

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 26, 2019 at 3:00 p.m.

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1. [19-21310-E-13](#) **WANDA COLLIER-ABBOTT** **MOTION TO VALUE COLLATERAL OF**
[RJ-5](#) **Richard Jare** **RPA CP OPPORTUNITY TRUST 2**
10-28-19 [116]

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, creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2019. By the court's calculation, 29 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 RPA CP Opportunity Trust 2 ("Creditor") is denied without prejudice.

The Motion to Value filed by Wanda Collier-Abbott ("Debtor") to value the secured claim of

RPA CP Opportunity Trust 2 (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 119. Debtor is the owner of the subject real property commonly known as 3101 Spinning Rod Way, Sacramento, California (“Property”). Debtor seeks to value the Property at a fair market value of \$470,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 4-1 filed by RPA CP Opportunity Trust 2 appears to be the claim that may be the subject of the present Motion.

OPPOSITION

Creditor has filed an Opposition. Dckt. 122. The “Opposition” is nothing more than a Notice that Creditor has an opposition, and for the court to figure out what it is, the court is directed/instructed/ordered by Creditor to read the separate statement of facts, memorandum of points and authorities, and state for Creditor an opposition.

Local Bankruptcy Rule 9004-1 states the long standing rule that a motion, opposition, points and authorities, declarations, and exhibits (which may be combined into one document) must be filed as separate pleadings. Merely telling the court to read everything that a party has filed and then put together the best motion or opposition possible does not comply with the Local Rules. ^{FN. 1}

FN. 1. While Creditor’s counsel may want to argue that for them, the various pleadings are clearly written, divided into well identified subsections, and clearly state what grounds for opposition exist, the court cannot have a special class of “good counsel” who do not have to comply with the Rules and a “RULES APPLY TO YOU counsel” who would (as is well demonstrated in the history of the court) would assemble and file abusive pleadings intended to confuse not only the opposing party, but the court.

RESPONSE BY DEBTOR

Debtor filed a Response Declaration on November 11, 2019. Dckt. 125.

DISCUSSION

Debtor values the property at \$470,000.00 based on her opinion. Creditor has an issue with Debtor’s statements regarding the value. But as this court has previously explained many times, a Debtor’s opinion of value is evidence, even if it’s of the most ephemeral essence. Debtor has lived in the Property since 2005. She describes that the Property requires repairs. Debtor is very specific in that it is her opinion. She does not claim to be an expert. Thus, her opinion is evidence.

Going to the Motion and evidence presented by Movant, the court computes the value in the property securing Creditor’s claim as follows:

FMV.....	\$470,000.00
Senior Lien Debt.....	(\$312,589.38)
	=====

Value Securing Creditor’s Junior Priority Obligation
\$157,410.62

Debtor’s Motion then raises the issue of whether the secured claim of Creditor may be valued under 11 U.S.C. § 506(a). Debtor argues that the motion is “consistent” with 11 U.S.C. § 1322(c)(2) which states:

- (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—
...
(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

Debtor’s reference to this Section tells us that: (1) the Property is the Debtor’s residence, (2) Creditor’s claim is secured only by Debtor’s residence, and (3) the last payment due on Creditor’s claim is after the completion of the Plan term.

Then, moving to 11 U.S.C. § 1325(a)(5) provides (edits and highlights added to emphasize

the portion in play):

(5) with respect to each allowed secured claim provided for by the plan—

~~(A) the holder of such claim has accepted the plan;~~

(B)

(i) the plan provides that—

(I) the **holder of such claim retain the lien securing such claim until the earlier of—**

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) **discharge under section 1328**; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) **the value**, as of the effective date of the plan, of property to be distributed under the plan on account of such **claim is not less than the allowed amount of such claim; and**

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such **payments shall be in equal monthly amounts**; and

~~(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or~~

~~(C) the debtor surrenders the property securing such claim to such holder~~

Based on the above, the Bankruptcy Code says that the secured claim for which the collateral is the debtor's primary residence may be the **allowed** amount, which must be paid in full during the term of the plan.

