

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 10, 2020 at 2:00 p.m.

1. **18-26402-E-13** **DENNIS/ROBIN COBB** **MOTION TO MODIFY PLAN**
MET-5 **Mary Ellen Terranella** **9-9-20 [71]**

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—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 September 9, 2020. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Dennis

Samuel Cobb and Robin Karen Cobb (“Debtors”), have filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response stating that Trustee does not oppose this Motion. Dckt. 83. However, Trustee will file a new Motion to Dismiss if a copy of Debtor’s 2019 tax returns is not provided by the date of this hearing.

At the hearing, **XXXXX**

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Dennis Samuel Cobb and Robin Karen Cobb (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on September 9, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 27, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee") filed an original objection on September 23, 2020 opposing confirmation. Dckt 20. In the original objection, Trustee opposed confirmation of the Plan on the basis that the Debtors failed to provide proof of his social security number and that Debtors may not have listed all of their assets on Schedule A/B. *Id.*

On October 27, 23030, Trustee filed an amended objection (Dckt. 36) and opposes confirmation of the Plan on the basis that:

- A. Payments may not be feasible.
- B. Chapter 13 Documents are inaccurate.

DISCUSSION

Trustee's objections are well-taken.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the Meeting of Creditors that Debtors have funds held in escrow for the Napa Auto Parts portion of their business that was sold for approximately \$125,000.00 to Napa. Debtors also admitted that Umpqua's Bank UCC-1 lien against the parts was creating an obstacle from allowing the escrow to close and complete the sale. Debtors have not reflected the sale, the auto parts accounts receivable, or the auto parts as assets in the Schedules or the Statement of Financial Affairs. Trustee and Creditor has requested copies of the escrow paperwork.

Additionally, at the Meeting of Creditors, Debtors admitted that they have tools and equipment for another auto care business that Debtors are currently operating and these assets have not been listed in their schedules. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Chapter 13 Documents are Inaccurate

Schedule B indicates that Debtors may not have listed all their assets. Questions #6 (household goods), #7 (electronics), #12 (jewelry), 316 (cash), #17 (bank accounts), and, #37 (business-related property), state "No". Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The "mere" inaccuracies in the Schedules are not insignificant. The original Schedules were presented and stated to be true and accurate under penalty of perjury. It is not clear that Debtors' revelation at the First Meeting of Creditors were Debtors realizing that there was a simple "clerical error" with substantial assets left off the Schedules or that creditors had advised the Trustee of the information and the jig was up for Debtors. Going forward in the case, the court will have to carefully consider the credibility of testimony by these Debtors, and each of them.

Additionally, with respect to the inaccurate information, the Chapter 13 Trustee reported that

XXXXXXX

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

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

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

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

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

3. [20-23804-E-13](#) **MARVIN/JEANINE BURGESS** **CONTINUED OBJECTION TO**
[RDW-1](#) **Douglas Jacobs** **CONFIRMATION OF PLAN BY**
CREDITOR UMPQUA BANK
9-24-20 [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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 24, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on November 5, 2020. Dckts. 44, 41. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

4.	<u>20-24105-E-13</u> SHELLY DESHAN <u>DPC-1</u> Michael Haysd	AMENDED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 10-23-20 [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 October 23, 2020. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

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

The hearing on the Objection to Confirmation of Plan is XXXXX.

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an original objection on September 9, 2020 opposing confirmation. Dckt. 28. Trustee opposed confirmation on the basis that the Debtor was delinquent in plan payments, Debtor’s plan relied on a Motion to Value Collateral, and Debtor filed two Chapter 13 plans with the court that appeared to be identical. *Id.*

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

- A. Creditor with secured claim should not be under Class 4.
- B. Debtor filed two plans.

DISCUSSION

Trustee's objections are well-taken.

Failure to Cure Projected Escrow Shortage of Creditor

Select Portfolio Services, ("Creditor") holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$1,279.18 in pre-petition arrearage. The arrearage is based on a projected escrow shortage. The Plan treats the Creditor as a Class 4 Creditor and Debtor will be making direct payments to the Creditor in the amount of \$812.34 per month. Trustee asserts that based on the delinquency, this creditor should be treated as a Class 1.

Debtor filed a Response to Trustee's Amended Objection to Confirmation of the Plan on October 26, 2020. Dckt. 37. Debtor argues that there is no delinquency but a "projected escrow shortage" which "should not result in a Debtor forced to have their mortgage in Class 1 when they are actually current with their regular mortgage payment." *Id.*, at 2.

This response raises a significant issue. The Trustee points to Proof of Claim No. 3-1 (misidentified as Proof of Claim 3-2 in the Objection), stating that Select Portfolio Servicing, Inc. (its representative) states under penalty of perjury that there is a \$1,279.18 pre-petition arrearage that must be cured.

Looking at Proof of Claim No. 3-1, the Creditor stating that there is a pre-petition arrearage is Athene Annuity and Life Company. Proof of Claim 3-1 is signed under penalty of perjury by Robert Zahradka, Esq., as the Attorney for Creditor. Select Portfolio Servicing, Inc. is merely the entity to which notice is to be sent for Creditor and where the payments to be made to creditor are to be sent.

The Attorney for Creditor and Creditor clearly state under penalty of perjury:

Amount necessary to cure any default as of the date of the
petition: \$1,279.18

Proof of Claim 3-1, § 9.

This statement of there being a pre-petition arrearage that must be cured is not "merely" made under penalty of perjury but also:

A person who files a
Fraudulent claim could be
Fined up to \$500,000,
Imprisoned for up to 5
Years, or both.
18 U.S.C. §§ 152, 157, and
3571.

Proof of Claim 3-1, Part 3.

In the Response, Debtor walks the court through the attachment to Proof of Claim No. 3-1 to show that the statement of there being a pre-petition arrearage of \$1,279.18 is a false statement under penalty of perjury, and that such amount is for a future, “Projected escrow shortage.” However, even on the portions of the attachment to Proof of Claim 3-1, it clearly states a “Total prepetition arrearage: \$1,279.18.”

By doing so in the Proof of Claim, such asserted prepetition arrearage amount controls, unless otherwise ordered by the court. Plan ¶ 3.02. The proceeding in which the court would order otherwise would be an objection to claim.

Thus, if Debtor is correct and the statement of a pre-petition arrearage is false, then Debtor will be put to the significant cost and expense of having to prosecute an objection to claim. While an initial expense to Debtor, presumably the Note and Deed of Trust upon which the claim is based has an attorney’s fee provision, which provision is made reciprocal under California Law (Cal. Civ. § 1717). At the end of the day, it would be creditor who will have to pay all of those attorney’s fees and costs if Debtor is correct.

Additionally, if Debtor is correct and the stated under penalty of perjury pre-petition arrearage is actually some future post-petition amount that will only be due in the future, more significant issues arise. First, those statements were made under penalty of perjury. Second, if it is done in this case, in how many other cases does this and other creditors misstate that there is a pre-petition arrearage, and then “double collect” the amount—getting paid for the alleged pre-petition arrearage and then raise the monthly payment in the future for the same “arrearage.”

Thus, it appears that the hearing needs to be further continued to allow Debtor to prosecute a claim objection, including seeking to recover all attorney’s fees and costs as permitted under applicable law.

This makes the court wonder if such has been reported to the U.S. Trustee and the Department of Justice, and whether there are any public statements about any ongoing investigations or review. At the hearing, the Chapter 13 Trustee, **XXXXXXXX**

Two Plans Filed

Debtor filed two Chapter 13 Plans with the Court, which are both identical. Dckt. 8, Dckt. 22. Debtor admitted at the First Meeting of Creditors, that the Plan filed on October 5, 2020, (Dckt. 22), was done in error and was meant to be an exhibit to accompany the Motion to Value Collateral. On October 9, 2020, Debtor filed Debtor’s Notice of Withdrawal to withdraw the Chapter 13 Plan that was filed on October 5, 2020. Dckt. 26. Trustee asserts that the filing of a subsequent plan is usually a de facto withdrawal of the previous plan and that as a result, there is no plan pending for the Debtor. Dckt. 33.

In reply, Debtor’s Attorney asserts that his “understanding is that a copy of the plan is supposed to be served on the creditor when a motion to value collateral is being filed and [he] mistakenly filed it again with the Court instead of just showing on the Proof of Service by Mail that a copy was being served on the creditor as part of the supporting documents.” Dckt. 37, at 2. Debtor’s

Attorney states, “no one else was served with a copy other than the creditor in the motion and their designated agent.” *Id.*

A review of the docket shows that Debtor filed a Notice of Withdrawal on October 9, 2020 explaining the error regarding the plan filed on October 5, 2020 and indicating that the plan filed on August 27, 2020, Dckt. 8, was the still operative plan. Dckt. 26.

The court finds that for the benefit of judicial economy, Debtor has properly explained the error via the Notice and the Response to this instant objection, and both plans being identical, there is no good cause for Debtor to have to refile a plan and a motion, and set it for hearing.

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

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

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

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

~~————— **IT IS ORDERED** that the Objection is overruled, and Shelly Kay Deshan’s (“Debtor”) Chapter 13 Plan filed on August 27, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2020. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Danny Lee Kelly and Marisa Leigh Kelly (“Debtor”) seek confirmation of the Modified Plan because of loss of income from Debtor being unable to work due to a disability. Declaration, Dckt. 21. The Modified Plan provides monthly plan payments of \$2,000.00 for months 1 through 7, followed by monthly plan payments of \$1,000.000 for 53 months, and a 12.50 percent dividend to unsecured claims totaling \$66,114.99. Modified Plan, Dckt. 23. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 21, 2020. Dckt. 26. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan will complete in more than the permitted 60 months.

