

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California**

November 26, 2019 at 2:00 p.m.

1.	<u>19-25901-C-13</u> <u>MRL-1</u>	LASAYN COLLINS Mikalah Liviakis	MOTION TO CONFIRM PLAN 10-15-19 <u>[12]</u>
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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, and Office of the United States Trustee on October 16, 2019. By the court’s calculation, 41 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.
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The debtor, Lasayn Antoine Collins (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides monthly payments of \$200 for 60 months, and a 0 percent dividend on unsecured claims totaling \$69,650.00. Plan, Dckt. 15. 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 November 12, 2019. Dckt. 17. Trustee opposes confirmation on the following grounds:

1. Debtor has not commenced payments, and is \$200.00 delinquent.
2. Debtor did not appear at the Meeting of Creditors is set for November 12, 2019. The Meeting was continued to November 14, 2019.
3. Debtor’s plan relies on valuing the secured claim of Rudolph Inc., but no motion to value has been filed.
4. Debtor’s counsel has set the confirmation hearing at a date before the date for objections to confirmation set by the Notice of Meeting of Creditors.

DISCUSSION

A review of the docket shows that Debtor attended the continued Meeting of Creditors on November 14, 2019, and the Meeting was concluded.

However, Debtor is \$200.00 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, Debtor’s Plan shows that it relies on the court valuing the secured claim of Rudolph Inc.. Debtor has not filed a Motion to Value the Secured Claim of Rudolph Inc., however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. §§ 1322, 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, Lasayn Antoine Collins (“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.

THRU #4

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 25, 2019. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor admitted at the Meeting of Creditors to being involved in nine (9) car accidents. Trustee believes there is a likelihood Debtor owes claims which are not listed on the Schedules and which would make the Chapter 13 plan infeasible.

No response was filed by Debtor rebutting the Objection and carrying Debtor's burden of showing the Plan is feasible.

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, Debtor's Attorney, and the Chapter 13 Trustee on October 31, 2019. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

Guild Mortgage Company, its assignees and/or successors, by and through its servicing agent Cenlar FSB ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan fails to provide for Creditor's prepetition arrearages.

The Chapter 13 Plan provides for prepetition arrearages of \$30,000.00. Dckt. 12. Creditor's Proof of Claim, No. 7, asserts arrearages of \$57,338.46.

Because the plan fails to provide for the correct amount, it fails to promptly cure Creditor's arrearages, and is not feasible. 11 U.S.C. §§ 1322(b)(5) and 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by Guild Mortgage Company, its assignees and/or successors, by and through its servicing agent Cenlar FSB (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 October 16, 2019. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

Santander Consumer USA Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor incorrectly classifies Creditor's claim as a non-purchase money security interest.
- B. Debtor provides only 5% interest on Creditor's claim. Because Debtor's disposable income is largely committed to the plan, and because the contract term on Creditor's claim is being extended, the plan should provide at least 7% interest.

DISCUSSION

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.00%. Creditor's claim is secured by a 2006 Chevrolet Avalanche. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment.

Here, Creditor argues the following risk factors are present:

1. Debtor's monthly disposable income reflected on Schedules I and J is \$1,167, which when making the proposed \$3,152.00 plan payment leaves Debtor at high risk for default.
2. The Plan extends the original contract period.

The court is not persuaded that the above risk factors justify a risk adjustment. That Debtor providing most or all of Debtor's disposable income through the plan is a basic premise of nearly all Chapter 13 cases. Allowing an adjustment on that basis would result in a near bright-line rule in Chapter 13 cases.

What is more concerning is that the Plan payment is greater than Debtor's disposable income—showing the plan is clearly not feasible^{FN.1}. 11 U.S.C. § 1325(a)(6).

FN.1. Reviewing the Debtor's Schedules and Plan, it seems like some of the payments being made through the plan are also listed as expenses.

As to Creditor's other argument, Creditor does not explain why extending the contract period is a risk factor. Furthermore, because the term is extended, the Creditor is already receiving added interest above and beyond the original contracted amount.

As stated above, the Plan is clearly not feasible. 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 Santander Consumer USA Inc. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 November 5, 2019. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Debtor is \$1,200.00 delinquent in plan payments.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$1,200.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2019. By the court’s calculation, 40 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, Sean Raymond Fries (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides for \$0 to be paid through month 3, for payments of \$3,135.00 for the remainder of the plan term, and for a 0 percent dividend on unsecured claims totaling \$11,687.00. Plan, Dckt. 29. 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 November 5, 2019. Dckt. 33. Trustee opposes confirmation on the basis that Debtor is \$3,135.00 delinquent in plan payments.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$3,135.00 delinquent in plan payments, which represents one month of the plan payment. This is where the present Amended Plan waives the first three missed plan payments.

Furthermore, before the hearing another plan payment will be due. Delinquency indicates

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

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, Sean Raymond Fries (“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.

7. [19-23819](#)-C-13 LORENZO NARANJO
Pro Se

CONTINUED MOTION TO VALUE
COLLATERAL OF ALLY FINANCIAL
9-5-19 [\[41\]](#)

On November 19, 2019, the court issued an Order determining the amount of creditor's secured claim and removing the Motion from the calendar. Dckt. 85.

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 16, 2019. By the court’s calculation, 41 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).

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 denied without prejudice.

Stephen James McAllister, the Chapter 13 debtor (“Movant”), requests that the court approve a compromise and settle competing claims and defenses with Jennifer McAllister (“Settlor”). The claims and disputes to be settled relate to the Movant and Settlor’s divorce.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule

9013. See 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. See 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL.,

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

Movant has not stated grounds in the Motion for the approval of a settlement agreement. With respect to the settlement, the Motion states the following:

6. Prior to the Petition Date, the Debtor's spouse commenced suit (the “Divorce Suit”) with him at the time, Jennifer McAllister, (“Spouse”) seeking Divorce. The Divorce Suit is in the Superior Court of California, County of Sacramento. In the Divorce Suit, the Spouse and Debtor allege irrevocable differences.

10. On September 11, 2019, Debtor and Spouse came to an agreement with a stipulation and order to their Divorce Suit.

12. As consideration for the parties' full settlement of the Claims and, upon terms that are more particularly detailed in the Stipulation and Order Agreement: (i) the Debtor will receive a settlement amount that is more than sufficient to satisfy his payment obligations under the Plan and (ii) the Debtor agrees to Divorce his marriage with Spouse.

13. A true and correct copy of the Stipulation and Order are attached as Exhibit A (the “Stipulation and Order Agreement”).

Motion, Dckt. 22 at p. 2:11.5-22.

Nowhere in the Motion seeking approval of a settlement agreement is it explained what the settlement terms actually are. Debtor is getting some thing (presumably monies) which will allow him to make plan payments, and Debtor will divorce his spouse. It is unclear if the settlement divides property or assigned debts.

Beyond the settlement agreement, it is not entirely clear what is disputed in the divorce action, and whether there is property of the Estate being divided and given to Debtor's non-filing spouse. All interests of the debtor and the debtor's non-filing spouse in community property as of the commencement of the case are property of the Estate. 11 U.S.C. § 541(a)(2).

The motion is denied without prejudice.

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

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

The Motion for Approval of Compromise filed by Stephen James McAllister (“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 is denied without prejudice.

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

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

Sufficient Notice Provided. A supplemental Proof of Service was filed October 22, 2019, to give proper notice to the FTB. Dckt. 51.

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

The Motion to Value Collateral and Secured Claim of California Franchise Tax Board (“Creditor”) is granted, and Creditor’s claim is secured by personal property in the amount of \$4,101.00 and secured by real property in the amount of \$0.00.

The Motion to Value filed by Eduardo Monterrosa (“Debtor”) to value the secured claim of California Franchise Tax Board (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 36. Debtor is the owner of the subject real property commonly known as 167 Bayside Terrace, Vallejo, California (“ Real Property”), as well as personal property listed on Schedule B (“Personal Property”). Debtor seeks to value the Real Property at a fair market value of \$395,000.00 as of the petition filing date, and the Personal Property at \$9,101.00. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the

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

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

TRUSTEE RESPONSE

The Trustee filed a Response on October 8, 2019 noting that the California Franchise Tax Board was not served at the address provided for by the Court's agency roster for government agencies. Dckt. 44.

OCTOBER 22, 2019 HEARING

At the October hearing the court continued the hearing to allow Debtor to serve the Motion on the FTB at the address provided for by the Court's agency roster for government agencies. Civil Minutes, Dckt. 52.

