relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In addition, 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. To attempt to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The Meeting has been continued to November 2, 2017.

Finally, 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); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). This is an independent ground 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

4. **14-24645-E-13** **ANDREW/KATHLEEN REED** **MOTION TO MODIFY PLAN**
MLA-5 **Mitchell Abdallah** **9-20-17 [108]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2017. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Andrew Reed and Kathleen Reed ("Debtor") seek confirmation of the Modified Plan because of changes to monthly finances. Dckt. 110 at 1:24.5–27. The Modified Plan proposes monthly payments of $186.69 for months forty through sixty with a 10.00% dividend to unsecured claims. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 24, 2017. Dckt. 116.

The Chapter 13 Trustee argues that Debtor has not filed supplemental Schedule I and J in support of the Plan. The most recent Schedule I and J were filed on July 17, 2014. Dckt. 49. The Chapter 13 Trustee notes Debtor's affirmance in their declaration that their monthly net income is $6,941.00 and average monthly expenses are $6,477.00, which are the same amounts reported on Schedule I and J filed in July 17, 2014. Dckt 110.

The Chapter 13 Trustee states that the order confirming Debtor's plan requires Debtor to provide copies of future tax returns and turnover all future tax refunds to the Chapter 13 Trustee. The Chapter 13 Trustee notes that the additional language is not included in additional provisions of the modified plan, and Debtor has not explained why.

Lastly, the Chapter 13 Trustee states that the Motion does not cite the applicable code such as 11 U.S.C. § 1329, which is required under Local Bankruptcy Rule 9014-1(d) and Federal Rule of Bankruptcy Procedure 9013.

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

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

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

5. **17-25491-E-13** **KATHLEEN HILL** **OBJECTION TO CONFIRMATION OF**
DPC-1 **George Burke** **PLAN BY DAVID P. CUSICK**
10-4-17 [24]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 4, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

A. Kathleen Hill ("Debtor") is delinquent in plan payments; and

B. Debtor failed to provide the Chapter 13 Trustee with pay advices.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $975.00 delinquent in plan payments, which represents one month of the $975.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Debtor has yet to pay any amount into the Plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In addition, Debtor has not provided the Chapter 13 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). This is an independent ground 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

6. **17-24045-E-13** **PAULINE ABBOTT** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-3 **Harry Roth**
10-6-17 [64]

Final Ruling: No appearance at the November 7, 2017 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Debtor's Claim of Exemptions was dismissed without prejudice, and the matter is removed from the calendar.**

7. **17-24045-E-13** **PAULINE ABBOTT** **MOTION TO SELL**
HDR-4 **Harry Roth** **10-17-17 [74]**

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, parties requesting special notice, and Office of the United States Trustee on October 17, 2017. 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 denied without prejudice.

The Bankruptcy Code permits Pauline Abbott, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 2961 10th Street, Biggs, California ("Property"). The proposed sale and terms thereof are stated with particularity in the Motion (Federal Rule of Bankruptcy Procedure 9013) as follows:

A. Movant seeks to sell the 2961 10th Street, Biggs, California.

B. Rosalva Ibarra was authorized to be employed by Movant as the real estate broker to market the Property.

C. The purchase price is $14,000.00.

D. The Property is not encumbered.

E. The estimated costs of sale are $2,860.60.

Motion, Dckt. 74. No information about the buyer is provided in the Motion.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on October 20, 2017. Dckt. 82. The Chapter 13 Trustee notes that Movant's Plan proposes to pay $4,200.00 from the sale of the Property into the Plan in month five. However, the Settlement Statement provided as an exhibit does not reflect that amount being paid to the Chapter 13 Trustee, but instead reflects that Debtor will receive proceeds of $11,188.76.

The Chapter 13 Trustee also argues that Movant proposes to pay $4,200.00 into the Plan, but the Motion only reflects $4,000.00 to be paid into the Plan.

Lastly, the Chapter 13 Trustee opposes the Motion on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor is proposing to sell the Property, which would generate net proceeds of $14,000.00, less real estate commission of $2,000.00, and less estimated other closing costs of $500.00. Debtor is proposing to pay $4,200.00, and the Chapter 13 Trustee argues that there would be non-exempt equity in property in the amount of $7,300.00. Thus, Debtor is proposing a 7.00% percent dividend to unsecured claims, additional equity in property exists. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claims are entitled to a 7.00% percent dividend when there may be upward of $7,300.00 in non-exempt equity in property.

DISCUSSION

The proposed purchaser of the Property is Casey Rufus, and the terms of the sale are:

A. The total purchase price is $14,000.00.

B. The close of escrow shall occur twenty days or sooner after Buyer's acceptance of offer.

C. The Listing and Selling Agent is RE/MAX Gold.

D. The initial deposit is $500.00, with a balance of $13,500.00.

E. The agreement is not contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 19B(3), in writing, remove the appraisal contingency or cancel this Agreement within seventeen days after acceptance.

F. Movant shall pay for a natural hazard zone disclosure report, including tax and environmental prepared by Property ID.

G. Buyer shall provide an inspection advisory.

H. Buyer and Movant shall split the escrow and title fee equally. Escrow Holder shall be Bidwell Title & Escrow-Gridley Office.

I. Buyer and Movant shall split the County transfer tax or fee equally.

J. Possession shall be delivered to Buyer at 12:00 p.m. on the date of Close of Escrow.

K. Movant has three days after acceptance to deliver to Buyer all reports, disclosures, and information for which Movant is responsible under paragraphs 3M, 7A, 12A, B, and E, 13, 16A and 18A.

L. Buyer has fifteen days after acceptance, unless otherwise agreed in writing, to: 1) complete all Buyer investigations; review all disclosures, reports, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and 2) deliver to Movant signed copies of statutory disclosures and other disclosures delivered by Movant in accordance with paragraph 12A.

M. The offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer, unless the offer is signed by Movant and a copy of the signed offer is personally received by Buyer, or by Rosalva Ibarra, who is authorized to receive it, by 5:00 p.m. on the third day after this offer is signed by Buyer.

N. The sale is contingent upon approval of the Chapter 13 Trustee.

RULING

The Motion does not disclose to the court who is the proposed buyer, and the sale agreement provided lists Casey Rufus. Additionally, the pleadings are inconsistent about what amount of funds from the sale will be contributed to Debtor's case—seeming to indicate that Debtor is not providing sufficient funds from the sale to pay unsecured claims as much as they would receive through Chapter 7.

The Motion appears to be something more than a motion to approve a sale, but a "motion to approve a sale, authorize the payment of monies, modify the plan, and authorize Movant to receive non-exempt assets of the estate in preference to creditors." Such complex and multiple claims for relief cannot be woven into one "simple" motion. See Federal Rule of Bankruptcy Procedure 9014(b), which does not incorporate the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 9018 into contested matter practice.

With substantial issues relating to the pleading of the Motion, it 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 Sell Property filed by Pauline Abbott ("the Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Sell Property is denied without prejudice.

8. 17-24045-E-13 HDR-2 | **PAULINE ABBOTT** **Harry Roth** | **MOTION TO CONFIRM PLAN** **9-21-17 [48]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2017. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Pauline Abbott ("Debtor") seeks confirmation of the Amended Plan because there will be additional funds from a proposed sale of property. Dckt. 50 at 2:6–7. The Amended Plan proposes to pay $440.00 for forty-six months, to pay Sierra Central Credit Union the full amount of its claim ($9,595.00 instead of $5,500.00 proposed previously), to make one lump sum payment of $4,200.00 in month five, and to provide a 7.00% dividend to Class 7 general unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 12, 2017. Dckt. 69. The Chapter 13 Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee is not able to tell whether Debtor's income is unreliable or whether Debtor has regular expenses that are not provided for in Schedule J.

The Chapter 13 Trustee asserts that Debtor's Plan calls for Debtor to use a portion of her Thrift Savings Plan, to withdraw an amount of $900.00 per month, to fund expenses that may arise and to fund the Plan when other funds are not available. Dckt. 56. The Chapter 13 Trustee states that over the Plan term, Debtor would withdraw $32,400.00, but from the income on Schedule I—$1,407.00 from Social Security; $1,005.00 from pension or retirement income; and $1,577.00 from Debtor's spouse's annuity paid by Social Security—no additional funding seems required. Thus, the Plan may not be confirmed.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor is proposing to sell real property at 2961 10th Street, Biggs, California, which would generate net proceeds of $14,000.00, less real estate commission of $2,000.00, and less estimated other closing costs of $500.00. Debtor is proposing to pay $4,200.00, and the Chapter 13 Trustee argues that there would be non-exempt equity in property in the amount of $7,300.00. Thus, Debtor is proposing a 7.00% percent dividend to unsecured claims, and additional equity in property exists. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a 7.00% percent dividend when there may be upward of $7,300.00 in non-exempt equity in property.