DISCUSSION

Failure to Complete Plan Within Allotted Time

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, the Plan will complete in 69 months due to the \$60,762.00 that remains to be paid through the proposed plan including Trustee fees. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor filed a Response on November 3, 2020 proposing an increase in the monthly plan payment to \$1,175 effective November 2020 after conferring and confirming with Trustee's counsel that this increase would resolve the objection. Dckt. 29. Debtor also informs the court that after the filing of the instant Motion, Debtor was approved to receive Social Security weekly payments of \$450.00 as a result of his payment disability. *Id.*, at 2.

At the hearing, Counsel for Debtor clarified that the increase in plan payment was for the 53 months that the original plan listed as having a \$1,000 plan payment **XXXXXXXX**

Debtor increasing the monthly payment to \$1,175 for 53 months, the Modified Plan as amended complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Danny Lee Kelly and Marisa Leigh Kelly ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 1, 2020, as amended,

monthly plan payments of \$1,175 for 53 months

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

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

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, and Office of the United States Trustee on October 13, 2020. By the court’s calculation, 28 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 Loan Modification is XXXXX.

The Motion to Approve Loan Modification filed by Carrington Mortgage Services, LLC (“Creditor”) seeks court approval for Becky Marie Hayes (“Debtor”) to incur post-petition credit. Carrington Mortgage Services, LLC whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$1,344.67 per month to \$1,343.69 per month.

The Motion is supported by the Declaration of Terrence Morley, Director of Carrington Mortgage Services, LLC. Dckt. 27. The Declaration states that the loan modification provides for the capitalization of arrearage into the principal balance of the loan and a deferred principal balance and that “approval of the loan modification will only benefit the Debtor and will not prejudice the rights of any other party in interest.” *Id.*

On October 27, 2020, the Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition. Dckt. 32. Trustee opposes on the basis that Debtor has failed to file Supplemental Schedules I and J with the Court demonstrating that Debtor can afford the payment and that Trustee is unable to ascertain whether the loan modification is beneficial to Debtor as the motion is silent as to the exact terms of the loan modification. *Id.* Trustee further notes that the motion having been filed by Creditor, it is unclear if Debtor wishes to have this loan modification approved.

While the court appreciates the efficiencies of the creditor bringing the Motion. However, is

unclear as to why Debtor is not the party jointly filing for the approval of this loan modification, why Debtor is nowhere to be seen by providing a declaration testifying as to the modification, or why Debtor's counsel has not filed a statement in support of the Motion..

A review of the Loan Modification Agreement filed as Exhibit 1 in support of the motion, provides for monthly mortgage payments of \$1,343.69 starting September 2020 with a fixed interest rate of 4.5 percent. Dckt. 28, at 4. Debtor signed the agreement on August 6, 2020. *Id.*, at 10.

At the hearing, **xxxxx**

~~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 Becky Marie Hayes ("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 Becky Marie Hayes to amend the terms of the loan with Carrington Mortgage Services, LLC ("Creditor"), which is secured by the real property commonly known as 1755 Blue Heron Court, Gridley, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dekt. 28).~~

**The Court Posts This as a Tentative Ruling to Afford
the Trustee the Opportunity to Document on the Record
Concurrence with The Proposed Amended Terms**

**No Appearance is Required Unless Counsel Has Issues
to Address Concerning the Tentative Ruling**

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 July 21, 2020. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Amended 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 Amended Plan, as amended at the final hearing, is granted.

The debtor, Ignacio Gonzalez Lopez (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$4,130.00 commencing August 2020 through month 60, and a 100 percent dividend for unsecured claims totaling \$21,000.00. Amended Plan, Dckt. 167. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 3, 2020. Dckt. 179. Trustee opposes confirmation of the Plan on the basis that:

- A. Class 1 creditor may have received double payments.
- B. Total amount paid into the Plan is incorrect.

DISCUSSION

Class 1 Creditor

The Non-Standard Provisions of the proposed Plan state in part: "The Payment to US Bank in class 1 shall commence in August, 2020 through month 60 because debtor has made direct payments to US Bank from filing date through July, 2020."

According to Trustee, his records show having paid a total of \$28,715.04 in mortgage payments to US Bank Home Mortgage. The Debtor's Declaration and the non-standard provisions do not specify the months Debtor paid US Bank directly. Thus, it appears that this creditor may have received duplicate payments.

Total Amount Paid into the Plan

Debtor's Non-Standard provisions states Debtor has paid a total of \$41,370, where Trustee's records show that Debtor has paid a total of \$43,550.00 into the Plan. Trustee would not object to correcting the total amount in the order confirming plan.

At the hearing, the Trustee concurred with a continuance to allow for the Debtor to propose necessary amendments to the plan in this case.

Debtor's Status Report

On September 22, 2020, Debtor filed a Status Report informing the court that Trustee and Debtor have reached a solution for the language of the proposed Order confirming the Plan, which is now waiting for the approval of secured creditor's attorney. Dckt. 190. Debtor expects the proposed order to be filed prior to the continued hearing.

September 29, 2020 Hearing

At the hearing, neither Counsel for Trustee nor counsel for the Trustee could tell the court the language that was to be included in the order confirming the plan. The court continued the hearing to allow them time to document and become aware of such language.

October 20, 2020 Hearing

As of the court's review of the docket at the time of drafting this tentative ruling, no further documents have been filed with the court.

At the hearing, counsel for the Trustee reported that the Debtor is current in payments and it continues to be represented that there is an agreement with the creditor to confirm the plan. However, the represented order form stating the amendments has not been presented to the court as an exhibit.

Counsel for the Debtor was scheduled to appear, but then his line dropped from CourtCall. Said counsel did not appear for any matters on the day's calendar.

November 2, 2020 Supplemental Statement

Debtor filed a Supplemental Statement informing the court that Debtor and Trustee have reached an agreement on the following language for the order confirming the plan:

1. The debtor shall immediately notify, in writing, the Clerk of the United States Bankruptcy court and the trustee of any change in the debtor's address;
2. The debtor shall immediately notify the trustee in writing of any termination, reduction of, or other change in the employment of the debtor; and
3. The debtor shall appear in court whenever notified to do so by the court.
4. Attorney's fees for the debtor's attorney in the full amount of \$6,000 are approved, \$3,000 of which was paid prior to the filing of the petition. The balance of \$3,000, provided that the attorney and debtor have complied with Local Bankruptcy Rule 2016-1 (c), shall be paid by the trustee from plan payments at the rate specified in the confirmed plan.
5. Section 7.1 of the additional provisions of the plan states that: "The total payments through July 2020 shall be \$41,370" The plan is hereby amended to correct that number to \$43,550.
6. Section 7.3 of the additional provisions of the plan states that: "The payment to US Bank in class 1 shall commence in August, 2020 through month 60 because debtor has made direct payments to US Bank from filing date through July, 2020. The plan is hereby amended to correct that statement to say: The payment to US Bank in Class 1 will be paid by the Trustee to the Creditor, US Bank for the entire life of the plan. Regardless of the Relief from the Automatic Stay that was entered on 1/14/2020 at Docket #99, the Trustee is authorized to make the payments to the creditor pursuant to the plan and the Creditor is obligated to post them to the Debtor's account.

Exhibit A., Dckt. 199.

Debtor further requests that the court vacate the November 10, 2020 Hearing.

At the hearing, XXXXXXXXXXXXXXXXXX

The Amended Plan, as further amended according to Exhibit A, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Ignacio Gonzalez Lopez (“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 July 21, 2020, as amended according to Exhibit A, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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, parties requesting special notice, and Office of the United States Trustee on September 26, 2020. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Seyran Aramyan (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$200.00 for 60 months, and a 3.02 percent dividend to unsecured claims totaling \$285,362.00. Amended Plan, Dckt. 22. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 27, 2020. Dckt. 29. Trustee opposes confirmation of the Plan on the basis that Debtor may not be able to afford the plan payment.

DISCUSSION

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that Debtor does not have any expenses for electricity, heat, natural gas, water, sewer, or garbage collection. *See* Dckt. 1. Additionally, it is unclear whether Debtor has paid the

\$500.00 expense for rent in the 90 days before filing. *Id.*

Lastly, Debtor has a \$300.00 transportation expense but does not own a car. *Id.* Debtor has leased a 2019 BMW but it is not assumed by the plan. *Id.* Moreover, Debtor has an interest in a 2010 Mazda that has been listed as surrendered. *Id.* Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a Response on October 28, 2020. Dckt. 32. In support of the Response, Debtor also filed a Declaration and the Declaration of the Debtor's son. Dckts. 34, 35. Debtor asserts that there is no expense for electricity, heat, or natural gas because Debtor's son, who resides in the same residence, makes the payments for these utilities. Declaration, Dckt. 34, ¶¶ 3-4. Debtor has also been making the \$500.00 monthly rent payment to his son. *Id.*, at ¶¶ 5-6. Lastly, Debtor will use his son's 2010 Mazda 6 Sedan 4D and spends an average of \$300.00 per month on fuel, maintenance, and registration for this vehicle. *Id.*, at ¶¶ 7-8. Debtor will use his son's Mazda 6 Sedan 4D for the duration of this plan and will be surrendering the 2019 BMW 4 Series 430 I Gran Coupe Sedan 4D to the lender. *Id.*, at ¶¶ 9-10.