PROOF OF CLAIM FILED

Proof of Claim, No. 5, filed by Creditor asserts a wholly secured claim of \$143,944.32.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$400,238.33. Proof of Claim No. 1-1. Creditor's state tax lien secures a claim with a balance of approximately \$133,240.00. Dckt. 1, Schedule D. Therefore, Creditor's claim secured by a junior secured claim is completely under-collateralized as to the Real Property. Creditor's secured claim is determined to be in the amount of \$0.00 as to the Real Property, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

Debtor's Personal Property has a value of \$9,101.00 as of the date of filing. Of the Personal Property, Debtor's 2002 Nissan Versa valued at \$5,000.00 is encumbered by a lien totaling \$7,479.00. Therefore, \$4,101.00 is the unencumbered value secured by Creditor's claim as to the Personal Property.

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 Eduardo Monterrosa (“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 California Franchise Tax Board (“Creditor”) secured by Debtor’s real property commonly known as 167 Bayside Terrace, Vallejo, California (the Real Property), as well as personal property listed on Schedule B (“Personal Property”), is determined to be a secured claim in the amount of \$4,101.00, for which the collateral consists of \$4,101.00 in Personal Property and \$0.00 for the Real Property.

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)(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 2, 2019. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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

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

- A. The proposed plan relies on valuing certain secured claims.
- B. Trustee received funds of \$368.00 from creditor, which creditor received as a post-petition payment from Debtor. Trustee requests any order confirming the plan authorize the Trustee to apply those funds.

DISCUSSION

A review of the docket shows the court has granted Debtor’s Motion To Value the secured claim of the FTB.

At the hearing, **xxxxxxxxxxxxxxxx**.

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

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

~~The 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 Eduardo Alfredo Monterrosa’s (“Debtor”) Chapter 13 Plan filed on August 22, 2019, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 7, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Impose the Automatic Stay is denied.

Timothy Janovich ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 19-25290 and 18-23571) were dismissed on July 9, 2019, and September 3, 2019, respectively. *See* Order, Bankr. E.D. Cal. No. 18-23571, Dckt. 85; Order, Bankr. E.D. Cal. No. 19-25290, Dckt. 9. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous earlier of two previous cases was voluntarily dismissed and the prior case was dismissed for failure to file documents. The most recent case filed *pro se* and the court notes that Debtor is represented in the present case.

OCTOBER 22, 2019 HEARING

At the October hearing the court imposed the stay on an interim basis and continued the hearing. Dckt. 30.

CREDITOR US BANK'S OPPOSITION

On October 21, 2019, creditor U.S. Bank Trust, N.A. ("US Bank") filed an Opposition. Creditor argues that Debtor sought extension of the automatic stay where (this being the third filing with two cases dismissed within a year) imposition was required. Creditor also argues Debtor failed to provide specific detail showing good faith.

CREDITOR WILMINGTON TRUST'S OPPOSITION

Wilmington Trust, National Association, not in its Individual Capacity, as Trustee for MFRA Trust 2016-1 ("Wilmington Trust") filed an Opposition on November 7, 2019. Dckt. 36. Wilmington Trust argues there was a judicial foreclosure sale held on September 24, 2019, and Trustee's Deed recorded on October 7, 2019—both occurring while there was no stay imposed.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 12, 2019. Dckt. 39. Trustee asserts that the Debtor voluntarily dismissed a recent prior case on July 9, 2019, which was after relief from stay was granted in that case on July 3, 2019. Trustee argues that because this case was filed within 180 days of the prior case (which was voluntarily dismissed after relief from stay was granted), the Debtor is ineligible for Chapter 13 relief pursuant to 11 U.S.C. § 109(g)(2).

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a supplemental declaration on November 18, 2019. Dckt. 51. Debtor concedes that his real property was foreclosed on before stay could be imposed, and requests a temporary stay of 6 months be imposed to allow Debtor to obtain surplus funds from the foreclosure to pay 100 percent of claims in the case.

APPLICABLE LAW

Chapter 13 Eligibility

11 U.S.C. § 109(emphasis added) states the following:

(g)Notwithstanding any other provision of this section, **no individual** or family farmer **may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—**

(1)the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) **the debtor requested and obtained the voluntary**

dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

In Debtor prior case, no. 18-23571, a motion for relief was filed by Wells Fargo Bank, N.A. on November 5, 2019. Case No. 18-23571, *Id.*, Dckt. 39. After numerous hearings, that Motion was granted by order issued July 3, 2019.

Less than a week later, the Debtor filed an *Ex Parte* Application to voluntarily dismiss the case, and the case was dismissed July 9, 2019. *Id.*, Dckts. 83, 84.

The present case was filed on September 23, 2019, less than three months after the Debtor's voluntarily dismissed case.

Debtor filed a Declaration responding to Wilmington Trust's Opposition, but not addressing Trustee's concern over whether Debtor can even be a debtor under Chapter 13.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

Denial of Further Imposition of Stay

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if::

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

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

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

Here, while Debtor seeks to rebut the statutory presumption of bad faith due to the multiple filings and dismissals. Debtor’s challenges are compounded by having elected to voluntarily dismiss the prior case on July 9, 2019. Having elected to dismiss the prior Chapter 13 case after the motion for relief had been filed, Debtor is ineligible to be a debtor in this, and any, bankruptcy case until January 5, 2020 (180 days after July 9, 2019). 11 U.S.C. § 109(g)(2).

In addition, the foundation of Debtor’s testimony to try and rebut by clear and convincing evidence the presumption of bad faith that Debtor intends to continue to rent the real property that was foreclosed on before this case was commenced (or attempted to be commenced by a person not eligible to be a debtor). That property is gone.

In his response declaration Debtor states that he believes that there are in excess of \$200,000 in proceeds that from the foreclosure sale that is due Debtor as surplus proceeds after paying the secured claims. Declaration, Dckt. 51. He states that this will be more than sufficient to pay all claims in full. It is unclear why Debtor would want to get a stay when he has monies to pay his creditors.

Debtor has not rebutted the presumption of bad faith.

The Motion is denied. The interim order imposing the stay terminates at noon on December 6, 2019, by the terms of that Interim Order (Dckt. 35).

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 Impose the Automatic Stay filed by Timothy Janovich (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

The Interim Stay imposed by prior order of this court (Dckt. 35) terminates at noon on December 6 2019, by the terms of that Interim Order, no further action of the court required.

THRU #13

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 31, 2019. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

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The Objection to Confirmation of Plan is sustained.

Creditor Sierra Crossing Homeowners Association (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that Debtor did not list Creditor’s claim on Debtor’s Schedules, and does not provide for Creditor’s secured claim totaling \$110,489.47 in the Plan.

DISCUSSION

Creditor asserts a claim of \$110,489.47 in this case, having filed Proof of Claim, No. 5. Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor’s matured obligation, which is secured by Debtor’s residence. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

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 Sierra Crossing Homeowners Association (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 29, 2019. By the court’s calculation, 28 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 Debtor listed the IRS’ claim at approximately \$100,000.00 in Debtor’s Schedules. However, the IRS filed Proof of Claim, No. 2 asserting a claim of \$548,676.94. Of that claim, \$197,351.81 is stated to be secured.
- B. Trustee has found evidence demonstrating Debtor has a possible interest in a trust and a 2017 Ferrari that were not disclosed.

DISCUSSION

Debtor filed Amended Schedules A/B on November 21, 2019. Dckt. 26. The Amended Schedule B adds that Debtor's business West Coast Construction & Development, Inc. DBA West Coast Pim Testing leases the Ferrari as a marketing tool. The Amended Schedule B also adds Debtor's interest in the Derosa Richard Lee TR Pick Norcal Trust, which Debtor argues only includes his residence and is valued at \$1.00.

Notwithstanding concerns of good faith, the Plan is clearly not confirmable. A secured claim of nearly \$200,000.00 held by the IRS was unaccounted for. Additionally, the Plan proposes paying 100% of unsecured claims, but understated the unsecured portion of the IRS' claim by roughly \$90,000.00. The Plan is not currently feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

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's, and Debtor's Attorney on November 6, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained .

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis it is not feasible. Debtor states on Schedule B:

Debtor husband had a auto collision in July 2019; he has a property damage reimbursement check of \$5415.00 for repairs to the Hyundai; otherwise vehicle would not be drivable. No other damage claim or personal injury claim.

Dckt. 1. However, at the Meeting of Creditors the Debtor admitted the Vehicle was totaled. Declaration, Dckt. 18.

The proposed Plan still provides for the secured claim of Golden 1 Credit Union, which is now secured by a totaled vehicle.

Trustee argues that with this vehicle totaled, Debtor will need to reform the plan to address the expenses of a replacement vehicle. Thus, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

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 29, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor admitted at the Meeting of Creditors that she is unemployed.
- B. Debtor's nonexempt assets total \$49,748.50, but Debtor proposes only a 2.5% dividend on unsecured claims totaling \$2,567.83.