Lastly, the Chapter 13 Trustee notes that the Plan proposes to pay the unsecured creditors a 7.00% dividend, but the Motion to Confirm states that non-exempt property would be insufficient to pay 100.00% to unsecured claims, but unsecured claims are proposed to receive 100.00% of allowed claims.

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

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

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

9. **17-25403-E-13** **BYLLIE DEE** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
10-4-17 [15]

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 4, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

A. Byllie Dee ("Debtor") has not made any plan payments;

B. Tax returns and pay stubs have not been provided;

C. Debtor has not provided the Class 1 Checklist, Authorization to Release Information, or Form 122C-2;

D. The Plan is infeasible because it does not provide enough funds in Classes 1 and 2; and

E. There are several errors or omissions in the Plan.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $667.00 delinquent in plan payments, which represents one month of the $667.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. 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 the Chapter 13 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). Also, the Chapter 13 Trustee argues that 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); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms, but they have not been provided. Additionally, Form 122C-1 indicates that Debtor receives above median income, but he has not filed Form 122C-2 as required.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, Class 1 lists ongoing mortgage payments of $378.00 and $1,100.00 per month, and Class 2 lists an automobile payment of $200.00 per month. To afford those payments and complete in sixty months, though, the Class 1 and Class 2 dividends would need to be $1,850.00 per month. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Finally, the Plan contains errors and omissions. Payments listed in Section 1.02 cannot be paid by the Chapter 13 Trustee as written, Section 2.08 lists arrears for secured claims but does not propose an arrearage dividend, Section 2.13 includes a debt that may not be entitled to priority, and Section 2.15 indicates that there are no unsecured claims even though some are listed on Schedule E/F.

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

10. **17-24960-E-13** **DOUGLAS/VALERIE LUTES** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Peter Macaluso** **9-6-17 [33]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Douglas Lutes and Valerie Lutes's ("Debtor") Plan relies on a Motion to Value a Secured Claim; and

B. Debtor's plan is not their best effort.

OCTOBER 3, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on November 7, 2017, to allow Debtor time to become current. Dckt. 38. Additionally, for Debtor to provide updated income information.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Franklin Credit/Bosco. That Motion was denied at the August 29, 2017 hearing and has not been refiled. Dckt. 32. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Chapter 13 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 Douglas Lutes stated on Schedule I that he receives unemployment income of $4,124.00 per month, but he testified at the Meeting of Creditors on August 31, 2017, that he is now back at work. Therefore, the accuracy of Schedule I is in question, and the amount of Debtor's disposable income to be distributed cannot be determined to satisfy § 1325(b)(1). Thus, the court may not approve 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 David Cusick ("the Chapter 13 Trustee") 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.

11. 17-24960-E-13 NLG-1 | **DOUGLAS/VALERIE LUTES** **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT LLC** **8-15-17 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 16, 2017. By the court's calculation, 48 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.

Bosco Credit LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Douglas Lutes and Valerie Lutes's ("Debtor") plan violates the anti-modification provisions of 11 U.S.C. § 1322(b)(2),

B. The Plan fails to provide for Creditor's claim, and

C. Debtor cannot afford the plan payments.

OCTOBER 3, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on October 17, 2017. Dckt. 39.

OCTOBER 17, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on November 7, 2017. Dckt. 42.

RULING

No further pleadings have been filed since the October 17, 2017 hearing.

Creditor's objections are well-taken. First, Creditor argues that Debtor's Plan is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $112,192.01, secured by a second deed of trust against the property commonly known as 3001 Tree Swallow Circle, Elk Grove, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Creditor asserts a claim of $112,192.01 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $92,705.63. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

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

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

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

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

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

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

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

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

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

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that Debtor has not account for its monthly mortgage payment that is more than $370.00, which would push Debtor beyond the available disposable income. 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 Bosco Credit LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

12. 17-24539-E-13 BARBARA CORONADO
Pro Se

CONTINUED ORDER TO SHOW CAUSE
8-31-17 [31]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Chapter 13 Trustee, and Office of the U.S. Trustee as stated on the Certificate of Notice on September 3, 2017. The court computes that 65 days' notice has been provided.

The Order to Show Cause was issued due to Debtor's inability to prosecute this case and several prior cases.

The Order to Show Cause is sustained, and the court shall enter a prefiling review order.

Barbara Coronado ("Debtor") filed the instant case on July 11, 2017. Dckt. 1. On July 13, the court issued a notice of incomplete filing and intent to dismiss the case if documents were not filed. Dckt. 10. On August 9, 2017, the case was dismissed after Debtor failed to timely file the required documents. Dckt. 22.

On August 31, 2017, the court issued an Order Setting Hearing and Order to Show Cause for this matter. Dckt. 31. The court summarized this case, noting that deadlines were missed in Debtor's second case this year and reviewing the information Debtor put in the Plan and swore under penalty of perjury on her schedules.

OCTOBER 3, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on November 7, 2017, to allow Debtor and her spouse to promptly seek advice of counsel and obtain representation if appropriate to commence a bankruptcy case and seek appropriate relief in that new case. Dckt. 42.

DISCUSSION

In the present case, Debtor requested and received an extension of time to file outstanding documents by August 8, 2017. The case was dismissed on August 9, 2017, for failure to file all documents on or before the deadline set by the court. Order, Dckt. 22 (the Chapter 13 Plan not having been filed by August 8, 2017).

Debtor did file a Plan on August 9, 2017, but Debtor did not use the plan form required by the Eastern District of California (Dckt 23). In reviewing the Plan further, the court notes that:

A. The Monthly Plan Payment is.....$1,000.00

B. Estimated Chapter 13 Trustee's Fees.....($ 70.00)

C. Required Current Secured Claim Payment.....($1,029.81)

D. Other Creditor Distributions.....None

In reviewing Debtor's Schedules Filed in this Case, Debtor states under penalty of perjury that:

A. She and another person have an interest in real property identified as 216 West Cedar Street, with the property having a total value of $25,000.00, of which Debtor's portion has a value of $7,500.00. Schedule A/B, Dckt. 15 at 3.

B. Debtor has no household goods or appliances. Schedule B, *id.* at 6.

C. Debtor has no jewelry. Schedule B, *id.*

D. Debtor has no bank or other deposit accounts. *Id.* at 7.

E. The claim of Bayview Loan Servicing, secured by Debtor's "House" having a value of $25,000.00 is ($100,000.00). Schedule D, *id.* at 14.

F. Debtor has no creditors with unsecured priority claims or unsecured general claims. Schedule E/F, *id.* at 15–16.

G. Robert Coronado is a co-debtor on the claim of Bayview Loan Servicing. Schedule H, *id.* at 19.

H. Debtor is unemployed and has no income. Schedule I, *id.* at 20–21.

I. Robert Coronado, Debtor's non-filing spouse has gross income of $1,500.00 per month, working for R&R Coronado Trucking. *Id.*

J. For expenses, Debtor states having only $1,412.00 of monthly expenses, of which $1,081.00 is for rental or mortgage payment. Schedule J, *id.* at 22.

K. For other Expenses, Debtor states that she pays $0.00 per month for: (1) Home Maintenance, (2) Water/Sewer, (3) Clothing/Laundry, (4) Personal Care Products, (5) Medical and Dental, (6) Entertainment/Recreation, (7) Transportation/Vehicle Maintenance/Registration, (8) Health Insurance, (9) Taxes, and (10) Vehicle Insurance. *Id.* at 23.

L. Debtor testifies that her monthly expense for food and house keeping supplies is $100.00. *Id.* Allowing $50.00 per month for housekeeping supplies, that leaves $1.66 per meal (assuming a thirty-day month) for food.

M. Though stating that her spouse has income on Schedule I, on the Statement of Financial Affairs, Debtor states under penalty of perjury that she is not married. Question 1, *id.* at 25.

N. In response to Question 4 of the Statement of Financial Affairs, Debtor states that she has had $10,500.00 in wage income in 2017. *Id.* at 26.

Filing of Bankruptcy Cases By Debtor's Spouse
That Have Been Dismissed

David Cusick ("the Chapter 13 Trustee") filed an opposition to Debtor's motion to vacate. Dckt. 26. In that opposition, the Chapter 13 Trustee states that Debtor has filed a previous case and that the non-filing spouse has filed multiple bankruptcy cases. In reviewing the court files, the non-filing spouse, Robert Ramirez Coronado ("Spouse-Debtor"), has filed nine cases in this District since July of 2012. Mr. Coronado's cases are summarized as follows:

1. **Spouse-Debtor Chapter 13 Case No. 17-23525**

   a. Filed.....May 25, 2017

   b. Dismissed.....June 12, 2017

   c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

   d. Stated under penalty of perjury that he had filed only one prior bankruptcy case in the eight years preceding May 25, 2017. 17-23525; Petition, Dckt. 1 at 3.