This treatment is permitted notwithstanding the provisions of 11 U.S.C. § 1322(b)(2), which would prohibit modifying rights of creditors holding claims secured only by a debtor's primary residence.

Unfortunately, other than quoting 11 U.S.C. § 1322(c)(2) and asserting that (c)(2) trumps (b)(2), Debtor and Debtor's counsel offer no authority or analysis (not even like the simple, initial

analysis above by the court).

Debtor does tell us in the Motion that it “appears,” based on the proof of claim filed by Creditor, that the obligation comes due on April 1, 2020. Unfortunately, Debtor cannot affirmatively allege the due in full date on the note that Debtor signed, but only reference it as a mirage.

Denial of Motion Without Prejudice

As directed by the Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), even when there is not an effective opposition presented, the court must determine the matter correctly and based on the law, not merely serve “you get whatever you ask for so long as nobody opposes it” street vendor.

The Debtor’s Motion does not provide the court with an analysis of the law sufficient to educate the court whether Debtor is entitled to the relief requested. The court declines the opportunity to construct such analysis for the Debtor.

While not stated in the Opposition, the Points and Authorities filed by Creditor provide the standard 11 U.S.C. § 1322(b)(2) analysis, cites to *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002) and *In re Lam*, 211 B.R. 36, 40-42 (BAP 9th Cir. 1997), for the standard if the claim of a lender secured by only the debtor’s primary residence has some value to partially secure the claim then it cannot be valued under 11 U.S.C. § 506(a). However, Creditor ignores the assertion that 11 U.S.C. § 1322(c)(2) has some legal effect and such valuations can be made when the obligation is due in full before the end of the term of the plan.

Before the court rules, it will be necessary for the respective parties and their counsel to address the issues and provide the court with their proper, relevant analysis, not merely assertions and boilerplate authorities. This necessitates the filing of a new motion. (The court would not want it to appear that parties can just throw stuff at the court and provide proper analysis and relevant authority when the court “catches” that it is missing.)

Such may present the parties with some significant research and analysis time. It may lead to the parties recognizing what the law actually provides and there will be no dispute - either no motion filed or no opposition. Or it may be that the parties have a good faith dispute, provide the court with thoughtful analyses (consistent with the Fed. R. Bankr. P. 9011 certifications) and the court will have the opportunity to publish a cutting edge opinion. ^{FN. 2.}

FN. 2. The Parties may also want to consider reviewing treatises on bankruptcy law. One such is Collier on Bankruptcy. A review of the index of the Collier Treatise discloses a section with the following intriguing title - ¶1322.17 Exceptions to the Rule Against Modification of Home Mortgages; § 1322(c)(2). The court leaves it to the respective counsel to read **that and other relevant treatises and case law when filing the new motion and deciding** if an opposition is proper and can be made consistent with the Rule 9011 certifications.

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 Wanda Collier-Abbott (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2. [19-25821](#)-E-13 **LARRY PERKINS** **OBJECTION TO CONFIRMATION OF**
 [DPC-1](#) **Richard Jare** **PLAN BY DAVID P CUSICK**
 7 thru 8 **11-6-19 [38]**

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 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.

The hearing on the Objection to Confirmation of Plan has been rescheduled to December 3, 2019 at 1:00 p.m. at Sacramento Courtroom 32, Department B, pursuant to prior Order (Dckt. 52).

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

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 15, 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). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The hearing on the Objection to Confirmation of Plan has been rescheduled to December 3, 2019 at 1:00 p.m. at Sacramento Courtroom 32, Department B, per prior Order (Dckt. 51).

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 (*pro se*), Chapter 13 Trustee, creditors, 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 Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter ~~xx~~ 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 Withdraw as Special Representative is ~~xxxxx~~.

Kristy Hernandez (“Movant”), counsel of record for Thomas Ivers (“Debtor”), filed a Motion to Withdraw as Special Representative to Debtor in the bankruptcy case. Movant states the following:

- A. Debtor has failed to cooperate in the sale of his home.
- B. Debtor and Special Representative cannot agree on a course of proceeding in this case.
- C. Debtor believes that the Special Representative is involved in a conspiracy to commit fraud against him, which has made it impossible for the Special Representative to act on his behalf.