DISCUSSION

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's nonexempt assets total \$49,748.50, but Debtor proposes only a 2.5% dividend on unsecured claims totaling \$2,567.83. Therefore the plan is not confirmable.

Additionally, the Debtor admitted that she is unemployed. Any income to fund the plan is speculative. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

THRU #17

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, party requesting special notice, and Office of the United States Trustee on November 12, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Capital One Auto Finance, a division of Capital One, N.A., (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$6,200.00.

The Motion filed by Richard Craig Parrish and Angela Dale Parrish (“Debtor”) to value the secured claim of Capital One Auto Finance, a division of Capital One, N.A., (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 35. Debtor is the owner of a BMW 2011 328i (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$6,200.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 2, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,133.38. Proof of Claim, No. 6. 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 \$6,200.00, 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 Richard Craig Parrish and Angela Dale Parrish ("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 Capital One Auto Finance, a division of Capital One, N.A., ("Creditor") secured by an asset described as BMW 2011 328i ("Vehicle") is determined to be a secured claim in the amount of \$6,200.00, 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 \$6,200.00 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 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 **Not** Provided. No proof of service was filed with the Motion to show when, or if, service was effected, and who was served.

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

The Motion to Value Collateral and Secured Claim of CarMax Business Services LLC (“Creditor”) is denied without prejudice.

As discussed above, no proof of service was filed to indicate the Motion was properly served on parties in interest. Therefore, the Motion is denied without prejudice.

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

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

The Motion to Value Collateral and Secured Claim filed by Richard Craig Parrish and Angela Dale Parrish (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

Alternative ruling in the event service is shown to be proper

The Motion filed by Richard Craig Parrish and Angela Dale Parrish (“Debtor”) to value the secured claim of CarMax Business Services LLC, (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 32. Debtor is the owner of a 2013 Infinity G37 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$8,850.00 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).

CREDITOR’S OPPOSITION

Creditor filed an Opposition on November 20, 2019, supported by a Declaration and various exhibits. Dckts. 41–43. Creditor argues that the value of the Vehicle is \$12,425.00 as shown by the NADA Report filed as Exhibit C. Dckt. 43.

Creditor argues that Debtor’s opinion relies on a statement that there is “deferred maintenance,” but fails to identify any actually specifics supporting Debtor’s conclusion of value. Creditor requests Debtor provide additional evidence and make the Vehicle available for Creditor’s inspection.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on November 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 \$17,079.11. Proof of Claim, No. 1. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$12,425.00, 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 Richard Craig Parrish and Angela Dale Parrish (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of CarMax Business Services LLC, (“Creditor”) secured by an asset described as 2013 Infinity G37 (“Vehicle”) is determined to be a secured claim in the amount of \$12,425.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$12,425.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

THRU #19

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on October 29, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

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

- A. Debtor's plan relies on the sale of real property, but does not provide any details about the timing of the sale or anticipated proceeds.
- B. Debtor has not provided business documents required by 11 U.S.C. § 521.
- C. Debtor lives with her stepson and non-filing spouse, but lists no dependents on Schedule J.
- D. Debtor states she is getting income from renting or operation of a business, but fails to explain what the source of income.

- E. Debtor left question 9 of her Statement of Financial Affairs, regarding lawsuits, blank. Debtor admitted at the Meeting of Creditors she may have potential lawsuits.
- F. Debtor received a refund of \$37,486.54 after the April 25, 2019, dismissal of her prior case, no. 17-25090. Trustee has requested a breakdown of the funds used and on-hand, and Debtor has not provided that information.
- G. Debtor admitted at the Meeting of Creditors she is selling her property located at Highway 20. However, no motion for approval of the sale was filed.
- H. Debtor admitted she has real property that was not listed on her schedules.

DISCUSSION

The throng of objections raised by the Trustee are all well-taken, and cast doubt as to whether the case was filed in good faith. This is Debtor's sixth case filed in the last decade. In Debtor's most recent prior case, no. 17-25090, she was represented by counsel. Therefore it is clear Debtor knows at least the basic requirements of filing, like completing schedules accurately, disclosing all assets, and providing the business documents required by 11 U.S.C. § 521. Still, Debtor has not met those requirements.

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 (*pro se*), and Chapter 13 Trustee on October 31, 2019. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

Citibank, N.A., not in its individual capacity, but solely as trustee of NRZ Pass-Through Trust VI, its assignees and/or successors, by and through its servicing agent Fay Servicing, LLC, (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the proposed plan fails to provide for the full amount of Creditor’s arrearages.

Creditor filed Proof of Claim, No. 2, asserting prepetition arrearages of \$131,989.80. The proposed plan does not provide for those arrearages. Plan, Dckt. 21.

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 Citibank, N.A., not in its individual capacity, but solely as trustee of NRZ Pass-Through Trust VI, its assignees and/or successors, by and through its servicing agent Fay Servicing, LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

THRU #22

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's, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 9, 2019. By the court's calculation, 48 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

Toyota Motor Credit Corporation, as , servicing agent for Toyota Lease Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan does not provide for the cure of Creditor's prepetition arrearages totaling \$2,097.12.

DISCUSSION

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee (or Chapter 13 Debtor exercising the powers of the Trustee) may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee cures, or provides adequate assurance that the trustee will promptly cure. 11 U.S.C. § 365(b)(1)(A).

Here, Creditor's prepetition arrearages total \$2,097.12. Proof of Claim, No. 9. The Plan

provides only for a postpetition payment, and does not cure arrearages. Therefore, the plan is not feasible because Debtor cannot assume the lease. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by Toyota Motor Credit Corporation, as , servicing agent for Toyota Lease Trust (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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’s, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 9, 2019. By the court’s calculation, 48 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

Toyota Motor Credit Corporation, as , servicing agent for Toyota Lease Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the Plan does not provide for the cure of Creditor’s prepetition arrearages totaling \$2,746.61.

DISCUSSION

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee (or Chapter 13 Debtor exercising the powers of the Trustee) may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee cures, or provides adequate assurance that the trustee will promptly cure. 11 U.S.C. § 365(b)(1)(A).

Here, Creditor’s prepetition arrearages total \$2,746.61. Proof of Claim, No. 7. The Plan provides only for a postpetition payment, and does not cure arrearages. Therefore, the plan is not feasible because Debtor cannot assume the lease. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by Toyota Motor Credit Corporation, as , servicing agent for Toyota Lease Trust (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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’s, and Debtor’s Attorney on October 29, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is \$5,900.00 delinquent in plan payments, which is one month of the plan payment.
- B. Debtor admitted at the Meeting of Creditors that their business’ bond will be terminated October 28, 2019, and their business will be shutting down.

DISCUSSION

Debtor’s current plan is not feasible. Debtor is delinquent in plan payments, and Debtor

admitted at the Meeting of Creditors that their business will be closing.

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 14, 2019. By the court’s calculation, 43 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 without prejudice.

The debtor, Catherine Cecilia Hannon (“Debtor”) seeks confirmation of the Modified Plan to address reduced income from Debtor going on disability. Declaration, Dckt. 23. The Modified Plan provides for \$10,250.00 to be paid in through month 11, and payments of \$550.00 through the remainder of the Plan term. Modified Plan, Dckt. 22. 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 November 12, 2019. Dckt. 25. Trustee opposes confirmation on the basis that (1) Debtor is \$100.00 delinquent in plan payments, and (2) Debtor has not filed Supplemental Schedules I and J to reflect Debtor’s situation since leaving work on disability.

DISCUSSION

Debtor is delinquent in plan payments, and has not filed updated Schedules I and J. Without

being current on payments and presenting a clear, accurate picture of Debtor's finances, the plan does not appear to be feasible. 11 U.S.C. § 1325(a)(6).

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, Catherine Cecilia Hannon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 25, 2019. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is overruled.

Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS8, by and through its authorized loan servicing agent, PHH Mortgage ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it does not promptly cure Creditor's prepetition arrearages.

Creditor filed Proof of Claim, No. 3, on October 25, 2019, asserting a prepetition arrearages of \$8,617.92 on its secured claim. The proposed Plan provides for only \$4,500.00.

The Plan "provides" for paying all of Creditor's pre-petition arrearage, as the Plan expressly provides that it is the amounts set forth in the proof of claim filed, or order of the court determining the amount of the claim, that determines the amount and classification of the claim. Plan ¶ 3.02; Dckt. 13.

Thus, on its face the Objection cannot be sustained.

Creditor offers no other basis for denying confirmation, such as feasibility to pay this claim as provided for in the Plan. ^{FN. 1}

FN. 1. Possibly feasibility was not raised because there is no such possible dispute. This plan is being funded with \$7,170 a month for 60 months. Plan ¶ 2.01, ¶ 2.03; Dckt. 13. Debtor's counsel is to be paid \$5,700 (average of \$95 a month) through the Plan and the Chapter 13 Trustee administrative expenses are computed to be approximately \$502 a month. After these two expenses, that leaves \$5,573 for plan disbursements to creditors.