2. **Spouse-Debtor Chapter 13 Case No. 17-21078** (Within Eight Years of Case 17-23525.)

   a. Filed.....February 22, 2017

   b. Dismissed.....March 13, 2017

   c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. Stated under penalty of perjury that he had filed no prior bankruptcy cases in the eight year period prior to February 22, 2017. 17-21078; Petition, Dckt. 1 at 3.

3. **Spouse-Debtor Chapter 13 Case No. 16-27427** (Within Eight Years of Case 17-23525 and Case 17-21078.)

a. Filed.....November 9, 2016

b. Dismissed.....November 28, 2016

c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. Stated under penalty of perjury that he had filed one unidentified prior bankruptcy case in the eight-year period prior to November 9, 2016. 16-27427; Petition, Dckt. 1 at 3.

4. **Spouse-Debtor Chapter 13 Case No. 16-24491** (Within Eight Years of Case 17-23525, Case 17-21078, and Case 16-27427.)

a. Filed.....July 11, 2016

b. Dismissed.....July 29, 2016

c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. Stated under penalty of perjury that he had filed one prior bankruptcy case in the eight-year period prior to July 11, 2016. 16-24491; Petition, Dckt. 1 at 3.

5. **Spouse-Debtor Chapter 13 Case No. 15-23427** (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, and Case 16-24491.)

a. Filed.....April 28, 2015

b. Dismissed.....May 18, 2015

c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. No statement of prior bankruptcy cases was provided.

6. **Spouse-Debtor Chapter 13 Case No. 15-21501** (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, and Case No. 15-23427.)

a. Filed.....February 27, 2015

b. Dismissed.....March 17, 2015

c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. No statement of prior bankruptcy cases was provided.

7. **Spouse-Debtor Chapter 13 Case No. 13-35585**[1] (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, Case No. 15-23427, and Case No. 15-21501.)

a. Filed.....December 11, 2013

b. Dismissed.....February 26, 2013

c. Dismissed for failure to attend the First Meeting of Creditors and default in plan payments.

d. Disclosed the filing of two prior bankruptcy cases, 12-33349 and 13-23632.

e. On the Schedules and Statement of Financial Affairs (13-35585, Dckt. 1), Robert Coronado stated under penalty of perjury:

I. Owning the 216 West Cedar Street Property, and it having a value of $90,000. Schedule A, *id.* at 3.

ii. Having household goods, clothing, firearms, a Kenworth Truck, and a GMC Yukon. Schedule B, *id.* at 5–6.

iii. Having monthly income of $2,619.00. Schedule I, *id.* at 16.

iv. His non-filing spouse having unemployment compensation income of $800.00 per month. *Id.*

v. Having expenses of $880.00 per month, exclusive of mortgage/rent. Schedule J, *id.* at 18–19. Robert Coronado stated under penalty of perjury that his family had no monthly expenses for clothing, personal care products, entertainment, or recreation.

[1] In cases 13-35585, 13-23632, and 12-33349, Robert Coronado (Spouse-Debtor) was represented by counsel, as opposed to his subsequent cases that he prosecuted in *pro se*.

vi. For the $880.00 per month expenses, Robert Coronado stated that he has a family unit of five persons who are dependents: wife, six-year-old son, three-year-old son, and one-year-old son. *Id.* at 20.

8. **Spouse-Debtor Chapter 13 Case No. 13-23632** (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, Case No. 15-23427, Case No. 15-21501, and Case 13-35585.)

a. Filed.....March 19, 2013

b. Dismissed.....September 23, 2013

c. Dismissed for default in plan payments.

d. Disclosed the filing of one prior bankruptcy cases 12-33349.

9. **Spouse-Debtor Chapter 13 Case 12-33349** (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, Case No. 15-23427, Case No. 15-21501, Case 13-35585, and case 13-23632.)

a. Filed.....July 19, 2012

b. Dismissed.....February 27, 2013

c. Dismissed for default in plan payments.

Bankruptcy Filings, Wasting of Rights by Debtor and Spouse-Debtor

Though filing Chapter 13 cases now spanning six years, Debtor and Spouse-Debtor have failed to prosecute any of the cases. In the couple of cases in which Spouse-Debtor confirmed a plan, defaults in plan payments followed shortly thereafter. In the filings since 2015, Spouse-Debtor has not even filed Schedules, Statement of Financial Affairs, or a proposed Chapter 13 Plan.

In the current case, though Debtor has filed Schedules, Statement of Financial Affairs, and a proposed Chapter 13 Plan, they appear incomplete, and the Plan appears to be unconfirmable. The proposed Chapter 13 Plan is under-funded, with not even enough to pay the one claim provided for in the Plan—the current monthly mortgage payment.

On Schedule I, Debtor states under penalty of perjury that their family has gross income (solely that of Spouse-Debtor) of $1,500.00 per month. Debtor further states that she and Spouse-Debtor have no dependents. Schedule J, Dckt. 15 at 22. This is in conflict with the statements of Spouse-Debtor under penalty of perjury in his bankruptcy case 13-35585 in which he states under penalty of perjury that the family unit includes three dependents—Debtor, Spouse-Debtor, and three children ages six years old, three years old, and one year old (as of 2013). 13-35585; Schedule J, Dckt. 1 at 20.

Even if there are only the adult Debtor and Spouse-Debtor, the $1,500.00 in gross income cannot be sufficient to fund a plan. On Schedule J in this case, after paying the insufficient proposed $1,000.00 into the Plan, that would leave only $500.00 for all other expenses. On Schedule J, Debtor states under penalty of perjury that she and Spouse-Debtor have no monthly expense for home repairs, no expense for water or sewage (either for district service or maintaining a well and septic system), $0.83 per meal per person for food, no clothing or laundry expense, no personal care expense, no transportation expense, no medical expense, no entertainment expense, and no car insurance expense without providing the court with any basis for concluding that such statements are reasonable and truthful, rather than just made up expenses. Schedule J, Dckt. 15 at 23–24.

It appears from reviewing the pleadings filed in this case and the pleadings filed in Spouse-Debtor's cases since 2015 (which were filed in *pro se*) the documents have been completed in a "check the box" manner without regard for the accuracy or truth of the information stated therein.

In reviewing the Statement of Financial Affairs the court notes that they have also been signed, under penalty of perjury, by Robert Coronado—Spouse-Debtor. Why Mr. Coronado would sign the Statement of Financial Affairs, other than as part of a "check the box and make it look complete" litigation strategy is not apparent.

Prefiling Review Authority of the Court

The bankruptcy courts are established by an act of Congress, and the All Writs Act, 28 U.S.C. § 1651(a), and 11 U.S.C. §105 provide the bankruptcy courts with the inherent power to enter prefiling orders against vexatious litigants. *See Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007); *see also Weissman v. Quail Lodge, Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999); *Gooding v. Reid, Murdock & Co.*, 177 F. 684 (7th Cir. 1910); *Harsh Inv. Corp. v. Bialac (In re Bialac)*, 15 B.R. 901 (B.A.P. 9th Cir 1981), *aff'd*, 694 F.2d 625 (9th Cir. 1982). A court must be able to regulate and provide for the proper filing and prosecuting of proceedings before it. 11 U.S.C. §105(a) expressly grants the court the power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. Further, the court is authorized to *sua sponte* take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. This power exists, and it does not matter whether it is being exercised pursuant to 11 U.S.C. §105 or the inherent power of the court. *See In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997); *Peugeot v. U.S. Trustee* (*In re Crayton*), 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996).

The Ninth Circuit Court of Appeals re-stated the grounds and methodology for prefiling review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. *See Molski*, 500 F.3d 1047, *en banc* hearing denied, 521 F.3d 1215 (9th Cir. 2008); *In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining free and open access to the courts, it is also necessary to have that access be properly utilized and not abused. The abusive filing of bankruptcy petitions, motions, and adversary proceedings for purposes other than as allowed by law diminishes the quality of and respect for the judicial system and laws of this country.

As addressed by the Ninth Circuit Court of Appeals in *Molski*, the ordering of a prefiling review requirement is not to be entered with undue haste because such orders can tread on a litigant's due process

right of access to the courts. As discussed by the Supreme Court in *Logan v. Zimmerman Brush Co.*, the right to seek redress from the court is a protected right of civil litigants. 455 U.S. 422, 429 (1982). The issuing of a prefiling order is to be made only after a cautious review of the pertinent circumstances.

However, the Ninth Circuit Court of Appeals clearly draws the line that a person's right to present claims and assert rights before the federal courts is a not a license to abuse the judicial process and treat the courts merely as a tool to abuse others:

> "Nevertheless, '[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.'"

Molski, 500 F.3d at 1057 (citing *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990); *O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990)). In the Ninth Circuit, the trial courts apply a four factor analysis in determining if and what type of prefiling or other order should properly be issued based on the conduct of the party at issue.