Motion, Dckt. 149.

DISCUSSION

October 29, 2019 Hearing

Debtor appeared at the October 29, 2019 hearing, as well as attorneys Luke Garcia and Stephen Johnson, and Kirsty Hernandez, the Limited Scope Representative/Guardian Ad Litem. As explained at the hearing, Ms. Hernandez reports that the proposed sale at the price she could get for the Property now nine months into this Chapter 13 case without a confirmed plan, would yield a net recovery of \$15,000 for Debtor, not the hundreds of thousands of dollars that Debtor asserts exists. This include Ms. Hernandez waiving any fees for fulfilling her duties in this case.

Debtor and Special Representative could not agree on a course of proceeding in this case. However, Debtor accused his former counsel and Special Representative of fraud. The court concluded that the relationship between the parties was irreparable. Counsel's Motion for Withdrawal as Debtor's Attorney was granted at the hearing, and the court requested Special Representative file this Motion.

Movant states in her declaration:

"Unfortunately, the actions and allegations of the Debtor in this case have made it impossible for me to represent him in any capacity."

Declaration, Dckt. 151.

At the hearing, ~~XXXXXXXXXX~~

~~As has been demonstrated in the prior hearing and discussed by the court in several recent decisions and orders, the use of a Special Representative will not work in this case to help a debtor save value in property that he or she appears incapable of protecting. The Debtor believes that his own former attorneys and the Special Purpose representatives have conspired to defraud him of the value in the Property, which he acknowledges must be sold, but which he has demonstrated now for several years he is incapable of selling. (Debtor does assert that part of this incapacity has been caused by the conspiracy to defraud.) The court has referred the Debtor to Sacramento County Adult Protective Services for their expert review and action for this Debtor.~~

~~The Motion is granted.~~

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

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

~~The Motion to Withdraw as Special Representative filed by Kristy Hernandez ("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 to Withdraw as Special Representative is granted, and Movant is permitted to withdraw as special representative for Thomas Ivers ("Debtor") and is discharged of all further duties.~~

5. [19-25327-E-13](#) **KIM BRILL**
[DPC-1](#) **Pro Se**

**OBJECTION TO CLAIM OF KIM JO
BRILL, CLAIM NUMBER 1
10-4-19 [18]**

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

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 (*pro se*), and Office of the United States Trustee on October 4, 2019. By the court’s calculation, 53 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 1 of Kim Jo Brill is sustained, with leave to file an amended proof of claim.

David P. Cusick, the Chapter 13 Trustee, (“Objector”) requests that the court disallow the claim of Kim Jo Brill (“Creditor”), Proof of Claim No. 1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$748.00. Objector asserts that it is uncertain as to who the correct creditor is and the address where payments should be sent.

Opposition

On November 14, 2019, Creditor County of Sacramento filed an Opposition to the Objection. Dckt. 36. Creditor explains that it encountered technical difficulties with the online filing system and, although the County enlisted the assistance of bankruptcy staff, it was unable to properly populate the appropriate fields to file its amended claim.

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.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Here, the Creditor has explained the challenges relating to the claim filed and filing an amended claim. Creditor wants to correct this outside the claim filing process to the satisfaction of the Trustee.

While the court does not doubt the good faith or intentions of Creditor, the bankruptcy claims process is one in which creditors, their claims and the basis for such claim are part of the public record as part of a transparent bankruptcy process. The proper way to address correctly documenting the claim is by amending the proof of claim.

The Objection is sustained, Proof of Claim No. 1-1 disallowed, with leave to amend, with the amended proof of claim to be filed by December 30, 2019.

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 Kim Jo Brill (“Creditor”), filed in this case by David P. Cusick, the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 1-1 is sustained is disallowed, with leave for Creditor to file an amended claim on or before noon on December 30, 2019.

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 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 -----

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The Objection to Confirmation of Plan is sustained.