For Creditor, the current monthly payment is \$2,220.88 and the arrearage payment based on the Proof of Claim amount is \$143.63 (when amortized over the full 60 months. The proposed plan appears to accelerate the pay down with a monthly payment of \$190 for the incorrect amount of \$4,500 in the Plan, which would have paid that arrearage in only 24 months), for a total monthly payment of \$2,364.51.63 – which is actually less than the total amount proposed to be paid monthly to Creditor in the Plan filed by Debtor.

Thus, it appears that there is no problem in Creditor's claim being paid through this plan..

It appears that Creditor's pleading is not an "objection" but a "reminder" to the Chapter 13 Trustee to properly compute the monthly dividend over the life of the Plan to fully pay the claim as stated in the Proof of claim.

Because the plan does provide for the correct arrearage amount, it is confirmable. 11 U.S.C. §§ 1322(b)(5), 1325(a)(6). 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 Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS8, by and through its authorized loan servicing agent, PHH Mortgage ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled, and the proposed Chapter 13 Plan (Dckt. 13) s confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. [19-25663](#)-C-13 AUDIE CRUZ AND ABIGAIL OBJECTION TO CONFIRMATION OF
[PPR-1](#) DY-CRUZ PLAN BY QUICKEN LOANS INC
 Seth Hanson 9-26-19 [[14](#)]

WITHDRAWN BY M.P.

In consideration of a stipulation filed between the parties the court issued an Order (Dckt. 20) withdrawing the Objection.

The Chapter 13 Plan filed on September 9, 2019, is confirmed. Counsel for the debtors, Audie Pierre Lauser Cruz and Abigail Limquiaco Dy-Cruz ("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.

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 9, 2019. By the court’s calculation, 48 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, Tanya Michelle Norfles (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides for \$2,160.00 paid through September 2019, and payments of \$725.00 a month for the remainder of the plan term. Plan, Dckt. 36. 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 November 5, 2019. Dckt. 42. Trustee opposes confirmation on the following grounds:

1. The claim of HOA c/o Sevroid Glahn is provided for as a Class 2 in the amount of \$4,000.00, paid \$75.00 monthly at 7% interest. The payment would need to be \$80.00 to complete within 60 months.
2. The claim of Wheels Financial Group, LLC is provided for as a Class 2 in the amount of \$2,800.51, paid \$20.00 monthly at 7% interest. The payment would need to be \$55.00 to complete within 60 months.

3. Debtor admitted at the Meeting of Creditors she changed her employment, but has not amended Schedules I and J.

DEBTOR'S REPLY

Debtor filed a Reply on November 18, 2019, stating that Debtor's final trial loan modification payment is due December 1, 2019. Debtor requests a continuance to allow Debtor to make that payment and address Trustee's other grounds for opposition.

DISCUSSION

This case is Debtor's third recent case. Debtor's case no. 18-27638 was filed December 10, 2018, and dismissed May 30, 2019 due to delinquency in plan payments. Debtor's case, no. 19-23445, was filed May 30, 2019, and dismissed July 15, 2019, due to failure to file and set a hearing on a motion to confirm.

Debtor here requests a continuance to make the December 1, 2019, trial loan modification payment. However, it is not clear how this will address Trustee's opposition. Debtor's Plan already lists the modified loan payment of \$1,168.18. Dckt. 36.

Debtor's Amended Schedule J shows disposable monthly income of only \$725.00. Dckt. 38. The Plan proposes using all of the income. Dckt. 36. Thus, where Trustee argues the payment needs to be increased \$40.00 a month to finish in 60 months, the plan does not appear to be feasible.

~~Additionally, Debtor admitted to changing employment, which appears to have caused a further reduction in income.~~

~~There is no indication a continuance here would make the proposed plan confirmable.~~

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

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

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

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 29, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on December 10, 2019.

Counsel for Debtor and Debtor are ordered to appear in person at the December 10, 2019 hearing - No Telephonic Appearances Permitted for the persons ordered to appear.

Creditor US Bank Trust N.A. as Trustee of Chalet Series III Trust, its successors and/or assignees ("Creditor") filed this Motion To Dismiss on the basis that the debtor, Robert D. Wagner ("Debtor"), materially breached the Confirmed Plan.

Debtor's Fourth Amended Plan was confirmed on August 2, 2016. Dckts. 206, 215, 217. While the Confirmed Plan provided for Creditor's claim as a Class 1 to be paid through the Plan, Section 6.02 of the additional provisions stated the following:

*The Debtor failed to direct his May 2015 ongoing mortgage payments in month one to the Trustee, but did make the payments directly to his mortgage companies. Class I payments through the Trustee began the second month of the Plan, in this case June 2015.

Dckt. 206.

Creditor asserts that after a recent audit, it was discovered Debtor never made the May 2015 payment. Creditor filed the Declaration of Jessica Watson and a Payment History (Exhibit D) as

evidence the May 2015 payment was not made. Dckts. 228, 230.

Creditor argues that failing to make the May 2015 payment was material breach of the Plan.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on November 8, 2019. Dckt. 233. Trustee asserts that Debtor has completed all payments made through the plan (including \$99,121.05 in post-petition mortgage and \$40,604.79 in arrearage payments to Creditor's claim).

Trustee states he hopes Creditor and Debtor's counsel will resolve the dispute over the May 2015 payment.

DISCUSSION

Debtor did not file any responsive pleading to the motion. However, the court has an independent duty to make certain that the requirements for confirmation have been met. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010).

Creditor argues and provides evidence that Debtor breached the Confirmed Plan terms by failing to make a payment in May 2015. The Plan requires that the first month's payment be made directly to Creditor and not through the Chapter 13 Trustee.

In that this dispute concerns a payment not made through the Plan but directly by the Debtor, there appear to be two viable options. The first would be to deny the Motion and leave it to Creditor commence a nonjudicial foreclosure sale. That would require Creditor to incur such expenses and the Debtor to have to pay such expenses, (in addition to expenses already incurred relating thereto) as well as cure the default - if such default exists.

The second, more preferable avenue would be to follow what Creditor has attempted prior to and in filing this Motion – get the Debtor and Debtor's counsel engaged in addressing what should be a minor financial issue.

The court opts for the second and sets a continued hearing on this Motion, ordering both the Debtor and Debtor's counsel to attend the hearing in person – No Telephonic Appearance Permitted for the persons ordered to appear.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to **2:00 p.m. on December 10, 2019.**

It is Further Ordered that Bruce Rorty, Esq., Counsel for Debtor, and Robert Wagner, Debtor, are ordered to appear in person at the December 10, 2019 hearing - No Telephonic Appearances Permitted for the persons ordered to appear.

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

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 11, 2019. By the court’s calculation, 46 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Gary Fraley, the Attorney (“Applicant”) for Paul Kevin Harrington, 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 July 1, 2019, through August 9, 2019. Applicant requests fees in the amount of \$3,000.00.

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 prosecution of motions to sell and confirm modified plan, and general case administration. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a non-opposition on October 30, 2019. Dckt. 95. 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. 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’s Billing Statement filed in support of the Motion shows the services provided that were unanticipated and substantial, including prosecution of motions to sell and confirm modified plan, and further general case administration after confirmation of the original plan.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Gary Fraley	12.5	\$450.00	\$5,625.00
Total Fees for Period of Application			\$5,625.00
Total Fees Requested			\$3,000.00

FEES ALLOWED

Fees

The unique facts surrounding the case, including prosecution of motions to sell and confirm modified plan, and further general case administration after confirmation of the original plan, 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 \$3,000.00 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	\$3,000.00
------	------------

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 Gary Fraley (“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 Gary Fraley is allowed the following fees and expenses as a professional of the Estate:

Gary Fraley, Professional Employed by Paul Kevin Harrington (“Debtor”)

Fees in the amount of \$3,000.00

as the final allowance of additional 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 under the confirmed Plan.

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 8, 2019. By the court’s calculation, 49 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice).

The Motion for Approval of Compromise 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 for Approval of Compromise is granted.

Kathleen Marie Pignataro, Chapter 13 Debtor, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with FCA US, LLC and Jeff Thompson’s Auto Group, Inc. dba Thompson’s Chrysler Dodge Jeep Ram (“Settlor”). The disputes to be resolved by the proposed settlement are Debtor’s claims under the California Song-Beverly Consumer Warranty Act, and Debtor’s state court case filed in the Superior Court of California, County of El Dorado, No.