Debtor's son testifies under penalty of perjury that Debtor pays him \$500 a month for a room and that utilities are included as part of that rent payment. Dckt. 35 *Id.*, at ¶¶ 2-3. The monthly rent helps the son make his mortgage payment. *Id.*, at ¶ 4. Debtor's son also testifies that Debtor has been allowed to use the Mazda for the duration of the plan and Debtor is in charge of paying for fuel, maintenance and registration. *Id.*, at ¶¶ 5-6.

At the hearing, **XXXXX**

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Seyran Aramyan ("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 26, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 13, 2020. By the court's calculation, **28 days' notice was provided**. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At the hearing, **XXXXXXX**

The Motion for Approval of Compromise 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 for Approval of Compromise is **XXXXX.**

Daniel Martin Furlong and Karen Marie Furlong, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Crystal Silva ("Settlor"). The claims and disputes to be resolved by the proposed settlement are a personal injury action where Debtor was rear-ended in a motor vehicle collision by Settlor, with the settlement agreement dictating that Settlor's automobile liability insurance will tender its policy limits.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 2 in support of the Motion, Dckt. 28):

- A. The Debtor shall receive \$15,000.00 which will be apportioned between Penney and Associates (\$5,053.00), the Rawlings Company (\$2,616.31), and Debtor (\$7,305.69).

- B. The Debtor shall release and discharge Settlor, and her principal, agents, representatives, and assigns, from any claims, rights, demands, and damages of any kind, related to the motor vehicle collision that occurred on or about March 14, 2018.

Trustee filed a Non-Opposition to Debtor's Motion to Approve the Settlement on October 28, 2020. Dckt. 30.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant argues that although there is a strong likelihood of success, there is still a risk of loss. Furthermore, prolonged litigation would have greatly depleted any award given by the jury or future settlement offer to an amount less than what it currently offered.

Difficulties in Collection

Movant asserts that a collection of anything more than the offered policy limit of \$15,000.00 may be difficult because the financial situation of the Settlor is unknown. Anything above the offered policy limits of \$15,000.00 would have to be collected directly from the defendant and this could turn expensive and lead to no further funds.

Expense, Inconvenience, and Delay of Continued Litigation

The litigation involved would require factual discovery, document production, deposition of

multiple parties, and expert witness testimony. Movant argues that completion of this case would likely take months or years to resolve, and will result in significant expense.

Paramount Interest of Creditors

It is in Creditors' best interests that the settlement is reached for it avoids protracted litigation. Furthermore, the Settlement Agreement allows the possibility of pursuing an underinsured motorist claim that will likely allow for payment of substantial non-exempt proceeds to creditors.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it avoids protracted litigation and maximizes the amount that the Debtor will recover. The Motion is granted.

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

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

~~The Motion to Approve Compromise filed by Daniel Martin Furlong and Karen Marie Furlong, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Crystal Silva ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 2 in support of the Motion (Dckt. 28).~~

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 4, 2020. By the court's calculation, 42 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Objection to Proof of Claim Number 5 of The Bank of New York Mellon is
XXXXX.**

Paul Wilson and Jessica Lucia Mainvoille-Wilson, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of The Bank of New York Mellon ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$275,005.92.

Objector asserts that Creditor's proof of claim should disallowed in its entirety and objects specifically to Creditor's escrow charges, amount of pre-petition arrearage, and "FC" costs.

Creditor filed an Opposition on September 1, 2020. Dckt. 62. The Opposition is discussed below.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Debtor explains that prior to filing, they requested an accounting of payments to Creditor from their credit union, The Golden One Credit Union. Debtor provides a copy of this accounting as Exhibit B. Exhibit B is a letter dated August 28, 2019 with a series of transactions made by Debtor Jessica to "Shellpoint Mort" for payments of \$1,022 on different dates during the years 2018 (September through December) and 2019 (January through July).

According to Debtor, the accounting shows that Debtor made payments of \$1,022.00 between September 2018 and July 2019, except for a \$1,539.90 in April 2019. Between February and October 2019, Debtor made payments totaling \$7,671.00 to Shellpoint Mortgage. Thus, according to Debtor, the total owed in arrearage in both principal and interest should be \$3,065.31, not \$9,195 as Creditor's Proof of Claim states.

Issues Identified by Debtor and Responses

Creditor has filed an Opposition to the Objection to the Claim, asserting in large part that the *prima facie* evidentiary value of Proof of Claim 5-1 has not been overcome. Dckt. 62. As of the filing of the Opposition, Creditor stated that it was in the process of reviewing its records and requests additional time for discovery.

The Debtor identifies several other objections to the Proof of Claim filed by Creditor. First, Debtor alleges that not all payments shown in the Proof of Claim have been applied to the loan. In particular, Debtor questions the amount on hand (\$865.44) versus the application of payments on October 23, 2019. Debtor notes that according to the Proof of Claim, there were \$865.44 on hand as of the date of the petition; however, the Creditor applied four (4) payments of \$1,331.75 on October 23, 2019; two days after the petition was filed.

Creditor responds that it is industry standard to hold in suspense any payments made after the recording of the Notice of Default. Because of this practice in anticipation of the foreclosure, Creditor did not apply the \$6,192.44 into Debtor's account. After the filing of the bankruptcy, the funds were applied, only leaving \$865.44 in suspense.

Second, Debtor alleges that Creditor's Proof of Claim fails to provide evidence as to the "FC Costs." According to Debtor, Creditor applies unexplained "FC costs" in the amount of \$1,781.25: late

charges totaling \$153.27, recording costs of \$199.00, and certified mail costs of \$74.70.

Here, Creditor contends that Debtor does not provide evidence to refute the amounts listed and explains that “FC costs,” presumed abbreviation for foreclosures costs, are the actual, reasonable costs incurred by Creditor for recording and publishing the Notice of Default and Notice of Sale.

Third, Debtor alleges that they maintain hazard insurance and made the property tax payments. The Proof of Claim states that the Debtor owed four (4) escrow payments of \$309.98 prior to the filing of the Debtors’ bankruptcy petition. Debtor argues that Creditor fails to show what these delinquent escrow payments are for. Debtor maintains their own hazard insurance on the subject property and pay the real property taxes to the Sacramento County Tax Collector semi-annually.

Debtor provides a copy of the receipt for the real property taxes paid as Exhibit C. The receipt appears to be a web page printout purported to be of the Sacramento County Tax Collector with a tax payment of \$1,913.01 with a posted date of October 30, 2018.

Debtor requests an accounting from Creditor showing that it has incurred insurance or real property taxes on the subject property.

As for this part of the objection, Creditor points to the Proof of Claim. Creditor argues that the Proof of Claim provides an escrow analysis which documents the escrow deficiency and calculated shortage.

FURTHER PROCEEDINGS AND DISCOVERY

It appears that the disputes relate to factual items that can be easily proven. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

“Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is “deemed allowed,” the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more.”

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that

offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

At the end of the day, if there is evidence of a dispute, the creditor has the burden of proof. Here, it appears that Creditor is claiming taxes and insurance amounts that Debtor provides evidence supporting Debtor's contention that Debtor has actually paid them.

Proof of Claim No. 5-1 is signed by Daniel Fujimoto, Esq., an attorney with the Wolf Firm in Irvine, California. It appears that it is not signed by someone employed by Creditor who would have personal knowledge of the claim. The attachment to Proof of Claim No. 5-1 includes various documents that Creditor has a claim and that it has a security interest - which Debtor has not disputed. It also includes a chart prepared by someone at the Creditor showing various payments, charges and "FC costs." Debtor has presented evidence disputing these amounts.

October 20, 2020 Hearing

As of the court's review of the docket at the time of drafting this tentative ruling, no further documents have been filed with the court.

At the hearing, Debtor's counsel reported that an amended proof of claim last week. The hearing is continued to allow Counsel to review it with his client and, if it resolves all issues, dismiss the objection.

November 10, 2020 Hearing

As of the court's November 7, 2020 review of the docket, no further documents have been filed regarding this objection.

At the hearing, **XXXXXX**

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—No Opposition Filed.

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 27, 2020. By the court's calculation, **14 days' notice was provided**. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Westlake Services, LLC
("Creditor") is ~~XXXXX~~.**

The Motion filed by Karen Patrice Blakley ("Debtor") to value the secured claim of Westlake Services, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 38. Debtor is the owner of a 2013 Kia Optima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$9,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Notice of Motion and Proof of Claim Filed By Creditor

The Notice of Hearing for this Motion was filed on October 27, 2020, for the hearing on November 10, 2020. The Notice states that notice is given as provided in Local Bankruptcy Rule 9014-1(f)(1) and that written opposition must be filed fourteen days before the November 10, 2020 hearing

date. That would be that opposition would have to be filed the day the Notice was filed. Providing notice using Local Bankruptcy Rule 9014-1(f)(1) requires at least twenty-eight days notice be provided.

Local Bankruptcy Rule 9014-1(f)(2) allows for a fourteen day notice period, as was given here, but no written opposition in advance of the hearing is required.

Looking at the Notice, there is another clerical error, in which the Notice states that the hearing will be conducted on October 20, 2020 (conflicting with the hearing date information included in the caption section of the first page of the Notice. The clerical error appears to have arisen in that the notice form used was one for a prior motion that was set for hearing on October 20, 2020, which Movant dismissed due to a potential error in service. Civil Minutes, Order; Dckts. 32, 34.