1. First, the litigant must be given notice and a chance to be heard before the order is entered.

2. Second, the district court must compile "an adequate record for review."

3. Third, the district court must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation.

4. Finally, the vexatious litigant order "must be narrowly tailored to closely fit the specific vice encountered."

Id.

Debtor's filing of the current bankruptcy case and the prior case demonstrate an inability to knowingly prosecute a bankruptcy case and assert Debtor's rights. Rather, they appear to be done in a manner to waste her rights. These bankruptcy filings are now piled on the multiple, unsuccessful, dismissed bankruptcy cases filed by Spouse-Debtor. The two cases filed by Debtor and the nine prior cases filed by Spouse-Debtor do not demonstrate an attempt to prosecute in any good faith, meaningful way, and demonstrate an inability or unwillingness to prosecute such cases.

The court is cognizant of the significant impact the filing of a bankruptcy case has not only on Debtor, but also on creditors and other persons. Even if, due to the repeated filings and the provisions that Congress has placed in a subparagraph of a subsection of the Bankruptcy Code, the automatic stay does not go into effect, the presentation of a filed bankruptcy petition and the significant sanctions imposed on someone violating the stay can work to improperly prevent creditors from legitimately enforcing their rights. In these cases, Debtor has filed a series of non-productive Chapter 13 cases, which do not appear to have been filed for any *bona fide* purpose. Debtor and Spouse-Debtor have been afforded multiple opportunities to advance a Chapter 13 plan to cure defaults on the obligation owing to the creditor and restructure the debt through the Chapter 13 plan. While obtaining the benefit of the automatic stay, whether actually or

improperly represented to exist, Debtor and Spouse-Debtor have been unable or have refused to properly prosecute a Chapter 13 Plan.

The court has weighed the options, ranging from just dismissing the current case, as it has done for the various other cases, to imposing an outright bar on Debtor filing another bankruptcy case. Clearly, some limits need to be placed on Debtor to prevent the abuse and attempted abuse of the bankruptcy court, bankruptcy laws, state court judgments, and third-parties.

Even if Debtor is "innocently" being led into a bankruptcy scheme by Spouse-Debtor, she is demonstrating that she is not able to prosecute a bankruptcy case, or even to accurately complete the bankruptcy schedules and statement of financial affairs. That has led to Debtor squandering her valuable bankruptcy rights,[2] as well as potentially committing a fraud on the court and creditors. In addition, the making of false statements under penalty of perjury could subject Debtor to both civil and criminal sanctions, penalties, and prosecutions.

At this point, the court will not ban Debtor from ever filing bankruptcy, but the court will impose the much more moderate requirement that Debtor first obtain prefiling authorization from the chief judge in the bankruptcy district before commencing another bankruptcy case during the four-year period following the dismissal of this case. The court selects a four-year period after considering the eight-year period that Congress has determined to be appropriate for obtaining discharges in Chapter 7 cases and the four-year period in Chapter 13 cases.

A prefiling review requirement is of little impact to a debtor seeking legitimate relief from the bankruptcy court. In this case, it will require Debtor (whether represented by counsel or continuing to act in *pro se*) to have the initial bankruptcy pleadings completed and, on their face, appear to be completed consistent with the requirements of the Bankruptcy Code and Chapter under which Debtor seeks to file bankruptcy. Authorization imposes no significant cost or delay, in that the petition, schedules, and other basic pleadings need to be prepared at the time of filing regardless of whether a prefiling review exists. The ability to file rests solely with Debtor, requiring Debtor to do and comply with only what the Bankruptcy Code requires.

Authorization also has the effect of this Debtor being prepared to successfully prosecute a Chapter 13 case, rather than continue to flounder and squander rights under the Bankruptcy Code. By the prior conduct, Debtor has lost the ability to receive the automatic stay. To the extent that she has or had the ability to cure any defaults and restructure any debts allowed in the Chapter 13 case, those appear to have been squandered as well. To the extent that Debtor is attempting to modify a claim secured by a lien only on her home, such modification is barred by the Bankruptcy Code without the consent of the creditor. 11 U.S.C. § 1322(b)(2).

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[2] The dismissal of this second bankruptcy case results in Debtor having made the provisions of 11 U.S.C. § 362(c)(4) effective in any other bankruptcy case filed by Debtor through and including June 18, 2018, which prevent the "automatic stay" from going into effect to protect Debtor and property of the bankruptcy estate. (Though Debtor could seek the court to impose such a stay pursuant to 11 U.S.C. § 362(c)(4)(B), it is questionable if Debtor and Spouse-Debtor appreciate the significance of such an obligation on them to act affirmatively.)

The court ordered Debtor and her spouse to appear personally at the hearing and show cause why the court should not issue an order:

A. Barring the filing of further bankruptcy cases for four years unless prior authorization is obtained by Debtor from the Chief Judge of the Bankruptcy Court in the District in which she seeks to file bankruptcy;

B. Requiring that Debtor pay all filing fees at the time a new case is commenced, and prohibiting her from obtaining a fee waiver or authorization to pay filing fees in installments; and

C. Authorizing and ordering the Office of the Clerk not to file any bankruptcy petition filed by Barbara Coronado that is not approved for filing by the Chief Judge of the Bankruptcy Court for the District in which Debtor attempts to file a bankruptcy case.

Issuance of Prefiling Review Order

Upon review of the files in this case and Debtor's prior Chapter 13 case, the files in the nine bankruptcy cases filed by Robert Coronado, identified as Debtor's Spouse and who has signed the Statement of Financial Affairs in this case, and good cause appearing, the court determines that the issuance of a prefiling review order is necessary and appropriate with respect to Barbara Coronado, Debtor in this case. While it appears equally proper for issuance of such an order with respect to Mr. Coronado, the court did not issue the Order to Show Cause for the issuance of such an order as to him.

As discussed above, taken most benignly, Debtor is being induced to commence bankruptcy cases in which she is wasting, squandering, and losing her valuable rights. Moving down the spectrum of conduct, she may be acting in concert with Spouse-Debtor to willfully and intentionally abuse federal law and the jurisdiction of this court.

This court determines that issuing a prefiling review order is proper, and necessary, which:

A. Bars the filing of further bankruptcy cases for four years, unless prior authorization is obtained by Debtor from the Chief Bankruptcy Judge in the District in which she seeks to file bankruptcy;

B. Requires that Debtor pay all filing fees at the time a new case is commenced, and prohibits her from obtaining a fee waiver or authorization to pay filing fees in installments; and

C. Authorizes and orders the Office of the Clerk not to file any bankruptcy petition filed by Barbara Coronado that is not approved for filing by the Chief Judge for the Bankruptcy District in which Barbara Coronado attempts to file a bankruptcy case.

The court shall issue a Chamber Order (not a minute order) substantially in the following form holding that:

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

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

IT IS FURTHER ORDERED that Barbara Sandy Coronado, is enjoined from filing any bankruptcy cases, in any Bankruptcy Court in any District, for the period of four years, commencing November 7, 2017, and continuing through and including November 6, 2021, unless prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.

In seeking leave to file a bankruptcy case in this or any other District, the motion for leave to file shall be supported by drafts of the petition, schedules, statement of financial affairs, and all other documents required for the complete filing of a bankruptcy case. Additionally, a copy of this order and the Civil Minutes for the November 7, 2017 hearing on the order to show cause (which Minutes constitute the court's findings of fact and conclusions of law) shall also be included as exhibits provided to the Chief Bankruptcy Judge from whom leave to file a bankruptcy case is requested.

IT IS FURTHER ORDERED that the Clerk of the Bankruptcy Court, and deputy clerks operating under the direction and control of the Clerk of the Court in any District, are authorized to reject any petition attempted to be filed by Barbara Sandy Coronado during the four-year period of the injunction issued in this order, if there is not prior authorization from the Chief Bankruptcy Judge for the District.

13. 17-26064-E-13 PGM-2 | **MARTIN/MARIA ORTEGA** **Peter Macaluso** | **MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC. 10-6-17 [30]**

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on October 6, 2017. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Santander Consumer USA, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,000.00.

The Motion filed by Martin Ortega and Maria Ortega ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Volkswagen Passat ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $8,000.00 as of the petition filing date. Dckt. 32 at 2:11–12. FN.1. 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).

FN.1. The court notes that the Motion asserts a value of $0.00, as well as appearing to reference a value of $8,000.00. *Compare* Dckt. 30 at 1:24.5, *with* Dckt. 30 at 2:5–7. The reference to $0.00 appears to be a scrivener's error.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on October 24, 2017. Dckt. 50. The Chapter 13 Trustee notes that the Motion references values of $0.00 and $8,000.00, and he notes that

Schedules B and D and the Plan list a value of $8,000.00. Finally, he notes that Creditor filed a claim for $10,437.26 asserting a value of $11,200.00 for the Vehicle.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in October 10, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $10,437.26. *See* Claim No. 1 (attached copy of the sale contract dated October 10, 2012). FN.2. Creditor has not responded to the Motion, but its claim lists the Vehicle's value at $11,200.00.