In exchange for dismissing the State Court Litigation, Settlor shall pay Movant \$171,000 and the costs and attorney’s fees from the litigation. See Accepted 998 Offer, Dckt. 71.

There is no “settlement agreement, but the “Accepted “998 Offer” that has been made by Settlor and agreed to under the provides of California Law. Cal. C.C.P. § 998. Dckt. 71. The terms of the 998 Offer are:

- A. In exchange for the “subject vehicle” (an undefined term in the 998 Offer) and dismissal of the State Court Action, Debtor will be paid \$171,000; and

The vehicle has been adequately identified in the Motion, in light of this being a 100 unsecured dividend case as the “2016 Jeep Cherokee.”

- B. The Settlor will pay the reasonable costs, expenses, and attorneys’ fees as agreed by the parties or ordered by the court having jurisdiction over the State Court Action.

The 998 Offer provides nothing more, nothing less. It is accepted by Debtor.

TRUSTEE’S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on November 6, 2019. Dckt. 73. Trustee does not oppose the settlement, but notes that the Motion seeks authority to make direct payments contrary to the confirmed plan.

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).

Woodson Factors

Movant primarily argues that the State Court Litigation is fact-intensive and legally complex, which would result in significant delay and cost to the Estate. This argument is well-taken.

The present settlement offers a reasonable settlement sum on Debtor's claim, and would allow immediate payment of claims in this case. 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. The Motion is granted.

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 -----.

Additional Requests For Relief

In the motion, Movant requests the court apportion the settlement proceeds, authorizing Movant to make certain payments. As the Trustee has noted, this would override the terms of the Confirmed Plan. If Debtor desires to make lump sum payments to complete the Plan, Debtor should file, serve, and set for confirmation hearing a modified plan.

The Motion also seeks to have the court order that a portion of the proceeds be disbursed to the Chapter 13 Trustee to pay the balance of the claims, with the net monies be held in Debtor's counsel's trust account and fees and costs paid "as provided in the retainer agreement.

A review of the Docket does not reflect that Debtor has sought authorization to employ special counsel (11 U.S.C. § 327) to prosecute the claims that are the property of the bankruptcy estate and plan estate. Such authorization for employment is the first step in being allowed attorneys' fees and costs pursuant to 11 U.S.C. § 330.

Granting of Motion

Upon review of the Motion and consideration of the arguments presented, the Motion is granted. From the settlement proceeds \$60,000.00 will be disbursed to the Chapter 13 Trustee for distributions to creditors and expenses as provided in the confirmed plan.

The balance of the settlement proceeds shall be held in the client trust account Knight Law Group, LLP, the identified law firm for Debtor to prosecute the claims that are property of the bankruptcy estate, which shall not be disbursed except upon further order of this court.

Additionally, an application seeking both the retroactive authorization for the employment of the lead attorney at the Knight Law Group, LLP to represent the Debtor and for approval of fees for the representation in the matter that is the subject of the Settlement shall be filed.

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 Kathleen Marie Pignataro, 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 FCA US, LLC and Jeff Thompson’s Auto Group, Inc. dba Thompson’s Chrysler Dodge Jeep Ram (“Settlor”) set forth in the accepted 998 Offer (Dckt. 71) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the accepted 998 Offer filed in support of the Motion (Dckt. 71); subject to the following additional provisions of this Order.

IT IS FURTHER ORDERED that from the Settlement Proceeds \$60,000.00 shall be disbursed by Debtor’s counsel in the settled litigation, the Knight Law Group, LLP, to David Cusick, the Chapter 13 Trustee, which monies shall be disbursed to pay the administrative expenses (excluding the fees of Knight Law Group, LLP) and claims in this case.

IT IS FURTHER ORDERED that the balance of the Settlement Proceeds shall be deposited in the client trust account fo Knight Law Group, LLP, which shall be held in the client trust account pending further order of this court.

IT IS FURTHER ORDERED that an application for the retroactive authorization for employment of the Knight Law Group, LLP to represent the Debtor in prosecuting the claims that are the subject of the Settlement (which are property of the bankruptcy estate under the Plan) and for allowance and payment of the legal fees and expenses of Knight Law Group, LLP for the legal services provided Debtor as special counsel. The court makes the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable in this contested matter for the joining of two different requests for relief in one motion or application.

If the Parties cannot agree to the amount of the proposed attorneys’ fees and costs, and such must be litigated pursuant to the Accepted 998 Offer in the State Court, Debtor’s counsel; (1) the Knight Law Group, LLP or the Debtor shall file a motion for retroactive authorization to employ counsel with the Knight Lw Group, LLP, and then after obtaining a final judgment on the allowed attorneys’ fees and costs will file a motion for the allowance of such fees in this court.

IT IS FURTHER ORDERED that the automatic stay is modified to allow for the surrender of the 2016 Jeep Cherokee

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

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, Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2019. 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). This requirement was met.

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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 10-1 of Christine Bunt is ~~XXXXXX~~

Donald Ulicny, the Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Christine Bunt (“Creditor”), Proof of Claim No. 10-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be a priority claim for a domestic support obligation in the amount of \$70,394.50. Objector asserts that the claim is not a domestic support obligation but a property equalization payment as a result of Debtor’s divorce from Creditor. Additionally, Debtor disputes any attorneys fees sought by Creditor.

Debtor states that he and Creditor were married and that in 2010 entered into a Separation Agreement in 2010 in New York State. Under the Separation Agreement the parties reached an agreement on property division and waived spousal support. Debtor states that under the agreement Debtor was to pay Creditor \$90,000.00 over 15 years with \$500.00 monthly payments. Debtor claims that he owes Creditor \$40,952.56. Dckt. 32, Exhibit B “Debtor Payment Ledger”.

Debtor states that in 2014 he paid a lump sum of \$25,000.00, this payment triggered a subsequent proceeding in the New York State Court to address whether that payment was an advance and whether Debtor needed to resume the \$500.00 monthly payments. The New York court determined that the payment was an advance that the Debtor was to resume monthly payments starting in August

2017. Debtor claims that Creditor's claim does not appear to credit payments made since August 2017 and seeks attorneys fees that Debtor disputes were awarded.

CREDITOR'S RESPONSE:

On September 3, 2019, Creditor's attorney, who discloses that she is not admitted to practice before this court, filed an "Affirmation" on behalf of her client, Christine Bunt. Dckt. 43. The filing did not include a proof of service and it is not clear whether Debtor or Debtor's Attorney received a copy. The filing states that Creditor's attorney is was on vacation when the Objector's Motion was received by her office and is presently assisting her client in finding an attorney authorized to appear. Creditor requests and additional two weeks to file a response.

SEPTEMBER 10, 2019 HEARING

At the hearing California counsel for creditor appeared, confirmed he had been retained, and stated that a response would be filed. Counsel believed that an amended proof of claim may be filed based on an accounting of the payments. The court continued the hearing. Civil Minutes, Dckt. 44.

CREDITOR'S REPLY

Creditor filed a Reply on October 1, 2019 noting that a stipulation requesting a continuance would be filed. Dckt. 48.

OCTOBER 22, 2019 HEARING

On October 2, 2019, the parties filed a joint Stipulation requesting a 30 days continuance. Dckt. 51. At the October 22, 2019 hearing the court continued the hearing pursuant to the request of the parties.

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.

Nothing has been filed by any party since the prior hearing.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Christine Bunt (“Creditor”), filed in this case by Donald Ulicny, 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 hearing on the Objection to Proof of Claim Number 10-1 of Christine Bunt 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.

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 24, 2019. By the court’s calculation, 33 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor did not appear at the Meeting of Creditors on October 17, 2019. The Meeting was continued to December 5, 2019.
- B. Debtor has non-exempt assets of \$7,265.50, but proposes a 0% dividend to unsecured claims.
- C. Debtor has not provided the Trustee a copy of Debtor’s most recent tax return.
- D. The Ensminger provision included in the Plan includes non-standard language, with the proposed adequate protection payment appearing to

be unreasonably low.

DISCUSSION

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

The Chapter 13 Trustee also opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor has non-exempt assets of \$7,265.50, but proposes a 0% dividend to unsecured claims. Therefore, the plan fails to provide what unsecured claims would receive in a Chapter 7 ad is not confirmable.

Additionally, 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).

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)(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 22, 2019. 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). 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.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding two judicial liens held by the State of California Employment Development Department (“Creditor”) against property of the debtor, Corey Alan Stipp (“Debtor”).

The two recorded abstracts of judgment are filed as Exhibits C and D. Dckt 48. The 2011 Judgment was for \$1,520.28, and was recorded in Placer County on May 16, 2011. The 2013 Judgment was for \$22,560.13, and was recorded in Placer County on September 25, 2013.