Normally, the court will deny without prejudice a motion with this type of noticing error. However, in looking at the Creditor's proof of claim it appears that this may be something that the parties have resolved in advance.

Creditor filed Proof of Claim 9-1 for the obligation secured by the Vehicle. The Proof of Claim states that the amount of the claim is \$17,304.81. POC 9-1, ¶ 6. The value of the motor vehicle securing the claim is stated to be \$10,318.00 (which is less than the amount that Movant values it). *Id.*, ¶ 9.

But then Proof of Claim 9-1 states that the "amount of the claim that is secured" is \$17,304.81, and the "Amount of the claim that is unsecured" is \$0.00. *Id.* It further states that the annual interest rate on this claim is Twenty-Nine Percent (29%).

It appears that Proof of Claim 9-1 contains a clerical error, in that a secured claim in bankruptcy is that portion for which there is value in the collateral securing the claim, and unsecured for the balance. *See* 11 U.S.C. § 506(a), for which there are exceptions which do not appear to be applicable here. The auto purchase contract for the Vehicle in 2016 from CarMax Auto Superstores, California with a Twenty-Nine Percent (29.79%) states that it was entered into April 19, 2016., which is 1,545 days prior to the commencement of this case.

Presumably, Creditor Westlake Financial Services was intended to state a secured claim of only \$10,318.00, and when it stated that the full amount is secured, which is not consistent with federal law, such was an inadvertent error.

At the hearing, **XXXXXXX**

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on April 19, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,304.81. Proof of Claim, No. 9-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$9,000.00, 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 Karen Patrice Blakley (“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 Westlake Services, LLC (“Creditor”) secured by an asset described as 2013 Kia Optima (“Vehicle”) is determined to be a secured claim in the amount of \$9,000.00, 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 \$9,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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

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

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 August 26, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXX.

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

- A. Debtor failed to provide tax returns.
- B. Debtor Plan term exceeds 60 months.
- C. Debtor failed to file a Motion to Value the Secured claim.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

At the meeting of creditors, Debtor failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. §521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Meeting of Creditors was continued to September 10, 2020 at which time Debtor must provide Trustee with copies of her tax returns.

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 73 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Westlake Financial Svcs. Debtor has failed to file a Motion to Value the Secured Claim of Westlake Financial Svcs, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Trustee reported that the First Meeting has been concluded, a motion to value is set for October 20, 2020.

The Trustee concurred with Debtor's counsel in requesting the hearing be continued and conducted in conjunction with the hearing on the Motion to Value.

October 20, 2020 Hearing

Debtor's Motion to Value the Secured Claim of Westlake Services, LLC, set to be heard October 20, 2020, was dismissed without prejudice so the Debtor could refile it and insure that proper service was made on the creditor.

The Trustee agreed to continue the hearing on the Objection to allow Debtor to prosecute the Motion to Value before the court ruled on the Objection.

November 10, 2020 Hearing

Debtor filed a Motion to Value the Secured on October 27, 2020. Dckt. 36. The motion has been set for hearing on ~~November 10, 2020 at 10:00 a.m.~~ Debtor's Motion was granted at the valuation requested of \$9,000.

At the hearing, **XXXXXX**

~~The proposed Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325, and the Motion is~~

~~granted 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 Motion to Confirm the Chapter 13 Plan filed by the debtor, Karen Blakely ("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 ~~xxxxxxx~~, and Debtor's Chapter 13 Plan filed on July 11, 2020, as amended to provide ~~xxxxxxx~~, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, ~~which states the above amendment~~, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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 15, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. The Plan will complete in more than the permitted sixty months.
- B. Debtor cannot comply with the Plan.
- C. Debtor's Attorney Fee is unclear.
- D. Debtor failed to provide pay advices and tax returns.
- E. Debtor failed to disclose a prior bankruptcy case.

DISCUSSION

Trustee's objections are well-taken.

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 106 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meeting of Creditors that the telephone expense of \$2,000.00 per month on Schedule J will be amended since this was an expense for cell phone that their son bought using their credit card and is not a normal monthly expense. No Amended Schedule J has been filed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Attorney Fee is Unclear

The Plan provides that "Debtor's attorney was paid \$0.00 prior to the filing of the case. Subject to prior court approval, additional fees of \$4,000.00 shall be paid through this plan." Dckt. 2. Additionally, Section 3.06 provides that \$200.00 of each monthly plan payment "shall be paid on account of: (a) compensation due a former Chapter 7 Trustee; (b) approved administrative expenses; and (c) approved attorney's fees." *Id.*

The Statement of Rights and Responsibilities indicated that initial fees charged in this case are \$4,000.00 and of this amount, \$0.00 was paid by the Debtor before the filing of the petition. Dckt. 3. The Disclosure of Compensation of Attorney for Debtor indicates that for legal services, the attorney has agreed to accept \$0.00, prior to the filing of this statement the attorney has received \$0.00, and the balance due is \$4,000.00.

Therefore, Trustee asserts that it cannot determine if the Debtor's attorney is charging a flat fee, seeks any fees through the Plan, or if there is a balance due. Absent an amended 2016(b) Statement, the Trustee will oppose any fee award.

At the hearing, **XXXXXXX**

Failure to Provide Pay Advices

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

Failure to Provide Tax Returns

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

Bad Faith: Failure to Disclose Prior Bankruptcy Case

Trustee reports that Debtor failed to disclose three prior bankruptcy cases (Case No. 16-22157, filed on April 5, 2016; Case No. 17-22209, filed on April 3, 2017; Case No. 17-28427, filed on December 31, 2017) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor reported 1 case (Case No. 19-23735), but Debtor did not report Case Nos. 16-22157, 17-22209, and 17-28427.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 21, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan term will complete in more than sixty months.

DISCUSSION

Trustee's objections are well-taken.

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 101 months due to claims being filed for amounts higher than the Debtor had scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

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, parties requesting special notice, and Office of the United States Trustee on October 6, 2020. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Denise Barker (“Debtor”) seeks confirmation of the Modified Plan to “account for the higher than anticipated proofs of claims.” Dckt. 55. The Modified Plan provides for monthly plan payments of \$1,960.00 for month 27 through month 60, and a 100 percent dividend to unsecured claims totaling \$10,774.14. Modified Plan, Dckt. 59. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 21, 2020. Dckt. 63. Trustee opposes confirmation of the Plan on the basis that:

- A. The reason for modification is unclear.
- B. Treatment of JP Morgan Chase Bank, NA
- C. Debtor may not be able to afford the plan.

DISCUSSION

Reason for Modification is Unclear

Trustee claims that the modification may not be proposed in good faith because the Debtor proposes to reduce future payments from \$2,700.00 to \$1,960.00, without a reasonable explanation.

Debtor filed a response on October 27, 2020. Dckt. 66. Debtor asserts that while the initial plan payment was \$2,700.00 per month, subsequent to the filing of this modified plan, on January 19, 2019, the Trustee sent a letter which reduced the plan payment to \$1,582.12. Exhibit C, Dckt. 67. Therefore, the Debtor responds that this plan modification increases the monthly plan payment from \$1,582.12 to \$1,960.00 per month. Dckt. 59.

At the hearing, **xxxxx**

JPMorgan Treatment

Trustee asserts that Debtor added a non standard provision regarding JP Morgan Chase Bank, NA, allowing relief from stay without a hearing. Further, Trustee points to the fact that Creditor was not served at the proper address, according to the Creditor's request for special notice.

In reply, Debtor asserts that the Debtor put in language concerning the non-standard provisions at the request of the Creditor. Dckt. 66, ¶ 2. Additionally, Debtor claims that Debtor changed the amount of debt owed to Creditor based on a letter from the Creditor and correspondence between Creditor and Debtor. *Id.* Debtor attaches an exhibit as an email and a letter but the exhibits were not properly authenticated as the declaration provided does not authenticate the email or letter.

With respect to this provision, the Parties have adopted a procedure used in some other courts in which they have a "private" procedure in which they self-adjudicate whether an order should be entered. Then, when the private adjudication has been completed, they deliver a order to the court with the instruction for the court to sign the order which they have determined must be entered.

This is inconsistent with the Federal Rules of Bankruptcy Procedure as adopted by the Supreme Court. No basis has been shown for the parties overruling the Supreme Court.

Fortunately, complying with the Rules promulgated by the Supreme Court will not add any significant work for the Parties. Federal Rule of Bankruptcy Procedure 9013 requires that if an order is sought from the court, then it must be requested by a motion (or application if the Rules so provide). In this situation, the court's procedure is to do as follows:

1. When the default has occurred and not been cured as provided by the parties;
2. Creditor files an *ex parte* motion for relief from the stay based on the default. The *ex parte* motion is supported by evidence of the default and failure to cure, which should be a very simple declaration from Creditor..
 - a. If there was a prior motion for relief from the stay, then the same

docket control number is used (thereby there not being a second required filing fee). If there was no prior motion for relief, then Creditor will have to file the *ex parte* motion, assign it a docket control number, and pay the filing fee.

- b. When the *ex parte* motion is filed, Creditor lodges with the court a proposed order granting the relief.
3. The court waits ten days from the filing and service before entering the order granting the requested relief. This is to afford the Debtor the opportunity to oppose the motion if, and only if, the allegations and evidence of default and failure to cure are not correct. No other issues are considered by the court with respect to the granting of relief as agreed by the parties.
4. If Debtor disputes that the default occurred, or if it occurred that it was not timely cured, Debtor must file an opposition, with supporting evidence, to the *ex parte* motion within ten days after it was filed and served, and set a hearing on the opposition for the first regular law and motion hearing date that is at least 21 days after the filing and service of the *ex parte* motion. The only issue for the hearing will be whether the default occurred, and if it occurred, whether it was cured within the 10 day period after the notice of default was given.