FN.2. Both the Motion and Debtor's Declaration state that the Vehicle was purchased in May 2015. Using any date from May 2015 would result in fewer than 910 days before the petition date, but fortunately for Debtor, Creditor attached a copy of the sale contract with its claims, which shows a purchase date of October 10, 2012.

Neither Debtor nor Creditor have provided an authenticated version of a valuation report from services such as NADA or Kelley Blue Book. Creditor's assertion in the proof of claim of $11,200.00 as the Vehicle's value is entirely unsupported. Debtor's valuation is based on their testimony that the "vehicle is in poor condition" and requires repairs to the brakes, master cylinder, fender, fuel injection, and air bags. Dckt. 32 at 2:1, 3–9. Debtor also states that they reviewed "local newspapers and trade articles, [and] websites such as Kelley Blue Book and NADA," but Debtor has not provided any exhibits from those sources.

Without authenticated exhibits to review, the court's determination of value is based upon the testimony provided by Debtor. Even assuming that $11,200.00 is a starting point, a reduction is appropriate for the various necessary repairs listed by Debtor.

Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $8,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Martin Ortega and Maria Ortega ("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 Santander Consumer USA, Inc. ("Creditor") secured by an asset described as 2012 Volkswagen Passat ("Vehicle") is determined to be a secured

claim in the amount of $8,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

14. 17-26064-E-13 PGM-3 | **MARTIN/MARIA ORTEGA** **Peter Macaluso** | **MOTION TO AVOID LIEN OF RONALD WASHLOHN C/O COLLINS JUDGMENT RECOVERY SERVICES** **10-6-17 [35]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on October 6, 2017. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted, with the lien avoided for all amounts in excess of $15,000.00.

This Motion requests an order avoiding the judicial lien of Ronald Washlohn against property of Martin Ortega and Maria Ortega ("Debtor") commonly known as 515 E. Tabor Avenue, Fairfield, California ("Property"). In the Motion, Debtor creates the name "Ronald Washlohn, c/o Collins Judgment Recovery Services," which appears to be a cloned hybrid created in Debtor's imagination. Fortunately for Debtor, the actual creditor has filed a proof of claim (identifying the creditor) and an opposition to the Motion, thereby appearing in this Contested Matter.

Looking at Proof of Claim No. 2, the creditor is clearly named as "Collins Judgment Recovery Services." Attached to Proof of Claim No. 2 is an Abstract of Judgment form in which Collins Judgment Recovery Services is identified as the assignee of record for the judgment. Proof of Claim No. 2 at 4.

The abstract of judgment attached to Proof of Claim No. 2 states that a judgment in favor of Creditor in the amount of $17,477.37 was entered against Martin Ortega, one of the debtors, on April 9, 2009, and then renewed on September 23, 2015. The abstract of judgment attached to Proof of Claim No. 2 bears a recording date in Solano County of August 23, 2017. The abstract of judgment does not list any original abstract of judgment having been recorded. The allegations in the Motion include that a judgment lien for $17,477.37 has been recorded, and it is that judgment lien that is the subject of this Motion.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $376,000.00 as of the date of the petition. The unavoidable consensual liens that total $285,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C. Thus, by Debtor's calculations there is no value in the Property to secure the judgment lien.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on October 24, 2017. Dckt. 47. The Chapter 13 Trustee notes that the claim is scheduled and that the Plan proposes reducing it to $0.00. He also notes that Creditor filed a claim indicating that the Property's value is $410,000.00.

CJRS'S OPPOSITION

Collins Judgment Recovery Services ("CJRS") has filed an Opposition on October 24, 2017, to this Motion. Dckt. 53. CJRS asserts that it is the creditor whose claim is being valued. CJRS argues that the same mortgage amount of ($285,000.00) was scheduled in this case as in Debtor's prior case (Case No. 15-27210) that was filed on September 14, 2015. CJRS argues that the mortgage payment of $1,306.00 has not changed, and because of the arrearage of $16,000.00, Debtor must be asserting that they have either paid or been credited $15,344.00 since the prior case.

CJRS argues that there is an evidentiary issue regarding the total amount owed on the mortgage secured by a first deed of trust. CJRS believes that the assertion of $285,000.00 as the mortgage balance is unreliable.

Additionally, CJRS argues that it listed the Property's value at $410,000.00 when it filed a claim, and CJRS now believes—after reviewing a comparative market analysis—that the Property's value is $420,000.00. Using CJRS's valuation, there would be sufficient equity to support its filed claim.

DISCUSSION

Schedule D filed in this case lists a debt owed to George Tedeschi for $285,000.00 that is secured by the Property. In Case No. 15-27210, Debtor also listed $285,000.00 owed to George Tedeschi secured

by the Property, but with an asserted value of $310,000.00. That case was dismissed on August 8, 2017. Case No. 15-27210, Dckt. 59.

However, on Schedule A, Debtor admits that the Property has a fair market value, but reduces it to $376,000.00 by deducting out the costs of sale. That is not a proper determination of the fair market value of the property. 11 U.S.C. § 522(a)(2) defines "value" as the "fair market value as of the date of the filing of the petition." In the Ninth Circuit, "fair market value" is defined as "the price that a seller is willing to accept and a buyer is willing to pay on the open market." *See, e.g.*, *United States v. Kaplan*, 839 F.3d. 795, 800 (9th Cir. 2016) (quoting *Fair Market Value*, BLACK'S LAW DICTIONARY (10th ed. 2014)).

Like other courts have noted, a debtor may not properly include hypothetical sale costs for property value when determining whether a homestead exemption is impaired. *See, e.g.*, *Wolmer v. Bristol Gastroenterology Assocs. PC (In re Wolmer)*, 494 B.R. 783 (Bankr. D. Conn. 2013) (disallowing improper eight-percent reduction for hypothetical liquidation costs); *In re Barrett*, 370 B.R. 1, 3 (Bankr. D. Me. 2007) ("[A] bevy of courts have opted against including hypothetical sales costs and other transaction costs in the valuation of collateral for the purpose of determining the fate of a judicial lien.").

Debtor also has explained to the court how the mortgage balance has not changed in the past two years, and CJRS has convincingly raised an issue that the claimed balance is unreliable without supporting evidence.

In the prior Chapter 13 case, Debtor made monthly plan payments of $530.00. 15-27210; Plan, Dckt. 10. Debtor was obligated to make direct payments to George Tedeschi in the amount of $1,306.00 for the claim secured by the senior lien on the Property. *Id.*, ¶ 2.11.

In reviewing the claims filed in the prior case, it is interesting to note that George Tedeschi did not file a proof of claim. That is unusual for a creditor with a secured claim of $285,000.00 as of the September 14, 2015 filing of the prior case. Such lack of action raises issues as to whether such a senior lien claim actually exists.

Debtor was required to make the monthly payment on the senior secured claim of $1,306.00 per month. From the September 14, 2015 filing of that prior case to the September 12, 2017 filing of the current case, that is twenty-four monthly payments of $1,306.00 each, for an aggregate amount of $31,344.00.

On Schedule D, Debtor states under penalty of perjury that the total claim of the creditor holding the senior lien was $285,000.00 as of the commencement of this case. Dckt. 1 at 20. Though given the opportunity to file a reply declaration addressing how the debt secured by the senior lien is exactly the same amount as two years earlier, Debtor fails (or refuses) to provide such testimony.

Using Debtor's admitted $400,000.00 fair market value for the Property, the court's mechanical calculation of whether the exemption is impaired is as follows:

Fair Market Value.....$400,000.00
Debt Secured by Senior Line.....($285,000.00) (using the amount stated by Debtor)
Debtor's Homestead.....($100,000.00) (no objection to exemption filed)

Value for Judgement Lien/(Impairment).....$15,000.00

The judgment lien is avoided, subject to the provisions of 11 U.S.C. § 349 if the case is dismissed, for all amount in excess of $15,000.00, with creditor Collins Judgment Recovery Services having a $15,000.00 secured claim in this case and an unsecured claim for the balance of the obligation on the judgment.

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Martin and Maria Ortega ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Judgment Lien of Collins Judgment Recovery Services, the assignee of original judgment creditor, for the judgment in California Superior Court for Solano County Case No. FCS030609, recorded on August 23, 2017, Document No. 201700071599 with the Solano County Recorder, against the real property commonly known as 515 E. Tabor Avenue, Fairfield, California, is avoided for all amounts in excess of $15,000.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

15.	**17-25486-E-13** **SS-2**	**CHERYL HANSEN** **Scott Shumaker**	**MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE** **9-29-17 [31]**

Final Ruling: No appearance at the November 7, 2017 hearing is required.