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

- A. Debtor failed to provide business documents.
- B. Debtor failed to provide business income and expenses.
- C. Debtor failed to provide 521 documents, including pay advices and tax returns.

DISCUSSION

Trustee’s objections are well-taken.

Pay Stubs & Tax Returns

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

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

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

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

Failure to File Business Documents Required by Schedule I

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.” Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

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, Chapter 13 Trustee and Office of the United States Trustee on October 11, 2019. By the court’s calculation, 46 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.

Nissan-Infiniti LT (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor failed to put forth a good faith, best efforts Plan to repay the creditor.
- B. Specifically, Debtor has failed to assume or reject the prevailing lease agreement.

DISCUSSION

Creditor’s objections are well-taken.

Debtor signed a lease agreement with Creditor. As part of the bankruptcy proceeding, Debtor is supposed to either assume the contract and make payments directly to Creditor, or reject the contract and surrender the vehicle. However, Debtor lists Creditor in Section 3.08 as a Class 2(A) claim of the

Plan as a purchase, rather than in section 4.02 of the Plan. Creditor further argues that accepting Debtor's plan as presently proposed will prejudiced them and lead to substantial loss.

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 Nissan-Infiniti LT ("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 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 Objection to Confirmation of Plan is sustained.

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

- A. Plan is not feasible because Debtor no longer receives a contribution from her adult son.
- B. Plan relies on two Motions to Value Collateral that have not been filed.
- C. Debtor improperly classified a lease agreement as a class 2 claim on the Plan.

DISCUSSION

Trustee’s objections are well-taken.

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). On October 17, 2019, Debtor admitted at the First Meeting of Creditors that her adult son's contribution of \$950.00 per month had ceased. Thus, the Plan may not be confirmed.

Debtor's Reliance on Two Motions to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing two secured claim for Personal Energy/RA/Loan and Select Portfolio Servicing, Inc. Debtor has failed to file either Motion to Value the Secured Claim of Personal Energy/RA/Loan or Select Portfolio Servicing, Inc, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Vehicle Lease in Class 2

Trustee alleges that the Plan does not comply with applicable law. 11 U.S.C. § 1325(a)(1). Debtor improperly classified a leased vehicle as a class 2 claim and on Schedule D rather than in Section 4.02 of the Plan.

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

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

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

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

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

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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, Creditor, parties requesting special notice, and Office of the United States Trustee on November 5, 2019. By the court’s calculation, 21 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 First Federal Tech (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$10,881.00.

The Motion filed by Jorge Oseguera and Gabriela Oseguera (“Debtor”) to value the secured claim of First Federal Tech (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 22. Debtor is the owner of a 2016 Nissan Rogue with 78,500 miles in fair condition (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$10,881.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on February 17, 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 \$18,378.13. Proof of Claim, No. 1-1. 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 \$10,881.00, 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 Jorge Oseguera and Gabriela Oseguera ("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 First Federal Tech ("Creditor") secured by an asset described as a 2016 Nissan Rogue with 78,500 miles in fair condition ("Vehicle") is determined to be a secured claim in the amount of \$10,881.00, 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 \$10,881.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

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

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

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

November 5, 2019 Hearing

At the hearing, the parties agreed to continue the Objection to November 26, 2019. Dckt. 24.

Motion to Value Collateral

On November 5, 2019, Debtor filed a Motion to Value Secured Claim. Dckt. 20.

DISCUSSION

Trustee's objection is well-taken.

Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of First Tech Federal Credit Union. The secured claim is on Debtor's 2016 Nissan Rogue SV.

The court granted the Motion on November 26, 2019. That resolves the Trustee's objection.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 17, 2019. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

The Motion for Entry of Hardship Discharge 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 Entry of Hardship Discharge is granted.

Max Anthony Shoffner (“Debtor”) moves for entry of a hardship discharge on the grounds that he is no longer able to continue working due to a disability. Debtor argues that he no longer has the income to complete his plan and pay the last two plan payments, and that the unsecured creditors received more than they would have under a Chapter 7 plan.