Debtor asserts that he has no real property, but that the value of personal property listed on Schedule B totals \$42,882.80. Dckt. 1. Debtor asserts further that all \$42,882.80 was exempted under California Code of Civil Procedure §§ 703.140(b)(3), (b)(5), and (b)(10)(E). Schedule C, Dckt. 1.

Proof of Claim, No. 5, shows that the judgment lien was for overpayment of benefits. Recording of an abstract for overpayment of benefits attaches a lien on all real and personal property. Cal. Unemp. Ins. Code § 1379.5.

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

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Corey Alan Stipp ("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 State of California Employment Development Department, California Superior Court for Placer County Case No. 34-2011-90015287, recorded on May 16, 2011, Document No. 2011-0038169-00, with the Placer County Recorder, against Debtor's personal property listed on Schedule B (Dckt. 1), 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.

IT IS FURTHER ORDERED that the judgment lien of State of California Employment Development Department, California Superior Court for Placer County Case No. 34-2013-90041613, recorded on September 25, 2013, [Document No. 2013-0092789-00, with the Placer County Recorder, against Debtor's personal property listed on Schedule B (Dckt. 1), 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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 12, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of California Employment Development Department (“Creditor”) is denied without prejudice.

The Motion to Value filed by Christopher G. Mcintos (“Debtor”) to value the secured claim of the California Employment Development Department (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 27. Debtor is the owner of the subject real property commonly known as 1824 Jamestown Drive Sacramento, California (“Property”). Debtor seeks to value the Property at a fair market value of \$310,000.00 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).

PROPERTY SECURING CREDITOR’S CLAIM

The nature of Creditor’s claim is unclear. Often, the California Employment Development Department records an abstract of judgment to recover a claim of overpayment of benefits. Recording of

an abstract for overpayment of benefits attaches a lien on all real *and* personal property. Cal. Unemp. Ins. Code § 1379.5.

No copy of the abstract is filed with the Motion. A screenshot of the Sacramento County recorder's office website was filed as an Exhibit. Dckt. 26. That document was not authenticated or shown to be admissible evidence.

Without knowing what all the collateral securing Creditor's claim is the court cannot grant the Motion and value Creditor's secured claim. There, the motion is denied without prejudice.

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

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

The Motion to Value Collateral and Secured Claim filed by Christopher G. Mcintos ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THRU #35

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, and Debtor's Attorney on October 24, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Disgorge 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Disgorge Fees is granted.

David Cusick ("the Chapter 13 Trustee") moves the Court for an order disgorging Thomas A. Moore's ("Counsel") attorney fees in this case pursuant to 11 U.S.C. § 329. The Chapter 13 Trustee argues that Counsel failed to make certain appear or file responsive pleading in relation to Debtor's Motion To Confirm (Dckt. 35), despite Debtor showing up to the hearing on that Motion.

APPLICABLE LAW

The court has the authority, and responsibility, to consider attorney's fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. §§ 329, 330, 331; *see also Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997). Fees in excess of the reasonable value of such services may be ordered repaid. *See In re Lawas*, No. 13-33513-E-13, 2014 Bankr. LEXIS 623 (Bankr. E.D. Cal. Feb. 12, 2014). The application of 11 U.S.C. § 329 and the Federal Rules of Bankruptcy Procedure may seem harsh, but they are necessary not only to protect vulnerable consumers and business owners, but also to protect the integrity of the federal judicial process. *See Neben & Starrett v. Charwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 881 (9th Cir. 1995). Debtor's counsel must lay bare all dealings regarding compensation and must be direct and comprehensive. *See Kavanagh v. Leija (In Re Leija)*, 270 B.R. 497, 501 (Bankr. E.D. Cal. 2001) (citation omitted); *In re Bob's Supermarket's, Inc.*, 146 B.R. 20, 25 (Bankr. D. Mont. 1992), *aff'd in part and rev'd in part*, 165 B.R.

339 (B.A.P. 9th Cir. 1993). The burden is on the person to be employed to come forward and to make full, candid, complete disclosure. *In re B.E.S. Concrete Products, Inc.*, 93 B.R. 228 (E.D. Cal. 1988). The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any bona fide rights to be adjudicated.

DISCUSSION

Trustee filed an Opposition (Dckt. 49) to Debtor's Motion To Confirm (Dckt. 35) opposing confirmation on the grounds that (1) it was unclear what effect Debtor's confirmed Chapter 11 plan would have on a Chapter 13 case, and (2) Debtor's declaration filed in support of the Motion provides insufficient information to meet 11 U.S.C. § 1325.

Debtor appeared at the hearing on the motion To Confirm, but Counsel did not. Declaration, Dckt. 65. After the hearing was continued and before filing this Motion, no response was filed by Counsel on behalf of Debtor.

After the filing of this motion, Counsel filed a Supplemental Declaration of Debtor in response to the Trustee's Opposition to the Motion To Confirm Plan. That Declaration provides testimony from the Debtor essentially stating that all claims not satisfied in Debtor's Chapter 11 Case are included in Debtor's present case.

However, there is no Reply including legal argument provided by Counsel. Additionally, the sufficiency of Debtor's declaration with respect to 11 U.S.C. § 1325 was not addressed.

Counsel did not respond to the present Motion. It appears the case is not being prosecuted by Counsel, and fees are in excess of what is reasonable.

Counsel in this case received \$6,000.00. Dckt. 1. Because there was no attempt by Counsel to explain what services were provided and what fee amount is reasonable, the court will disgorge the entire fee.

The Motion is granted, and Attorney shall disgorge \$6,000.00 back to Debtor.

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

IT IS ORDERED that the Motion is granted and Thomas A. Moore, Esq. shall turnover or pay from other monies if he is not holding the monies paid to him by the Debtor the sum of \$6,000.00 on or before December 25, 2019. The Chapter 13 Trustee shall segregate the \$6,000.00 (which can be done by an accounting entry rather than a separate account), to which any attorney lien or

right to payment from of Thomas A. Moore shall fix. The Trustee shall not disburse the \$6,000.00 except on further order of this court or as provided below.

IT IS FURTHER ORDERED that if no motion for allowance of attorney's fees is filed by Thomas A. Moore for his services as the attorney for the Chapter 13 debtor is filed on or before noon on December 25, 2019, the Chapter 13 Trustee may lodge with this court a supplemental order (using the Docket Control Number for the present Motion) authorizing the Chapter 13 Trustee to disburse or otherwise administer the monies as permitted under the Bankruptcy Code.

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 August 8, 2019. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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, Michael Petkus (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payment of \$2,100.00 for month 1 and then \$3,200.00 for the remaining 59 months, providing a 23% dividend to general unsecured creditors. Amended Plan, Dckt. 25. 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 28, 2019. Dckt. 49. The Trustee states that the court sustained the Trustee’s Objection to Debtor’s prior plan because it did not address the effect of Debtor’s prior Chapter 11. Debtor’s Amended Plan does not address the effect of the prior Chapter 11. Additionally, Debtor’s Declaration in support of the Amended Plan is insufficient.

DEBTOR’S SUPPLEMENTAL DECLARATIONS

Debtor filed a Declaration and Amended Declaration in support of the Motion. Dckts. 87, 93.

The Declarations provide testimony that Debtor satisfied or included all debts that were in Debtor's Chapter 11, and that all current debts are included in the Chapter 13.

DISCUSSION

Debtor provided testimony that all claims have been properly included. However, Debtor's counsel did not address the deficiencies with respect to Debtor's declaration.

At the hearing -----

The Amended Plan **xxxx** with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is **xxxx** 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, Michael Petkus("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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on October 24, 2019. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor did not appear at the Meeting of Creditors on October 17, 2019.
- B. The plan proposes valuing the secured claims as to three of Debtor's vehicles. However, no motions to value have been filed.
- C. Debtor has improperly claimed exemptions pursuant to California Code of Civil Procedure sections 703 and 704.
- D. Debtor has not provided business documents required by 11 U.S.C. § 521.
- E. On Debtor's Form 12C-1, Debtor lists \$18,600 of monthly gross income.

Debtor then lists the net income as \$6,220.00 without listing any ordinary and necessary business expenses.

DISCUSSION

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).

A review of Debtor's Plan shows that it relies on the court valuing the secured claims as to three of Debtor's vehicles. Debtor has failed to file any motion to value. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor claimed exemptions under California Code of Civil Procedure sections 703 and 704. Because Debtor must make an election of one of those sections, those exemptions will be disallowed and the plan render infeasible.

Finally, On Debtor's Form 12C-1 at page 45, Debtor lists \$18,600 of monthly gross income. Debtor then lists the net income as \$6,220.00 without deducting any ordinary and necessary business expenses. Without presenting an accurate picture of Debtor's finances, the court cannot determine if the Plan is Debtor's best efforts or is feasible.