The court has found this procedure to comply with minimal compliance with Due Process (some documented notice and opportunity to address a request for the federal court to issue an order) and compliance with Federal Rule of Bankruptcy Procedure 9013.

At the hearing, **XXXXX**

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor filed a supplement to Schedule I and J on October 6, 2020. Dckt 61. Debtor's supplement to Schedule I (line 11), reflects a decrease in the amount of rent that Debtor collects. *Id.* Debtor originally collected \$1,500.00 in monthly rent (Dckt. 1) and the supplement reflects \$750.00 in monthly rent. Dckt. 61. Trustee asserts that Debtor has not provided "any supporting documentation to explain why one person is no longer paying rent and the other is paying a reduced rent." Dckt. 63. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In support of her response, Debtor filed a declaration testifying that Debtor's friend moved out, Debtor's son is contributing less rent, and that Debtor's former spouse continues to pay the same monthly rent payment. Declaration, Dckt. 68.

At the hearing, **XXXXX**

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

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

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

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Denise Barker (“Debtor²”) 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 **XXXXX**.~~

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 29, 2020. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 Plan is denied.

The debtor, Lander Green (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly plan payments of \$3,251.00 for sixty months, and a 44% dividend to unsecured claims totaling \$201,668.64. Plan, Dckt. 22. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 27, 2020. Dckt. 25. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to Appear at 341 Meeting.
- B. Debtor is delinquent in plan payments.
- C. Debtor has filed two identical plans.
- D. Debtor has failed to provide two domestic support obligations.

DISCUSSION

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by 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).

According to Trustee's Report, Debtor appeared at the continued Meeting of Creditors on November 5, 2020 and the meeting was concluded as to Debtor. Trustee's November 6, 2020 Docket Entry Statement.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,251.10 delinquent in plan payments, which represents one month of the \$3,251.10 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor has Filed Two Identical Plans

Debtor has filed two Chapter 13 plans with the Court, which appear to be identical. Dckt. 18, Dckt. 22. The Motion to Confirm the Plan and the Declaration filed in support of the Motion references the Chapter 13 Plan filed on September 21, 2020 (Dckt. 18). Declaration, Dckt. 23. However, an Amended Plan was filed on September 29, 2020. Dckt. 29. Furthermore, the Certificate of Service does not reference which Plan was served on the creditors.

Failure to Provide Domestic Support Obligation Checklist

Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist. Local Rule of Bankruptcy Procedure 3015-1(b)(6) provides, "the debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, Domestic Support Obligation Checklist[...]" Here, Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist.

The 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 Chapter 13 Plan filed by the debtor, Lander Green ("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 Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

17. [18-24658](#)-E-13 **WILLIAM FREEMAN/ CARLA** **MOTION TO MODIFY PLAN**
[CRG-4](#) **TAVORMINA FREEMAN** **9-22-20 [82]**
17 thru 18 **Carl Gustafson**

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 22, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtors, William Matthew Freeman and Carla Elise Tavormina Freeman (“Debtor”) seek confirmation of the Modified Plan to recover from the financial setbacks based on the birth of the Debtor’s twins. Declaration, Dckt. 85. The Modified Plan provides monthly plan payments of \$1,565.00 until the completion of the plan, and an eight (8) percent dividend to unsecured claims totaling \$265,000.00. Modified Plan, Dckt. 84. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 26, 2020. Dckt. 94. Trustee opposes confirmation of the Plan on the basis that:

A. The Motion is inconsistent with the Plan terms.

DISCUSSION

Inconsistencies between the Motion and Plan

Chapter 13 Trustee provides that the plan payment amount is inconsistent between the Motion and the Plan. Debtor's plan proposes that \$32,000.00 has been paid as of August 2020, then \$1,565.00 starting July 2020 for the balance of the Plan. Trustee notes that Debtor's have paid \$32,200.00 plus \$1,595.00 for the month of July. Further, the Plan proposes an eight (8) percent dividend to unsecured creditors, and the Motion provides for a 10 percent dividend to unsecured creditors. Trustee believes the plan will pay a ten (10) percent dividend.

At the hearing, **xxxxxxx**

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, William Matthew Freeman and Carla Elise Tavormina Freeman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on September 22, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. [18-24658-E-13](#) **WILLIAM FREEMAN/CARLA TAVORMINA FREEMAN** **MOTION FOR COMPENSATION FOR**
[CRG-5](#) **Carl Gustafson** **CARL R. GUSTAFSON, DEBTORS**
ATTORNEY(S)
9-23-20 [88]

Final Ruling: No appearance at the November 10, 2020 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 23, 2020. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Carl R. Gustafson, the Attorney (“Applicant”) for William Freeman and Carla Tavormina Freeman, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period January 24, 2019, through September 2, 2020. Applicant requests fees in the amount of \$6,785.00 and costs in the amount of \$0.00.

APPLICABLE LAW

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.

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)).

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). 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 [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 is obligated to consider:

- (a) Is the burden of the probable cost of legal 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 for the Estate include Counseling Regarding Sale of Property, Plan Modification, Application for Fees, Tax Issues, and Case Representation. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

- (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local

Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 84. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. 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). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (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)).

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:

Sale of Property: Applicant spent 4.10 hours in this category. Applicant communicated with debtor regarding approval to sell house and ultimately the decision to forego sale of the house.

Plan Modification: Applicant spent 21.8 hours in this category. Applicant reviewed changed income and expenses due to debtor giving birth to twins and ending employment to care for them, revised budget, and prepared modification.

Application for Fees: Applicant spent 6.4 hours in this category. Applicant reviewed time records and drafted application for fees.

Tax Issues: Applicant spent 3.5 hours in this category. Applicant reviewed substantial tax arrears held by debtor based on under-withholding to pay for post-petition medical bills and childbirth expenses, and adjusted plan modification to account for post-petition taxes.

General Case Management: Applicant spent 2.7 hours in this category. Applicant communicated with debtor and creditors.

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
Carl R. Gustafson	12.30	\$425.00	\$5,227.50
Karen Alvarez	8.90	\$175.00	\$1,557.50
		\$0.00	\$0.00
Total Fees for Period of Application			\$6,785.00

Costs and Expenses

Applicant is not seeking costs through this motion.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including counseling regarding sale of property, plan modification, application for fees, tax issues, and general case administration raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$6,785.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$6,785.00
------	------------

pursuant to this Application as final fees 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 Carl Gustafson (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Carl Gustafson, Professional Employed by William Freeman and Carla

Tavormina Freeman (“Debtor”)

Fees in the amount of \$6,785.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick (“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 in a Chapter 13 case.

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 17, 2020. By the court’s calculation, 54 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Daniel Crain (“Debtor”) seeks confirmation of the Modified Plan to surrender a 2016 Kia. Declaration, Dckt. 75. The Modified Plan provides payments of \$1,790.00 for 60 months, and a four (4) percent dividend to unsecured claims totaling \$209,007.00. Modified Plan, Dckt. 74. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), holding a secured claim filed an Opposition on October 26, 2020. Dckt. 79. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Payments are not authorized.

DISCUSSION

Delinquency

Debtor is \$1,740.00 delinquent in plan payments, which represents less than one month of the \$1,790.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Payments Not Authorized

Debtor's modified Plan proposes to reclassify Capital One Auto Finance regarding 2016 Kia Soul from Class 2 to Class 3, but does not authorize payments made by Trustee under the confirmed Plan. The Trustee's records reflect that \$800.00 has been disbursed to the claim in this matter to date.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 7, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXX.

Caliber Home Loans, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan fails to provide for cure of pre-petition arrearage.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$2,574.30 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as

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

At the hearing, counsel for Debtor requested a short continuance so that the dollar and cure amount can be provided for with an amendment to the proposed plan.

November 3, 2020 Status Report

Trustee filed a Status Report reporting that Debtor are current in plan payments but have failed to identify how Caliber Home Loans mortgage arrearage will be cured. Dckt. 20. However, Trustee informs the court that he has been advised that the majority of the arrearage has been paid, except for \$400 amount due to an escrow adjustment. *Id.*, at 2. The plan requires Debtor to pay this directly as a Class 4 claim. *Id.*

November 10, 2020 Hearing

At the hearing, xxxxxxxxxxxxxxxx

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’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Alvin and Michelle Haymon (“Debtor”) seeks confirmation of the Modified Plan because debtors have separated and moved into separate homes and debtor Alvin Haymon has been temporarily laid off due to COVID-19. Declaration, Dckt. 48. The Modified Plan provides payments of \$1,530.00 for 14-60 months, and a 0 percent dividend to unsecured claims totaling \$0.00. Modified Plan, Dckt. 50. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 26, 2020. Dckt. 55. Trustee opposes confirmation of the Plan on the basis that Debtor has unexplained increased deductions.

DISCUSSION

Unexplained Increase of Deductions

Trustee argues that Plan is not feasible because Debtors' Schedule I indicates Debtor Alvin's deductions for tax, medicare, and social security have increased from \$1,248.19 to \$1,563.66 despite his income being reduced, and Debtor Michelle has a monthly voluntary retirement contribution of \$242.67. Debtors did not provide an explanation for the changes for these deductions and have proposed reducing the percentage to unsecured creditors from 64.31% to 0%. Trustee opposes the motion unless Debtors can provide adequate evidence to support the changes proposed in the form of a declaration.