Cheryl Hansen ("Debtor") 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 Motion to Value was dismissed without prejudice, and the matter is removed from the calendar.**

16. **17-25486-E-13** **CHERYL HANSEN** **MOTION TO VALUE COLLATERAL OF**
SS-3 **Scott Shumaker** **CARMAX AUTO FINANCE**
10-20-17 [42]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on October 20, 2017. 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 CarMax Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,500.00.

The Motion filed by Cheryl Hansen ("Debtor") to value the secured claim of CarMax Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Chrysler 200 Convertible Touring ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on October 24, 2017. Dckt. 48. The Chapter 13 Trustee notes that Creditor filed a claim for $13,313.40, while the Motion alleges that the claim

is $11,702.00, and the Plan lists the claim as $12,000.00. The Chapter 13 Trustee also notes that Debtor has not provided any information about the Vehicle, except to state that there are "nicks and scratches."

RULING

Creditor's claim lists the Vehicle's value as $8,425.00. Claim No. 3. That claim includes a copy of the sale contract and the certificate of title, but it does not include any information about how Creditor reached a value of $8,425.00, and Creditor has not responded to the Motion with any evidence about the Vehicle's value.

At the same time, Debtor has presented questionable justifications for the Vehicle's value. Debtor states in her Declaration that she values the Vehicle based on "various factors," but she does not list those factors. Dckt. 44 at 2:2 Instead, Debtor discusses how she looked at "similar cars" listed for private sale online through Edmunds and Craigslist, listing values of $9,097.00 and $5,988.00. *Id.* at 2:3–5. Debtor justifies reducing her perceived value of the Vehicle to $7,500.00 because of "nicks and scratches," because of costs to make the Vehicle sale-ready, and because of the customary practice of attempting to negotiate a lower sales price. *Id.* at 2:8–15. While Debtor's opinion of value is the most ephemeral of evidence, her opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on August 19, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,313.40. 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 $7,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Cheryl Hansen ("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 CarMax Auto Finance ("Creditor") secured by an asset described as a 2011 Chrysler 200 Convertible Touring ("Vehicle") is determined to be a secured claim in the amount of $7,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $7,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

17. 17-25486-E-13 DPC-1 | **CHERYL HANSEN** Scott Shumaker | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **10-4-17 [36]**

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 4, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

A. Cheryl Hansen ("Debtor") is delinquent in plan payments;

B. The Plan relies upon the court granting a Motion to Value; and

C. Debtor failed to attach gross business income and expenses to Schedule I.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is $3,070.00 delinquent in plan payments, which represents one month of the $3,070.00 plan payment. Before the hearing, another plan payment will be due.

According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for

relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of CarMax Auto Finance, which motion has been granted at the November 7, 2017 hearing.

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor has not provided the required attachment.

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

18. **17-25586-E-13** **JOSE SILVA** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Gabriel Liberman** **PLAN BY DAVID P. CUSICK**
10-4-17 [13]

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 4, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

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

A. Jose Silva ("Debtor") proposed a plan that is not his best effort under 11 U.S.C. § 1325(b); and

B. Debtor's plan fails the liquidation analysis.

DEBTOR'S RESPONSE

Debtor filed a Response on October 16, 2017, to address the Chapter 13 Trustee's objections. Dckt. 17. Debtor proposes in his Response to amend Section 1.03 of his Chapter 13 plan from thirty-six months to sixty months so the Plan satisfies the best effort requirement of 11 U.S.C. § 1325(b). In addition, Debtor asserts that by extending his plan, Debtor's payments to Class 2 claims will be reduced from $350.69

to $219.74 per month. Moreover, Debtor will pay Class 7 unsecured claims a total of $74,629.71, or 39.50% dividend.

CHAPTER 13 TRUSTEE'S REPLY

The Chapter 13 Trustee filed a Reply on October 20, 2017. Dckt. 19. The Chapter 13 Trustee states that he does not oppose confirmation with a plan term of sixty months, but he notes that creditors do not appear to have been notified of the proposed amendments.

RULING

The Chapter 13 Trustee raised sufficient grounds for denying confirmation, but through successive pleadings, Debtor has demonstrated to the court that the Plan can work when spread out over sixty months, instead of thirty-six months.

The Chapter 13 Trustee raised a final concern in his Reply that all creditors do not appear to have received notice of the proposed amendment to the plan term. The court's review of the docket shows that a Certificate of Service was filed on October 23, 2017, (apparently in response to the Chapter 13 Trustee's Reply) and it indicates that all creditors listed on the mailing matrix have been served with Debtor's Response that contained the proposal to amend the plan term to sixty months. Dckt. 21. Further, the increase in the term inures to the creditors' benefit, enhancing their rights.

All of the grounds for denying confirmation have been resolved. The Plan, as amended, complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Jose Silva's ("Debtor") Chapter 13 Plan filed on August 23, 2017, as amended to increase the plan term to sixty months, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. 17-22489-E-13 MRL-3 | **EUGENE NIERI** Mikalah Liviakis | **MOTION TO APPROVE LOAN MODIFICATION** 9-27-17 [52]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 27, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Trial Loan Modification is granted.

The Motion to Approve Loan Modification filed by Eugene Nieri ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the proposed Modified Plan provides for in Class 4, has agreed to a trial loan modification that will reduce Debtor's mortgage payment from the current $3,082.00 per month to $2,944.50 per month. The modification will capitalize the pre-petition arrears.

The Motion is supported by the Declaration of Eugene Nieri. Dckt. 55. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

CREDITOR'S LIMITED OPPOSITION

Creditor filed an Opposition on October 23, 2017. Dckt. 59. Creditor states that it providing a trial loan modification to Debtor, but it opposes any effort by Debtor to assert that the trial loan is permanent. Creditor argues that to any extent that Debtor alleges that no pre-petition arrears are owed or that the monthly payment, interest rate, and principal balance are modified, then those assertions should be denied.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 24, 2017. Dckt. 64. The Chapter 13 Trustee opposes because the letter for the FHA Home Affordable Modification Trial Period Plan does not disclose the term, interest rate, or amount of the loan. Additionally, he notes that only six pages from the seven-page document have been filed.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on October 26, 2017. Dckt. 67. Debtor states that he has now attached the missing page from the document as its own separate exhibit. *See* Exhibit B, Dckt. 68.

RULING

As to Creditor's opposition noting that the proposed loan modification is merely for a three-payment trial period, the court agrees that it is not considering a permanent loan modification at this time. Instead, the court is only considering trial payments that may lead to a permanent modification for Debtor.

For the Chapter 13 Trustee's opposition, the court notes that the missing page has been filed on the docket, and as far as information about the term, interest rate, and amount of the loan, the court notes that the Motion pleads a new principal balance of $423,542.00. Final details about term length and interest rate will be determined at any potential approval of a permanent loan modification.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. The Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve Loan Modification filed by Eugene Nieri ("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 court authorizes Eugene Nieri on a trial basis to amend the terms of the loan with Wells Fargo Home Mortgage ("Creditor"), which is secured by the real property commonly known as 2098 Bates Circle, El Dorado Hills, California, on such terms as stated in the Trial Modification Agreement filed as Exhibit A & B in support of the Motion (Dckt. 54 & 68).

20. **17-22489-E-13** **EUGENE NIERI** **MOTION TO MODIFY PLAN**
MRL-2 **Mikalah Liviakis** **9-27-17 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 27, 2017. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Eugene Nieri ("Debtor") seeks confirmation of the Modified Plan because he received a loan modification recently. Dckt. 50. The Modified Plan proposes monthly payments of $3,250.00 for four months, $1,855.50 for eight months, and $2,900.00 for forty-eight months. The Modified Plan also proposes no less than a 35% dividend to unsecured claims. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 24, 2017. Dckt. 61. First, the Chapter 13 Trustee argues that service to the Internal Revenue Service does not comply with Local Bankruptcy Rule 2002-1(c) and that the United States Attorney for the Internal Revenue Service and the United States Department of Justice have not been served.

Second, the Chapter 13 Trustee opposes moving the claim of Wells Fargo Home Mortgage from Class 1 to Class 4 on the basis of a temporary loan modification. The Chapter 13 Trustee argues that the loan has not been modified permanently.

Third, the Chapter 13 Trustee notes that the Motion does not cite any code provisions as required by Local Bankruptcy Rule 9014-1(d) and Federal Rule of Bankruptcy Procedure 9013. He argues that the Motion does not plead grounds with particularity.

RULING

First, the court notes that the Motion is merely a restatement of Debtor's Declaration like the Chapter 13 Trustee has alleged, but that is not sufficient by itself to support denying confirmation. Debtor has expressed what provisions are included in the Modified Plan, and he has asserted that he seeks confirmation of the Modified Plan because of a recent loan modification that changes his mortgage payments. That is a significant ground for seeking confirmation.