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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 8, 2019. By the court's calculation, 49 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.

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

- A. the plan provides for 5% interest on Creditor's claim where Creditor is entitled to 7% interest due to risk factors.
- B. Creditor's claim in the plan is stated by Debtor to be a non-purchase money security interest, where the claim actually was a purchase money security interest.

DISCUSSION

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.00%. Creditor's claim is secured by a 2006 Chevrolet

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

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment.

Here, Creditor argues the following risk factors are present:

1. Debtor’s monthly disposable income reflected on Schedules I and J os \$1,175, which when making the proposed \$1,112.00 plan payment leaves Debtor only \$63.00 variance. Therefore, Creditor believes Debtor is at high risk of default.
2. The Vehicle is a depreciating asset which loses value with continued use.

The court is not persuaded that the above risk factors justify a risk adjustment. That Debtor is providing most or all of Debtor’s disposable income through the plan is a basic premise of nearly all Chapter 13 cases. Allowing an adjustment on that basis would result in a near bright-line rule in Chapter 13 cases.

Furthermore, the vehicle securing the claim here is a 2006 model. While the vehicle will continue to depreciate, the rapid-depreciation normally associated with vehicles has likely plateaued significantly.

The Chapter 13 Trustee filed an Objection To Confirmation set for hearing the same day as the hearing on this Objection. A review of the docket shows the court sustained that objection on several grounds. Therefore, the court will also sustain this objection based on the same grounds.

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 Creditor Credit Acceptance Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 17, 2019. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on October 17, 2019.

The Order to Show Cause is sustained, and the case is dismissed.

At the November 20, 2019, hearing on this Order To show Cause, the court continued the hearing to allow Debtor to pay the delinquent filing fee installment.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the 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.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 23, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert is granted, and the case is converted to one under Chapter 7.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Elizabeth Micaller Cruz ("Debtor"), has not set a confirmation hearing since the case was converted to Chapter 13 on July 31, 2019.
2. The Debtor provided bank statements from March 2019 to the Trustee for accounts not previously listed as assets in the Chapter 7 case (prior to conversion). Those accounts in March 2019 indicated balances of \$115,130.82 and \$33,972.98.
3. Debtor's 2018 tax return indicates \$31,222.00 from gambling income that was not listed on the Statement of financial affairs. Trustee is concerned the gambling may effect the feasibility of the plan.
4. Debtor has funds on-hand to pay all claims within one month, rather than 60 months.
5. Debtor has a plan payment coming due on October 25, 2019.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 5, 2019. Dckt. 32. The Opposition asserts that the undisclosed bank account funds were held by the non-filing spouse and were unknown to Debtor. The Opposition asserts further that the gambling income was from the non-filing spouse, about which Debtor had no knowledge—other than to know her husband is a “high roller.”

Debtor's counsel explains that Debtor's current plan is to make a nominal payment until deadline for filing claims, and then to make a lump sum to pay off claims from the bank account funds.

TRUSTEE'S RESPONSE

Trustee filed a Response on November 12, 2019, adding that there is a \$1,010.00 delinquency under the plan.

NOVEMBER 20, 2019 HEARING

At the November 20, 2019 hearing on the Motion the court continued the hearing to allow Debtor to have deposited with the Chapter 13 Trustee \$50,000.00 to be applied toward the Plan to be filed in this case.

DISCUSSION

The court continued the hearing to allow Debtor to turnover a significant amount of the “discovered” monies.

At the hearing, **xxxxxxxxxxxxxx**.

The Trustee requests conversion to Chapter 7 on the grounds that Debtor has not provided an accurate financial picture, is delaying payment to creditors where they could be paid off immediately, and because gambling income suggests Estate funds could be depleted.

The more compelling case for conversion is made by the Debtor. Debtor testifies that her husband is a “high roller,” spending enough money on gambling that casinos offer him free lodging. Declaration, Dckt. 33. Debtor's husband had over a hundred thousand dollars on-hand that Debtor had no knowledge of, taken out as a loan against Debtor's residence. *Id.*

Debtor provided the court inaccurate information on her Schedules and Statement of Financial Affairs under penalty of perjury. While Debtor testifies that she had no knowledge of a lot of her husband's financial activity, she knew that she did not know. *Id.* The Debtor had no reasonable basis to believe the information she provided was complete or accurate.

When Debtor discovered funds in her husband's account enough to pay all claims, the case was converted out of fear over how Debtor's husband would react. Opposition, Dckt. 32.

Debtor's stated intent is to make nominal payments while the claims are determined and then make a lump sum. However, the Debtor is delinquent in plan payments. Dckt. 35.

Furthermore, there is no declaration from the husband, whom has been represented to be in control of the funds, testifying that claims will be paid. The non-filing spouse has not presented testimony showing that gambling activity will be foregone, and funds will be preserved.

The Debtor's Opposition states the following:

Trustee mentions that he is concerned that the funds in the husband's account may be depleted. Debtor shares that concern.

Opposition, Dckt. 32 at p. 4:7-8.

The Debtor has not set a plan confirmation hearing, and the Debtor is not making plan payments. That alone is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

By converting the case to Chapter 7, the funds on-hand will be preserved. The non-filing spouse will be taken out of the "driver's seat" and replaced by a Chapter 7 Trustee, a fiduciary of the Estate. The concern that the Debtor and Chapter 13 Trustee share about funds being diverted will be mitigated, if not eliminated entirely.

Based on the foregoing, cause exists to convert the case to Chapter 7. The Motion is granted, and the case is converted to one under Chapter 7.

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

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

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

IT IS ORDERED that the Motion to Convert is granted, and the case is converted to one under Chapter 7.

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 27, 2019. The court computes that 23 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on October 21, 2019.

The Order to Show Cause is sustained, and the case is dismissed.

At the November 20, 2019, hearing on this Order To show Cause, the court continued the hearing to allow Debtor to pay the delinquent filing fee installment.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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

Final Ruling: No appearance at the November 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors’, and Office of the United States Trustee on October 7, 2019. By the court’s calculation, 50 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 13 of LVNV Funding, LLC is sustained , and the claim is disallowed in its entirety.

David Wayne Miller and Billie Kay Miller, Chapter 13 Debtor (“Objector”) requests that the court disallow the claim of LVNV Funding, LLC (“Creditor”), Proof of Claim No. 13 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$10,557.58. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was February 1, 1999. The date of last payment on the Statement of Account Information attached to the Proof of Claim states April 27, 1998.

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).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 13 lists the charge off date as February 1, 1999. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after April 27, 1998. Thus, the four-year statute of limitations expired in April 2002.

This bankruptcy case was filed on July 31, 2019—over a decade after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. 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 LVNV Funding, LLC ("Creditor") filed in this case by David Wayne Miller and Billie Kay Miller, 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 13 of LVNV Funding, LLC 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 26, 2019, hearing is required.

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on September 11, 2019, is confirmed.**

Counsel for the debtor, Tiffany Allen (“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.

44. [16-23440-C-13](#)
[DPC-1](#)

CYNTHIA UNDEN
Peter Macaluso

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-22-19 [70]**

Final Ruling: No appearance at the November 26, 2019, hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the November 26, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not 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, 2019. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

Upon review of the pleadings and the record, a hearing is not necessary.

The hearing on the Objection to Confirmation of Plan is continued to December 10, 2019 at 2:00p.m.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the plan relies on valuing the secured claim of Regional Acceptance Corporation, and Debtor’s Motion To Value (Dckt. 8) that claim was denied without prejudice.

DEBTOR’S RESPONSE

Debtor filed a Response on October 30, 2019. Dckt. 25. Debtor mistakenly responds to a “motion to dismiss” where this is an Objection to Confirmation.

Debtor notes there is a new Motion To Value (Dckt. 28), and requests the Trustee’s opposition to plan confirmation be overruled.

DISCUSSION

The Plan relies on the outcome of Debtor’s newly filed Motion to Value. The court shall continue the hearing to December 10, 2019 at 2:00p.m. to be heard alongside Debtor’s Motion To Value.

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

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

hearing.

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

IT IS ORDERED that the hearing on the Objection to Confirmation is continued to December 10, 2019 at 2:00 p.m.

Final Ruling: No appearance at the November 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2019. By the court’s calculation, 67 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, Bryan Carl Master (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on November 6, 2019. Dckt. 20. 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, Bryan Carl Master (“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 20, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the November 26, 2019, hearing is required.

The Motion To Confirm is dismissed without prejudice.

Gary Alan Howe (“Debtor”) having filed a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on November 18, 2019. Dckt. 54; 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 oppositions filed by the Chapter 13 Trustee and creditor Bank of New York Mellon; the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, the Plan is not confirmed, 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 Confirm filed by the Debtor, Gary Alan Howe, having been presented to the court, the Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 54, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Confirm is dismissed without prejudice.