Debtor filed a Reply on November 3, 2020 explaining that Debtor Alvin did not voluntarily adjust his federal withholdings with his employer but that the calculations changed, and that Debtor Michelle's voluntarily retirement deduction of \$242.67 is exactly the same as when the case was filed. Dckt. 58.

In making these statements, Debtor neglects to address several points. First, while Debtor Alvin's employer has purportedly unilaterally increased the withholding, without any correction by Debtor, Debtor Alvin does not consider how much of this unilateral withholding change will be coming back as part of a tax return.

For Debtor Michelle, her decision to keep making voluntary retirement contributions does not consider that under the prior plan Debtor was making a 63% dividend on unsecured claims, but under the proposed Modified Plan these drop to a Zero Percent (0.00%) unsecured dividend.

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

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

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

~~—————The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Alvin and Michelle Haymon ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~—————**IT IS ORDERED** that the Motion is **XXXXXX**~~

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 25, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Gregory and Cherie Borgerson (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan provides for six (6) plan payments of \$3,373.00 followed by 54 plan payments of \$4,096.00. Amended Plan, Dckt. 58. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 26, 2020. Dckt. 62. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has issues based on excess tax claims and unfiled returns.
- B. No Supplemental Schedules have been filed.
- C. Plans provisions may improperly alter rights of claim secured by Debtor’s principal residence.

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company ("Creditor") holding a secured claim filed an Opposition on October 27, 2020. Dckt. 65. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor's plan impermissibly modifies secured creditor's rights.
- B. Debtor's plan is too speculative and is not allowed under Bankruptcy Code.
- C. Debtor's plan does not appear to be offered in good faith.

DISCUSSION

Failure to File Tax Returns

Debtors' tax returns are missing for 2015, 2017, 2018, and 2019, according to claims filed by the Franchise Tax Board and the Internal Revenue Service. Debtors asserted annual income of \$143,738 in 2019, \$65,000 in 2018, \$111,819 in 2017, and \$92,989 in 2016, and so it appears that Debtor is required by law to file returns and yet has failed to do so. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). According to Trustee's calculation, it will take 73 months to complete the Plan, as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

In addition, Debtors' tax expense projected is too low. Debtor scheduled \$11,737.86 of gross income and \$2,242.79 of tax, medicare, and social security deductions. The amount projected to be withheld for tax would therefore be 11.46%, but 2020 federal tax rate alone is 22% for married individuals earning over \$80,250.00. Therefore, the amount projected for taxes is unreasonable. Thus, the Plan may not be confirmed.

No Supplemental Schedules Filed

Debtors have filed no Supplemental Schedules with the Court. Debtor's motion and declaration state a Supplemental Schedule I and J will be filed soon but have not yet been filed.

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and 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 \$252,330.70, secured by a deed of trust against the property commonly known as 2105 Pimlico Ct., Lincoln, 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.

Debtor proposed to pay \$1,958.30 per month as adequate protection to PHH Mortgage and \$1,028.19 per month as adequate protection to Bosco/Franklin Financial Management Corp. According to Creditor, if Debtor paid the value of the property over 30 years at the current interest rate of 3.92%, Debtor would pay \$2,720.00 per month, which is \$552.64 more than the amount they have proposed.

Debtors' Plan Is Overly Speculative

Creditor argues that Debtors may not premise the cure of arrears on their obtaining a mortgage modification. Courts have held that a plan should not be confirmed where it is proposing a balloon payment or otherwise is contingent on a speculative event to take place during the life of the plan. See *In Re Gavia* (9th Cir. BAP 1982) 24 BR 573,574; *In Re Nantz*, 75 BR 617, 618-619 (Bankr. E.D. Mo. 1987); *In Re Fantasia* (1st Cir. BAP 1997) 211 BR 420,424; *In Re Craig*, 112 BR 224, 225 (Bankr. N.D. Ohio 1990).

Debtors have the burden to show that "past marketing efforts, the state of the market for the subject asset, current sale prospects, the existence and maintenance of any 'equity cushion' in the property, and all other circumstances that bear on whether the creditor will see its way out of the case financially whole." *In re Lindsey*, 183 B.R. 624, 627 (Bankr. D. Idaho 1995), quoting *In re Newton*, 161 B.R. 207, 217-18. Debtors have provided no completed loan modification to Creditor. Therefore this provision puts the feasibility of the Amended Plan in question due to its speculative nature and the plan is not feasible.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 6, 2020. By the court's calculation, 35 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 ~~XXXXXXX~~ .

This Motion requests an order avoiding the judicial lien of MCKession Specialty Care Distribution Co. ("Creditor") against property of the debtor, Anne Price ("Debtor") commonly known as 2205 Trails Ct., Rancho Cordova, California ("Property").

Trustee filed a Response noting that Trustee is uncertain if Debtor has properly claimed an exemption in Debtor's real property, where the original Schedule C states \$0 as claimed, and the Schedule C filed as an Exhibit asserts an exemption of 100% of fair market value, up to any applicable statutory limit." Dckt. 27. Trustee further notes that in Debtor's declaration, Debtor states having claimed "an exemption on the Lien property in the amount of \$75,000," but does not provide any other details. *Id.*, at 2.

A judgment was entered against Debtor in favor of Creditor in the amount of \$43,500.00. Exhibit 1, Dckt. 21. An abstract of judgment was recorded with Sacramento County on May 18, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$382,786.00 as of the petition date. Dckt. 10. The unavoidable consensual liens that total \$351,464.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 10. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$0.00 on

Schedule C. Dckt. 10.

In support of this Motion, Debtor filed exhibits using the Schedules A/B, C, and D Forms. Exhibit 1, Dckt. 21. These are copies of the Schedules filed in this case. There is no filing information of where the court would find these on the Docket.

As stated above, on Schedule C filed by Debtor on August 23, 2020, Debtor stated under penalty of perjury that the exemption in the Property was \$0.00. Dckt. 10 at 10. No Amended Schedule C has been filed by Debtor.

Attached as one of the exhibit document is a Schedule C form, in which no dollar amount of exemption has been claimed by the Debtor. This form, which has never been filed as an Amended Schedule C, fails to claim any dollar exemption and instead merely checks the box stating that whatever possible exemption should be claimed, Debtor claims "100%." Dckt. 21 at 10. The court has no idea of what dollar amount, if there was an Amended Schedule C filed with this incomplete information, is claimed. It is not for the court to provide legal services to investigate what the proper exemption amount would be and then expand the incomplete schedule for Debtor.

In her Declaration, Debtor states under penalty of perjury that, as of the time of making the Declaration, she has claimed an exemption on the Property in the amount of \$75,000. Dckt. 20, ¶ 5. As of the September 30, 2020 Declaration being signed under penalty of perjury by Debtor, no such exemption had been claimed.

At the hearing, **XXXXXXX**

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

~~ISSUANCE OF A COURT DRAFTED ORDER~~

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

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Anne Price ("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 MCKession Specialty Care Distribution Co., California Superior Court for El Dorado County Case No. PC20160244, recorded on May 18, 2020, Document No. 202005181141, with the Sacramento County Recorder, against the real property commonly known as 2205 Trails Ct., Rancho Cordova, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2020. 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 ~~XXXX~~.

The Bankruptcy Code permits John Martin, 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 21255 Meadow Oaks Lane, Weimar, California (“Property”).

The proposed purchaser of the Property is Cathy Cieslikowski and Roman Padilla, and the terms of the sale are:

- A. The sellers are: John Martin, Phebe Martin, Johnathan Martin, Jeandra Martin, and Jaime Martin.
- B. A sale price of \$440,100.
- C. Property is sold “as is.”

In the Motion, Debtor’s counsel seems to be arguing that the children will likely have to “make an accommodation to allow Debtor to do this, as they hold a 60% fractional interest, and states

this is likely to occur because they would risk significant income tax liability from the sale if they did not gift the property back to Debtor. Further, Debtor estimates that the sale of the property would pay off the plan in full, which is estimated to be \$56,000.00.

Trustee filed a Response on October 27, 2020, making note that Debtor's Motion to Sell Property did not provide a contract or an estimated closing statement. Dckt. 65. Trustee also notes that Debtor has proposed to pay \$47,071.00 from the proceeds of the sale to complete the plan; however, Trustee estimates the total necessary to complete the plan would be \$58,881.40.

On October 28, 2020, Debtor filed Exhibits, which have not been authenticated as required by Federal Rules of Evidence 901 et seq., including a Seller's Estimated Closing Statement, a Residential Purchase Agreement with Addendums, and the Title Company's Preliminary Report. Dckt. 67. On the cover page, the following language is stated:

Title Company Prepared Estimated Closing statement and Sales Contract with Buyer, Excerpt from Preliminary report

The children listed on page 23 of this exhibit signed the sales contract also, but when Richard Jare combined the files to make this exhibit, those signatures FELL OFF of the documents possibly because they were not attached well enough.

Dckt. 67, at 1. Only Debtor and the Buyers signatures are listed in the documents provided.

DISCUSSION

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

As stated in Trustee's Response, the amount necessary to complete the plan is \$58,881.40, but Debtor is entitled to only \$47,071.00 of the proceeds, notwithstanding any amount his children may agree to gift to him. Debtor has not provided declarations from his children that indicate their intention to gift Debtor the necessary funds from the sale proceeds to fully satisfy the amount necessary to complete the plan.