Significantly, the "Motion" can be read to state that counsel is the actual debtor in this bankruptcy case. The "Motion" is replete with the pronouns I and my in stating the alleged grounds, with the "Motion" being signed by counsel for Debtor. While one might find it "picky" to address this point, words (and the correct use thereof) are the attorney's tools of the trade. While it might be efficient (more profitable) to merely cut and paste one document to the other, this is not merely a "close enough" tactic in federal judicial proceedings.

Second, Local Bankruptcy Rule 2002-1(c) specifies the rules for providing notice to the Internal Revenue Service in contested matters. The rule states that in addition to the instructions on the Roster of Governmental Agencies, notice shall be provided to the United States Department of Justice and the United States Attorney. The Proof of Service filed with the Motion does not include the United States Department of Justice and the United States Attorney.

Finally, the Chapter 13 Trustee disagrees with treating the claim of Wells Fargo Home Mortgage in Class 4 on the basis of a temporary loan modification. The court agrees. When a debtor is approved to make trial loan modification payments, those payments are temporary, and upon receipt of a permanent loan modification, then a debtor could move to confirm a modified plan. In this case, Wells Fargo Home Mortgage filed a claim asserting that $56,821.18 is in arrears.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is denied without prejudice, and the proposed Chapter 13 Plan is not confirmed.

21. 17-25091-E-13 DPC-2 | **JULIET DACPANO** **Pro Se** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK 9-21-17 [31]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 21, 2017. By the court's calculation, 47 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") filed the instant Objection to Juliet Dacpano's ("Debtor") discharge on September 21, 2017. Dckt. 31.

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 February 3, 2016. Case No. 16-20597. Debtor received a discharge on June 29, 2016. Case No. 16-20597, Dckt. 46.

The instant case was filed under Chapter 13 on August 1, 2017.

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).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 24, 2017. Dckt. 41. Debtor argues various grounds about a Loan Modification pursuant to the federal Home Affordable Modification Program and alleges that Bank of New York Mellon is not fulfilling its obligation to modify her loan repayment. The court focuses on the grounds that relate to the instant Objection, though.

In her Opposition, Debtor acknowledges her prior Chapter 7 discharge in Case No. 16-20597. *Id.* at 3:9. Debtor also states that she is "aware that she will not receive a discharge in this primary case because . . . [she] received a discharge" in a prior case. *Id.* at 6:17–19.

RULING

Here, Debtor received a discharge under 11 U.S.C. § 727 on June 29, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 17-25091, Dckt. 31. 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. 17-25091), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick ("the Chapter x13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained , and upon successful completion of the instant case, Case No. 17-25091, the case shall be closed without the entry of a discharge.

22. 17-25904-E-13 DPC-1 | **BARBARA MYERS** Chinonye Ugorji | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 10-11-17 [18]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 11, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan proposes to classify the secured claim of Select Portfolio Servicing, Inc. ("Creditor") in Class 4, even though there are pre-petition arrears;

B. Barbara Myers ("Debtor") has not provided six months of bank statements and sixty days of profit and loss statements for her self-operated business; and

C. The Plan fails the liquidation analysis.

The Chapter 13 Trustee's objections are well-taken. Regarding the claim listed in Class 4, first, Debtor has named the wrong party as the claimholder. In Debtor's prior case (17-20130), Claim No. 15 was filed and indicated that Creditor was the servicer for the mortgage. The actual creditor who filed the claim

was Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2015-RPL1 Trust, Mortgage-Backed Notes, Series 2015-RPL1.

Additionally, Schedule D indicates that there are at least ten months of arrears because it lists a last-active date of November 1, 2016, and the Statement of Financial Affairs does not list any payments made to the mortgage within ninety days before filing. Claim No. 15 in the prior case listed arrears of $23,293.23.

The Additional Provisions section of the Plan indicates that additional provisions are not appended to the Plan, but the explanation Debtor provided in them that she is working on a loan modification indicates that the Additional Provisions should be appended to the Plan. The Chapter 13 Trustee notes that a copy of a loan modification has not been provided, though, and the Plan does not propose to maintain ongoing payments to the mortgage, contrary to 11 U.S.C. § 1322(b)(5).

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

A. Sixty days of profit and loss statements, and
B. Six months of bank account statements.

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has not scheduled or exempted a refund of $1,087.32 that would go to unsecured claims in a Chapter 7 case, and the Plan proposes a 0.00% dividend to them.

Beginning with the Additional Provisions for Debtor to make payments on the defaulted obligation owed to Creditor Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, the Plan appears to be nothing more than a promise to continue in the pre-petition defaults. Over the years, the consumer attorneys and creditor attorneys in this District have worked out an additional provision for a debtor in good faith pursuing a loan modification while providing adequate protection payments (usually in the amount of the expected loan modification) to the creditor. The adequate protection payments are made through the plan and disbursed by the Chapter 13 trustee, providing accountability in the making of the adequate protection payments. That provision is commonly known as the "Ensminger Additional Provision." When the loan modification is approved by the court, the then-secured debt with no defaults can be moved into Class 4 claim treatment (direct payment under the Plan, not through the Chapter 13 trustee).

The Ensminger Additional Provision balances the rights of the debtor with the obligation to actually make adequate protection payments. It prevents there being "secret" loan modifications in which the debtor does not get court approval for the modification, reduces the payment to an amount less than the

stated adequate protection amount, and then diverts the extra, undisclosed disposable income created by the loan modification.

Additionally, the Ensminger Additional Provision continues in effect the automatic stay to protect the property, rather than the stay being terminated by operation of the Class 4 treatment in the Plan.

This is Debtor's second recent bankruptcy case. She commenced case no. 17-20130 on January 9, 2017 (represented by the same counsel as in the current case), which was dismissed on July 28, 2017. Dismissal of the prior case was based on Debtor being in default under the proposed plan in that case. 17-20130; Civil Minutes, Dckt. 32. Additionally, Debtor failed to file an amended plan or attempt to prosecute a plan in the prior case after confirmation of the original plan was denied. *Id.*

As shown on Schedule I filed in this case under penalty of perjury, Debtor's Monthly Income is $3,017.62 ($2,045 family support payments, $195.62 business income, and $777.00 Social Security), before any income or self-employment taxes. Dckt. 1 at 40–42. On Schedule J, Debtor states under penalty of perjury that her reasonable and necessary business expenses are ($2,814.00) per month, leaving her $203.62 to fund the plan. *Id.* at 43–44. The ($2,814.00) in expenses includes ($1,500.00) for mortgage or rent, which leaves $914.00 for all of the Debtor's other expenses.

For her expenses, Debtor states under penalty of perjury that she spends only ($200) per month for food and housekeeping supplies. Deducting ($35) per month for housekeeping supplies, that leaves only ($165.00) per month for all of the food for one adult. That breaks down to ($1.83) per meal. Debtor has ($0.00) for personal care products, ($20.00) for clothing and laundry, and ($20.00) for medical and dental monthly expenses listed on Schedule J. *Id.* Apparently, Schedule J is constructed not to state actual and necessary expenses but is populated with manufactured numbers to create a projected disposable income that appears to show that the Plan is feasible.

It appears that the real reason for excluding an adequate protection payment from the Plan and Chapter 13 Trustee is to allow Debtor to use that money for other expenses rather than make the payment. Given that only the creditor with the secured claim and an obligation owed to the Internal Revenue Service in the amount of $8,500.00 are to be paid, in addition to $2,000.00 to counsel for Debtor, not providing for the modification through the Plan creates a Chapter 13 plan of little utility.

The expense figures on Schedule J create just enough disposable income for the proposed payments to pay the attorney's fees, Chapter 13 Trustee fees (estimated at 7%), and the Internal Revenue Service claim. That further indicates that the amounts stated on Schedule J have been artificially structured to create the appearance of feasibility when none exists.

Reviewing Proof of Claim No. 5 filed by the Internal Revenue Service shows that Debtor owes income taxes for 2013, 2014, 2015, and 2016. Thus, it appears questionable that Debtor now states that she can have no income taxes to pay in 2017.

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

23. 17-23504-E-13 THS-2 | **JOSEPH GAITHER** / **Timothy Stearns** | **MOTION TO COMPEL ABANDONMENT** / **9-12-17 [53]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 12, 2017. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Abandonment is denied without prejudice.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Joseph Gaither ("Debtor") requests the court to order David Cusick ("the Chapter 13 Trustee") to abandon property commonly known as a 2014 Dodge Ram 2500 Crew Cab Tradesman 4x4 ("Property"). Original Schedule D lists the Property as encumbered by the lien of Pacific Crest Credit Union, securing a claim of $22,963.72, with a value of $30,000.00. The Motion asserts that Debtor can trade the Property for a 1998 Ford Ranger 4x4 truck with 58,000 miles, with the buyer of the Property paying off the secured claim.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 15, 2017. Dckt. 59. The Chapter 13 Trustee argues that Debtor has not pleaded why trading a three-year-old truck for a sixteen-year-old one makes sense. He also notes that Debtor has not identified the buyer and has not clearly expressed why he wants the Property abandoned.