48. [19-25856-C-13](#) **JAVIER/SOCORRO ORTEGA**
[PPR-1](#) **Gabriel Liberman**

**OBJECTION TO CONFIRMATION OF
PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC**
10-15-19 [\[15\]](#)

Final Ruling: No appearance at the November 20, 2019, hearing is required.

Creditor Carrington Mortgage Services, LLC (“Creditor”) 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 September 18, 2019, is confirmed.**

Counsel for the debtors, Javier Garcia Ortega and Socorro Ortega (“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 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, and Debtor's Attorney on October 15, 2019. By the court's calculation, 42 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 pursuant to California Code of Civil Procedure section 703.140(b)(5) are disallowed in their entirety.

The Chapter 13 Trustee, David Cusick ("Trustee"), objects to Daniel Bryan Butler's ("Debtor") claimed exemptions of \$31,482.94 pursuant to California Code of Civil Procedure section 703.140(b)(5) exceed the allowable exemption amount.

Debtor filed a Response on November 6, 2019, conceding that the claimed exemption is beyond the allowable amount, and stating that an Amended Schedule C will be filed. Dckt. 116.

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions pursuant to California Code of Civil Procedure section 703.140(b)(5).

Final Ruling: No appearance at the November 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2019. 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, Elmer Noe Crespin and Alma Yared Crespin (“Debtor”), have filed evidence in support of confirmation. Dckt. 279. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on November 12, 2019. Dckt. 283. 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, Elmer Noe Crespin and Alma Yared Crespin (“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 21, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the November 26, 2019, hearing is required.

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on September 9, 2019, is confirmed.**

Counsel for the debtor, Junho Pae (“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 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2019. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Juan Alfonso Almanza (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition November 5, 2019. Dckt. 47. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Juan Alfonso Almanza (“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 October 21, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the November 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2019. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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, Daniel Alexander Arana (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition November 5, 2019. Dckt. 47. 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, Daniel Alexander Arana (“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 October 21, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the November 26, 2019 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 10, 2019. By the court’s calculation, 42 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Upon review of the Objection and the Debtor’s Surreply, a hearing is not necessary.

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 debtors, Michael Eugene Boyd and Sandra Danyelle Palen Boyd (“Debtor”), could be paying more into their plan and therefore the plan is not Debtor’s best efforts.

Trustee specifically that Debtor’s average monthly income is \$24,059.12, and not the \$17,407.74 stated. Trustee also notes there are expenses for telephone that may not be necessary, and there is a monthly deduction for repayment of retirement loan of \$847.69 that may not continue through the life of the plan.

DEBTOR’S REPLY

Debtor filed a Reply on October 15, 2019. Dckt. 22. Debtor argues that the income listed on Schedule I is prospective. Debtor was working 90 hours of overtime bi-weekly, and going forward will work 60 hours per week.

Debtor argues further that the \$665 per month expense is not just for telephone, but for telephone, cell phone, internet, satellite, and cable services. Debtor also states that while the Debtor’s repayment of 3 retirement loans will not continue throughout the plan term, that schedules will later be amended to reflect subsequent changes (though Debtor is anticipated to further reduce work hours).

DISCUSSION

The Debtor filed a Surreply on November 8, 2019, conceding that the proposed plan is not confirmable and consenting to the court sustaining the Trustee’s Objection.

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

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

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

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

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

Final Ruling: No appearance at the November 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor’s, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 9, 2019. By the court’s calculation, 48 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 16 of NC Financial Solutions of CA LLC is sustained, and the claim is disallowed in its entirety.

The debtors Michael Barron and Denise Barron, (“Objector”) requests that the court disallow the claim of NC Financial Solutions of CA LLC (“Creditor”), Proof of Claim No. 16 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$7,998.82. 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 April 22, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 8.

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 April 22, 2019. Creditor's Proof of Claim was filed on April 24, 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 NC Financial Solutions of CA LLC ("Creditor") filed in this case by Michael Barron and Denise Barron, Chapter 13 Debtors ("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 16 of NC Financial Solutions of CA LLC 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 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2019. By the court’s calculation, 40 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, Myanh Thi Quach (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition / statement of non-opposition on November 12, 2019. Dckt. 27. 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, Myanh Thi Quach (“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 October 17, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the November 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 24, 2019. By the court's calculation, 63 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 Jefferson Capital Systems LLC is sustained, and the claim is disallowed in its entirety.

Jami Lynn Kear, the debtor ("Objector") requests that the court disallow the claim of Jefferson Capital Systems LLC ("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 \$954.09. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and payoff date was August 15, 2007. The chargeoff date on the Statement of Account Information attached to the Proof of Claim states October 16, 2007.

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).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 4 lists the charge off date as October 16, 2007. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after August 15, 2007. Thus, the four-year statute of limitations expired on August 15, 2011.

This bankruptcy case was filed on August 19, 2019—several years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to

the statute of limitations expiring prior to the filing of the case. 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 Jefferson Capital Systems LLC (“Creditor”) filed in this case by Jami Lynn Kear, the 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 Jefferson Capital Systems LLC 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 26, 2019, hearing is required.

The Objection to Confirmation is dismissed without prejudice.

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a an Ex Parte Motion to Dismiss the pending Objection on November 22, 2019, Dckt. 34; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Christopher Michael Chang and Alison Elizabeth Hoyer (“Debtor”); **the Ex Parte Motion is granted, the Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on November 4, 2019, is confirmed.**

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

Final Ruling: No appearance at the November 26, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor’s, and Debtor’s Attorney on October 23, 2019. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to December 10, 2019 at 2:00p.m.

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

- A. Debtor’s plan relies on two lien avoidance motions, both set for a November 5, 2019, hearing date.
- B. Debtor’s plan payment is coming due \$2,534.77.

DISCUSSION

A review of the docket shows that one of Debtor’s motions (Dckt. 16) was granted, but the hearing on the other motion (Dckt. 20) was continued to December 10, 2019 at 2:00p.m.

The court shall continue the hearing on the Objection to be heard alongside the continued Motion To Value.

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

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

hearing.

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

IT IS ORDERED that the Objection to Confirmation of the Plan is continued to December 10, 2019 at 2:00p.m.

THRU #61

Final Ruling: No appearance at the November 26, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not 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 31, 2019. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

Creditor U.S. Bank National Association, as indenture trustee, for the holders of the CIM Trust 2018-NR1, Mortgage-Backed Notes, Series 2018-NR1 (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the plan payment of \$1,219.00 is less than the proposed payment on Creditor’s Class 1 Claim (\$688.16 monthly for arrearages and \$1,284.89 for the post-petition payments).

AMENDED PLAN

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 22, 2019. Dckts. 24, 27. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the November 26, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor on October 29, 2019. By the court’s calculation, 28 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 -----
-----.

This contested matter is dismissed without prejudice, no motion having been filed.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed several documents which support Trustee’s Objection to the confirmation of Debtor’s proposed Chapter 13 Plan. However, the Objection itself was not filed.

The Declaration of Christina Lloyd in support of the objection was filed twice. Dckts. 16, 18.

The Debtor has filed an amended plan and motion to confirm, which is a de facto dismissal of the plan that is the subject of this “objection.” The court has denied confirmation of the plan pursuant to the Objection of a creditor.

The Trustee’s “Objection” is dismissed without prejudice.

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

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

The 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 dismissed without prejudice. Confirmation of the Plan has been denied pursuant to an objection filed by a creditor. Debtor has filed an amended plan and motion to confirm that amended plan.

THRU #63

Final Ruling: No appearance at the November 26, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor’s Attorney on November 7, 2019. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Bank of New York Mellon fka The Bank of New York, as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Inc. Mortgage Pass-Through Certificates Series 2006-AR1 (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that Debtor’s income is too speculative to prove the plan is feasible.

Specifically, Creditor questions the reliability of a \$1,300.00 monthly contribution from Debtor’s son, listed on Schedule I. Creditor also questions the reliability of rental income where Debtor has not produced any long-term lease agreements.

Creditor also notes that, according to the Statement of Financial Affairs, Debtor received \$50,377.50 in income from January 1, 2019, through the bankruptcy filing date, but was unable to make any mortgage payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on November 13, 2019. Dckt. 27.

AMENDED PLAN

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended and corresponding Motion to Confirm on November 14, 2019. Dckts. 30, 34. 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.

Final Ruling: No appearance at the November 26, 2019, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor’s Attorney on November 5, 2019. By the court’s calculation, 52 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 this Objection asserting that the proposed pending Chapter 13 Plan was not feasible.

Thereafter, Debtor filed an Amended Plan and corresponding Motion to Confirm on November 14, 2019. Dckts. 30, 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. 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.