On November 2, 2020, Debtor filed Status Report reporting that the "Title Company no longer stands by the estimated closing statement it provided previously. There is a risk that the payoff on encumbrances against the property is much greater." Dckt. 69.

At the hearing, ~~XXXXXXX~~

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because XXXXXXXX.~~

~~Movant has estimated that a 5.5 percent broker's commission from the sale of the Property will equal approximately \$24,205.50, where Debtor's broker will receive 3.00 percentage totaling \$13,203.00, and Buyer's broker will receive \$11,002.50. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5.5 percent commission.~~

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

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

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

~~**IT IS ORDERED** that John Martin, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Cathy Cieslikowski and Roman Padilla or nominee (“Buyer”), the Property commonly known as 21255 Meadow Oaks Lane, Weimar, California (“Property”), on the following terms:~~

- ~~A. The Property shall be sold to Buyer for \$440,100.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dekt. 67, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~E. Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than 5.5 percent of the actual purchase price upon consummation of the sale. The 3.0 percent commission shall be paid to Chapter 13 Debtor’s broker, Rhonda Rajaofera.~~
- ~~F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

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, parties requesting special notice, and Office of the United States Trustee on September 21, 2020. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

The debtors, Brian Edward Winship and Peggy Diane Winship (“Debtors”) seek confirmation of the Modified Plan to cure default in plan payments after income was affected by the non-essential orders related to COVID-19. Declaration, Dckt. 65. The Modified Plan provides plan payments of \$930.00 for 50 months commencing September 25, 2020, and a 0 percent dividend to unsecured claims totaling \$22,525.01. Modified Plan, Dckt. 63. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 7, 2020. Dckt. 71. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to attach supporting documentation for business income.
- B. Debtor’s total paid through August 2020 as stated in the Plan is incorrect.

DISCUSSION

Failure to File Business Documents Required by Schedule I

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 is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Debtor filed a Reply on October 20, 2020 and responds that Debtor will file a supplemental income and expense attachment. Dckt. 74, ¶ 1. Further, Debtor explains that Debtor Peggy changed employers and will file further supplemental schedules to address this matter. *Id.*

At the hearing, counsel for the Trustee reported that the document had not yet been filed and Debtor’s counsel requested a short continuance.

Incorrect Total paid through August 2020

The proposed Plan states Debtors have paid a total of \$54,040 through August 2020. According to Trustee, the correct amount is \$54,060.00, as well as a payment posted on September 10, 2020 of \$1,910.00. Thus, Trustee requests the plan payments be modified in the order.

In the Reply, Debtor agrees with Trustee’s assessment and requests the following language be added to the order confirming the plan:

Debtor has paid a total of \$55,970.00 through September 2020. Plan payments of \$930.00 will begin October 25, 2020 for 49 months.

Dckt. 74, ¶ 2.

Debtor’s counsel requested a short continuance to allow him to resolve the documentation with the Trustee.

November 10, 2020 Hearing

As of the court’s drafting of this tentative ruling, no other pleadings had been filed.

At the hearing, xxxxxxxxxx

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 October 27, 2020. By the court's calculation, 14 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The court granted Debtor's Motion to Shorten Time (Dckt. 99) on October 28, 2020 and set the hearing for November 10, 2020. Dckt. 101.

The Motion to Sell Property 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 Sell Property is granted.
--

The Bankruptcy Code permits Linda Conkling, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2481-2483 American River Drive, Sacramento, California ("Property").

The proposed purchaser of the Property is Eric and Louisa Stiff, and the terms of the sale are:

- A. \$525,000.00 for the real property at 2481-2483 American River Drive, Sacramento, CA, and sold "As Is."
- B. Escrow is to close 30 days after acceptance, with the agreement having been signed by both buyers and seller on October 10, 2020.
- C. It is a cash transaction.
- D. Buyer to provide an initial deposit of \$10,000.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

Movant has estimated that a four percent broker's commission from the sale of the Property will equal approximately \$21,000, with Debtor's broker receiving 1.75 % commission in the amount of 9,187.50, and Seller's broker receiving 2.25% commission in the amount of \$11,812.50. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than four (4) percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Debtor would like to use proceeds of the sale to purchase another home and is unable to do so without having cash in hand..

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by Linda Conkling, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Linda Conkling, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f) to Eric and Louisa Stiff or nominee ("Buyer"), the Property commonly known as 2481-2483 American River Drive, Sacramento, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$525,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 98, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

- D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than four (4) percent of the actual purchase price upon consummation of the sale. The four percent commission shall be divided between Chapter 13 Debtor's broker, Frederick Max Group, receiving 1.75%, with a commission in the amount of \$9,187.50, and Seller's broker, Coldwell Banker Realty, receiving 2.25% with a commission of \$11,812.50.
- F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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 3, 2020. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

The debtor, Brian Mitchell Okamoto (“Debtor”) seeks confirmation of the Modified Plan account for financial hardship due to Covid-19 after their income was reduced by 9.23%. Declaration, Dckt. 165. The Modified Plan provides monthly plan payments of \$3,350 for 12 months commencing September 25, 2020, followed by monthly plan payments of \$3,725.00 for 27 months, and a 0.0 percent dividend to unsecured claims totaling 55,250.19. Modified Plan, Dckt. 164. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 6, 2020. Dckt. 171. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor failed to file Supplemental Schedules I and J.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,350.00 delinquent in plan payments, which represents one month of the proposed \$3,350.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Supplemental Schedules I and J

Trustee requests that Debtor file Supplemental Schedules I and J in support of current income and expenses. Debtor's Declaration states that the plan modification is due to reduction in income by 9.23%, yet, Trustee argues that Debtor has failed to explain how he will afford the proposed increased plan payment in month 58 of the plan.

Debtor filed a Reply asserting that a partial payment of \$1,460 was made on October 7, 2020 and will become current prior to hearing. Dckt. 176. Additionally, Debtor filed Supplemental Schedules I and J on October 12, 2020 which show Debtor's latest income reduction. Dckt. 175.

At the hearing, counsel for the Debtor reported that Debtor made the payment, but it had not yet posted. The Trustee agreed to continue the hearing to allow the Debtor to document that the default has been cured.

November 10, 2020 Hearing

As of the court's drafting of this tentative ruling, no other pleadings had been filed.

At the hearing, **xxxxxxxxxx**

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 22, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Ronald Gadreault (“Debtor”) seeks confirmation of the Modified Plan because Debtor’s wife went without employment for six weeks due to COVID-19 and Debtor incurred unexpected medical expenses due to his son’s injury. Declaration, Dckt. 97. The Modified Plan provides Debtor will resume plan payments at \$1,921.79 a month, with 0% to unsecured creditors, and \$1,219.31 to Class 2 Creditor Golden One Credit Union. Modified Plan, Dckt. 96. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), holding a secured claim filed an Opposition on October 23, 2020. Dckt. 101. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor cites no legal authority for modified plan.

C. Debtor has not filed Supplemental Schedules I or J.

DISCUSSION

Delinquency

Debtor is \$1,921.79 delinquent in plan payments, which represents more than one month of the \$1,710.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Legal Authority

Debtor's motion does not cite legal authority for which the motion is based, and therefore does not comply with Local Rule 9014-1(d)3A.

Feasibility

Debtor has not filed Supplemental Schedules I and J in support of assertions regarding current income and expenses. Debtor states in his motion that he will file the amended schedules to show that the plan is feasible. Debtor's proposed modified plan increases plan payments to \$1,921.79 but Debtor's previous Schedules I and J state a monthly net income of \$1,717.82. Therefore, it appears Debtor cannot afford to make plan payments, as required under 11 U.S.C. § 1325(a)(6).

Debtor filed a Supplement to the Motion on November 3, 2020. Dckt. 108. Debtor argues that his Declaration shows that circumstances have changed which necessitate a modified plan, namely that due to COVID-19 his spouse's income has been reduced and that Debtor incurred medical expenses after his son broke his wrist. *Id.*, at 1.

Debtor also filed a Reply on November 3, 2020. Dckt. 110. Debtor asserts that amended Schedules I and J have been filed which show that he can afford the proposed plan and that a payment of \$1,550 was submitted on TFS on October 29, 2020, and a second payments of \$2,293.58 that will go through on November 8, 2020 was scheduled through TFS. *Id.*, at 1. Debtor argues the scheduled payment should make him current under the proposed plan. *Id.* Debtor filed Exhibits 1 through in support of the Response. Dckt. 106. Exhibits 3 and 4 are "screenshots" of the TFS payments reflecting the payment made and the payment scheduled for November 8, 2020.

Further, Debtor filed Amended Schedules on November 3, 2020. Dckt. 104. Amended Schedule I and Schedule J reflect a monthly net income of \$1,931.34. *Id.*, at 8.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Ronald Gadreault (“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 **XXXXX**.

29. [19-23498-E-13](#) **SUSAN CIANFICHI** **MOTION TO INCUR DEBT**
[SMJ-1](#) **Scott Johnson** **10-26-20 [18]**

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

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

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

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 26, 2020. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Incur Debt is granted.

Susan Cianfichi (“Debtor”) seeks permission to purchase real property commonly known as 6242 Johanson Circle, Sacramento, California, with a total purchase price of \$215,000.00 and monthly payments of \$1,514.82 to Equity Prime Mortgage, LLC over 30 years with a 2.75% fixed interest rate.

Trustee does not oppose the motion but request the court take into consideration that Debtor

has had a steady job for 14 years, has been working through COVID and is at month 17 of the plan. Dckt. 24.