The Chapter 13 Trustee notes that there is at least $1,686.28 in non-exempt equity in the Property, and Debtor has not sought court approval for the disclosed transfer. Additionally, the Chapter 13 Trustee notes that Debtor has not increased his plan payments by the $534.04 he had been paying toward the Property through Class 4. Instead, Debtor increased plan payments by $320.00.

DEBTOR'S REPLY

Debtor filed a Reply on October 5, 2017. Dckt. 70. Debtor states that he decided to sell the Property after the Meeting of Creditors when he was informed that he "probably had to get rid of debtor's 2014 truck because it did not appear debtor could feasibly make the payments on that truck and also make plan payments sufficient to pay off his debts." *Id.* at 1:21–23. Debtor learned that his friend's father-in-law (Mike Faria) wanted to buy a new truck, and he offered to buy the Property by paying off the amount owed and trading a 1998 Ford Ranger to Debtor in exchange for the equity Debtor had in the Property. Debtor argues that the transaction was arms-length.

Debtor states that the plan payment was increased by only $320.00 because the older truck has more maintenance expenses, and its fuel consumption is worse. Debtor states that he has amended Schedule J to reflect the change in vehicle expenses. *See* Dckt. 81.

DISCUSSION

Debtor filed an Amended Schedule B on October 19, 2017. Dckt. 81. On that schedule, Debtor no longer lists the Property, and instead, Debtor lists the 1998 Ford Ranger. Noticeably absent from Debtor's various pleadings for this Motion is a statement about when the unauthorized transfer or sale occurred. This case was filed on May 24, 2017, and the latest Schedule B indicates that Debtor has bought and sold property without court approval.

The Motion seeks to order the Chapter 13 Trustee to "abandon" property. The Chapter 13 Trustee is not in possession or control of property of the estate or property of the estate revested in Debtor, subject to being re-revested in the estate if the case is converted to one under Chapter 7. Debtor makes no motion to sell or use the truck, only that it be "abandoned" by the Chapter 13 Trustee.

In the supplemental Declaration, Debtor provides his "opinion" as to value but fails to provide any independent valuations or common trade reports, such as Kelley Blue Book or NADA Valuation Reports. Rather, he merely says "I think it is, so it is."

What this Motion really seems to seek is retroactive court approval of an undisclosed sale. Debtor's decision to sell the property without court approval and not to wait for court approval to abandon property of the estate indicates to the court that Debtor does not believe that the Bankruptcy Code applies to him, that he can do as he pleases and ask the court for forgiveness afterward if necessary. That attitude does not work well with the court, especially when a fiduciary for the bankruptcy estate had dealt with the property of the estate without obtaining proper authorization from the court..

Debtor's schedules have been updated to purport that Debtor no longer has possession of the Property, even though it is still property of the estate (no sale having been approved). Additionally, Debtor's admission to a sale in his reply indicates that what he really seeks from the court is approval of a sale that occurred during the pendency of this bankruptcy case without court approval. Debtor has not presented any argument, grounds, or legal authority for that request, however.

By not waiting for the court to rule on this Motion, Debtor has demonstrated to the court that he is not prosecuting the Motion in good faith, and with the admission in his Reply that he sold the Property without court approval, Debtor has illustrated that he may not be prosecuting this case in good faith either. The court has not been presented with valid, convincing grounds to grant the Motion. The Motion is denied without prejudice.

The court shall issue an 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 Compel Abandonment filed by Joseph Gaither ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is denied without prejudice.

FINAL RULINGS

24. 17-23504-E-13 JOSEPH GAITHER MOTION TO CONFIRM PLAN
THS-1 Timothy Stearns 9-12-17 [46]

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2017. By the court's calculation, 56 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Joseph Gaither ("Debtor") filed a Second Amended Plan and corresponding Motion to Confirm on October 5, 2017. Dckts. 64 & 65. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, 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 Motion to Confirm the Amended Chapter 13 Plan filed by Joseph Gaither ("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 as moot, and the proposed Chapter 13 Plan is not confirmed.

25.	**17-25903-E-13** **PGM-2**	**CHRISTINE MCKAY** **Peter Macaluso**	**MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.** **10-3-17 [37]**

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

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

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

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

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

26. **17-26217-E-13** **LATRICE/MICHAEL HATCHER** **OBJECTION TO DISCHARGE BY**
DPC-1 **James Keenan** **DAVID P. CUSICK**
10-5-17 [12]

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 5, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") filed the instant Objection to Latrice Hatcher's ("Co-Debtor") discharge on October 5, 2017. Dckt. 12.

Objector argues that Co-Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Co-Debtor filed a Chapter 7 bankruptcy case on July 27, 2015. Case No. 15-25910. Co-Debtor received a discharge on November 3, 2015. Case No. 15-25910, Dckt. 15.

The instant case was filed under Chapter 13 on September 19, 2017.

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, Co-Debtor received a discharge under 11 U.S.C. § 727 on November 3, 2015, which is less than four years preceding the date of the filing of the instant case. Case No. 15-25910, Dckt. 15. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Co-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. 17-26217), the case shall be closed without the entry of a discharge, and Co-Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick ("the Chapter 13 Trustee") 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. 17-26217, the case shall be closed without the entry of a discharge for Latrice Hatcher ("Co-Debtor").

27. **14-22528-E-13 GW-3** | **ERNST/KATHARINE GARTNER** **Gerald White** | **MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTORS ATTORNEY(S)** **10-6-17 [49]**

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2017. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The court, *sua sponte*, shortens the time for notice to the thirty-two days given. Because this does not merely seek approval of just interim fees of less than $1,000.00, but the final allowance of fees which total $6,945.00, the application is for that higher amount, necessitating the full notice as required under Federal Rule of Bankruptcy Procedure 2002 and the Local Bankruptcy Rule 9014-1(f)(1) or (2).

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

The Motion for Allowance of Professional Fees is granted.

Gerald White, the Attorney ("Applicant") for Ernst Gartner and Katharine Gartner, the Chapter 13 Debtor ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 23, 2015, through September 16, 2017. Applicant requests fees in the amount of $705.00.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on October 11, 2017. Dckt. 54.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R.

103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization

to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include post-confirmation case management. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 2.35 hours in this category. Applicant communicated with Client, the Chapter 13 Trustee, and creditors after plan confirmation.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Gerald White, attorney	2.35 hours	$300.00	$705.00
	0	$0.00	$0.00
	0	$0.00	$0.00

	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$705.00

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

Application	**Interim Approved Fees**
First Interim	$6,240.00
	$6,240.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$6,240.00

Costs & Expenses

Pursuant to prior interim applications, the court has allowed costs of $281.00.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $705.00 and prior Interim Fees in the amount of $6,240.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds] in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Prior Interim Costs in the amount of $281.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees $705.00

pursuant to this Application and prior interim fees of $6,240.00 and interim costs of $281.00 as final fees and expenses pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gerald White ("Applicant"), Attorney for Ernst Gartner and Katharine Gartner, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald White, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $705.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.
>
> The fees and costs pursuant to this Motion, and fees in the amount of $6,240.00 and costs of $281.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

28. 17-24229-E-13 DEBORAH LEONEL MOTION TO CONFIRM PLAN
PLG-1 Steven Alpert 9-21-17 [20]

Final Ruling: No appearance at the November 7, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2017. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Deborah Leonel ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on October 16, 2017. Dckt. 28. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Deborah Leonel ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 21, 2017, is confirmed. Debtor's Counsel shall

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

29. 17-25942-E-13 DPC-1 **FIAZ JAVED** **Robert McCann** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **10-5-17 [32]**

Final Ruling: No appearance at the November 7, 2017 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 5, 2017. By the court's calculation, 33 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 exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Fiaz Javed's ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140(b)(2)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed and that several claimed exemptions listed incorrect exemption codes (for example, household items not listed on Schedule B, property repairs, a combination of household goods and electronics, and incorrect tools of the trade). The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

IT IS ORDERED that Objection is sustained, and all of the claimed exemptions stated on Schedule C, Dckt. 6, are each disallowed in their entirety.

30. 17-25557-E-13 DPC-1 | **ERIC FRAZIER** / **David Foyil** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **10-4-17 [20]**

Final Ruling: No appearance at the November 7, 2017 hearing is required.

The Objection to Confirmation of Plan is dismissed without prejudice.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on October 17, 2017, Dckt. 31; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Eric Frazier ("Debtor"); the Ex Parte Motion is granted, the Chapter 13Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection to Confirmation of Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 31, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is dismissed without prejudice.