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

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

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

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

The Motion to Incur Debt filed by Susan Cianfichi (“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 Susan Cianfichi is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 21.

FINAL RULINGS

30. [18-27400-E-13](#) MICHAEL/TAMMIE PORTZER MOTION TO MODIFY PLAN
[MDA-2](#) Mary Anderson 9-23-20 [53]

CASE DISMISSED: 10/05/20

Final Ruling: No appearance at the November 10, 2020 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 Modify Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

CASE DISMISSED: 10/05/20

Final Ruling: No appearance at the November 10, 2020 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 Modify Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2020. 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.

The Motion to Sell is dismissed without prejudice.

Edward C Casarino and Janet L. Casarino (“Debtor”) having filed a Request for Dismissal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on October 30, 2020, Dckt. 131; no prejudice to the responding party appearing by the dismissal of the Motion; and Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; the *Ex Parte* Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Sell filed by Edward C Casarino and Janet L. Casarino (“the Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 131, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 27, 2020. By the court’s calculation, 14 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is dismissed without prejudice.

Edward C. Casarino and Janet L. Casarino (“Debtor”) having filed a Request for Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on October 30, 2020, Dckt. 131; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David P. Cusick (“the Chapter 13 Trustee”); the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Sell filed by Edward C Casarino and Janet L. Casarino (“the Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure

41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dekt. 131, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Modified Plan is dismissed without prejudice.

34. [19-21809-E-13](#) **DAVID/RACHEL CLARK** **MOTION TO INCUR DEBT**
[SLH-1](#) **Seth Hanson** **10-6-20 [29]**

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 6, 2020. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Incur Debt is granted.

David Wayne Clark and Rachel Lynn Clark (“Debtor”) seeks permission to purchase real property commonly known as 733 Lincolnshire Circle, Lincoln, California, with a total purchase price of \$421,500.00 and monthly payments of \$2,657.00 to DHI Mortgage Company, Ltd., L.P. over 30 years with a 2.5% fixed interest rate.

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

adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

On October 23, 2020, the Chapter 13 Trustee, David Cusick (“Trustee”) filed a Response stating his non-opposition to the purchase terms but noting that Debtor did not file the Supplemental Schedules with the Court pursuant to Local Bankruptcy Rules but as Exhibits to the Motion. Dckt. 34.

Debtor filed Supplemental Schedule I (Dckt. 36) and Supplemental Schedule J (Dckt. 37) on October 26, 2020.

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

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

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

The Motion to Incur Debt filed by David Wayne Clark and Rachel Lynn Clark (“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 David Wayne Clark and Rachel Lynn Clark is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 32.

35. [20-23416-E-13](#) JESUS GUZMAN
[DPC-1](#) Steele Lanphier

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
8-26-20 [17]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 10, 2020 hearing is required.

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on July 10, 2020, is confirmed.**

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

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 22, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Daniel Santiago (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on October 27, 2020. Dckt. 28. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Chapter 13 Plan filed on September 22, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order

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

37. [20-24647-E-13](#) **FRANCISCO GONZALEZ AND** **MOTION TO VALUE COLLATERAL OF**
[MS-1](#) **ELVA LAGOS** **AMERICREDIT FINANCIAL SERVICES,**
Mark Shmorgon **INC.**
10-4-20 [10]

Final Ruling: No appearance at the November 10, 2020 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, Creditor, and Office of the United States Trustee on October 4, 2020. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of AmeriCredit Financial Services, Inc. dba GM Financial ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$15,397.00.

The Motion filed by Francisco Gonzalez and Elva Lagos ("Debtor") to value the secured claim of AmeriCredit Financial Services, Inc. dba GM Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 12. Debtor is the owner of a 2015 Chevrolet Camaro SS Coupe 2D ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$15,397.00 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).

Trustee filed a Response stating no opposition to the motion and noting that creditor is included in the plan and that creditor's proof of claim states \$15,397.00 as secured. Dckt. 23.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on January 4, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$19,539.55. Proof of Claim, No. 4-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$15,397.00, 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 Francisco Gonzalez and Elva Lagos ("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 AmeriCredit Financial Services, Inc. dba GM Financial ("Creditor") secured by an asset described as 2015 Chevrolet Camaro SS Coupe 2D ("Vehicle") is determined to be a secured claim in the amount of \$15,397.00, 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 \$15,397.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

38. [20-24069-E-13](#)
[MET-1](#)

BARBARA WILLIAMS
Mary Ellen Terranella

CONTINUED MOTION TO VALUE
COLLATERAL OF LOAN MART
8-31-20 [8]

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 31, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion has been granted by prior Order (Dckt. 26) of the court, determining Creditor's secured claim to have a value of \$6,125.00. The Matter is removed from the Calendar.

Final Ruling: No appearance at the November 10, 2020 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, 2020. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Therese Weathers-Reyes (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on October 26, 2020. Dckt. 41. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Modified

Chapter 13 Plan filed on October 5, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

40. [20-23576-E-13](#) **ROMY OSTER** **MOTION TO CONFIRM PLAN**
[MWB-2](#) **Mark Briden** **9-15-20 [30]**

Final Ruling: No appearance at the November 10, 2020 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, and Office of the United States Trustee on September 15, 2020. By the court’s calculation, 56 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Romy Oster (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on October 26, 2020. Dckt. 37. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Romy Oster (“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 15, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41.	18-26982-E-13 EJS-1 41 thru 42	RUSSELL PUCKETT Eric Schwab	OBJECTION TO CLAIM OF CITI BANK N.A., CLAIM NUMBER 3 9-24-20 [54]
-----	--	---------------------------------------	--

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on September 24, 2020. By the court’s calculation, 47 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

The Objection to Proof of Claim Number 3 of Citi Bank N.A. is sustained, and the claim is disallowed in its entirety.

Russell Pucket, the Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim

of Citi Bank N.A. (“Creditor”), Proof of Claim No. 3 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$1,215.32. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is January 14, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 32.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was January 14, 2019. Creditor’s Proof of Claim was filed on January 15, 2019. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

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

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

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

The Objection to Claim of Citi Bank N.A. (“Creditor”) filed in this case by Russell Puckett, the Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 3 of Citi Bank N.A. is sustained, and the claim is disallowed in its entirety.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on September 24, 2020. By the court’s calculation, 47 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

The Objection to Proof of Claim Number 4 of Citi Bank N.A. is sustained, and the claim is disallowed in its entirety.

Russell Puckett, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Citi Bank N.A. (“Creditor”), Proof of Claim No. 4 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$11,903.08. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is January 14, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 32.

DISCUSSION

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

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

The deadline for filing a proof of claim in this matter was January 14, 2019. Creditor's Proof of Claim was filed on January 15, 2020. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

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

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

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

The Objection to Claim of Citi Bank N.A. ("Creditor") filed in this case by Russell Puckett, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 4 of Citi Bank N.A. is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on September 21, 2020. By the court’s calculation, 50 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.

The Chapter 13 Trustee, David Cusick (“Trustee”) objects to Brad Hamilton and Cherise Williams (“Debtor”) claimed exemptions under California law because Debtors have improperly used Cal. Civ. Proc. Code § 704.010, which is intended for motor vehicles, by claiming their interest in golf clubs, a canoe, and a guitar as exempt. In addition, Debtors have improperly used § 704.060, which is intended for vehicles that are tools of a debtor’s trade. Debtors claimed their 2007 GMC exempt under this section in the amount of \$5,662.00 despite the fact neither debtor appears to be self-employed. The Chapter 13 Trustee’s Objection is sustained, and the claimed exemptions are disallowed.

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

DISCUSSION

California Code of Civil Procedure § 704.010 provides:

(a) Any combination of the following is exempt in the amount of two thousand three hundred dollars (\$2,300):

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

Here, Debtor has claimed golf clubs, a canoe, and a guitar as exempt under C.C.P. § 704.010. Dckt. 1, at 19. This property is not a motor vehicle and as such is not permissible as exempt under this California exemption. Thus, Debtor's claimed exemption under C.C.P. § 704.010 is disallowed.

California Code of Civil Procedure § 704.060 provides:

(a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

- (1) Six thousand seventy-five dollars (\$6,075), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.
- (2) Six thousand seventy-five dollars (\$6,075), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.
- (3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

Here, Debtor has claimed 2007 GMC Sierra as exempt under C.C.P. § 704.060. Dckt. 1, at 18. This property is not permissible as exempt under this California exemption unless Debtor can show that this vehicle is a tool of a trade, business, or profession. Debtor does not provide evidence of such. Thus, Debtor's claimed exemption under C.C.P. § 704.060 is disallowed.

On October 18, 2020 Debtor filed an Amended Schedule where Debtor no longer claims the

Final Ruling: No appearance at the November 10, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 12, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Mercedes-Benz Financial Services USA, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$20,000.00.

The Motion filed by Bryan Lee (“Debtor”) to value the secured claim of Mercedes-Benz Financial Services USA, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of a 2015 Mercedes Benz C300 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$20,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee does not oppose the motion and notes that Debtor provides for Creditor in the proposed plan; and that, to date, Creditor has not filed a claim. Dckt. 19.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on September 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a

balance of approximately \$25,013.00. Declaration, Dckt. 10. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$20,000.00, 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 Matthew Lee ("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 Mercedes-Benz Financial Services USA, LLC ("Creditor") secured by an asset described as 2015 Mercedes Benz C300 ("Vehicle") is determined to be a secured claim in the amount of \$20,000.00, 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 \$20,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.