TRUSTEE’S RESPONSE

Trustee filed a Response on November 8, 2019. Dckt. 68. Trustee contends that Debtor fails to explain his disability or how Debtor had continued to make the \$1,340.00 payments until the last such payment on June 28, 2019.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

- (1) the debtor’s failure to complete such payments is due to

circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g., In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden of proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). “Unsubstantiated and conclusory statements” about a debtor’s inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g., In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a “debtor is justly accountable for the plan’s failure.” *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

- A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;
- B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;
- C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;
- D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;
- E. Whether the debtor had control, direct or indirect, of the intervening event or events; and
- F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event “such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments.” *In re Nelson*, 135 B.R. 304, 306 (Bankr.

N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) “requires that the circumstances leading to the debtor’s failure to make payments be beyond the debtor’s control.” *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be “truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability.” *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the “best interests” test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan “is not ‘practicable’ if there is no source of income to fund the modified plan.” *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that “[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan.” *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, “the availability of case closure does not eliminate a bankruptcy court’s duty to ensure that a debtor complies with the Bankruptcy Code’s ‘best interests of creditors’ test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan.” *Id.* The Ninth Circuit found explicitly that a “bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter.” *Id.*

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Debtor’s life that prevents Debtor from complying with and completing the Plan.

Through a Supplemental Declaration responding to Trustee’s Response to the Discharge, Debtor asserts that on September 20, 2017 he was involved in a work-related accident. He expected his condition to improve and had been prescribed work restrictions. But on June 3, 2019, his disability was declared permanent and stationery and his benefits reduced from \$1,172.57 to \$290.00 a week. Because of this reduction, he can no longer afford his plan payments.

Additionally, the Debtor has paid a total of \$59,200.00 to date under the terms of the confirmed plan. The total amount due is \$61,880.00. The unsecured creditors have received approximately 45.13% of the filed and allowed claims. The confirmed plan proposed 0% to unsecured creditors.

Modification of the plan is no longer practicable. The plan is past 60 months with November

2019 being the 63rd month.

The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor in this case.

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

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

The Motion for Hardship Discharge filed by Max Anthony Shoffner (“Debtor”) having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the court shall enter a “hardship” discharge pursuant to 11 U.S.C. § 1328(b) for Max Anthony Shoffner in this case based on the Plan as performed as of the November 26, 2019 hearing date on this Motion.

12. [19-25742-E-13](#)
[AP-2](#)
20 thru 22

ORLANDO CISNEROS
Richard Jare

**OBJECTION TO CONFIRMATION OF
PLAN BY ELIZON MASTER
PARTICIPATION TRUST I, U.S.
BANK TRUST NATIONAL
ASSOCIATION
10-31-19 [\[47\]](#)**

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

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 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.

Elizon Master Participation Trust 1, U.S. Bank Trust National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor did not file the current bankruptcy proceeding in good faith but as a delay tactic to stop foreclosure on Creditor's Property.
- B. Debtor's Plan is not feasible because the Plan is dependent on obtaining an unlikely loan modification of the Property loan.

DISCUSSION

Creditor's objections are well-taken.

Plan Not Filed in Good Faith

Creditor argues that Debtor's Plan was not filed in good faith. The Debtor has filed four (4) bankruptcy cases in the past 18 months: two (2) have been dismissed and two (2) are currently pending. Creditor argues that the timing indicates that debtor is attempting to prevent Creditor from exercising its rights of a foreclosure sale over the Property. One case was filed the day before the foreclosure, and another one the day of the foreclosure sale. Moreover, after Creditor obtained relief from the automatic stay in Debtor's first case (Case No. 18-22528), Debtor filed a Chapter 13 case three weeks later which re-imposed an automatic stay.

Infeasible Plan

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's Plan proposes to modify Creditor's claim by pursuing a loan modification. Indeed, Debtor's Plan is dependent in said modification. Creditor asserts that this modification is unlikely as Debtor has had many opportunities to work with Creditor to obtain modification but instead has missed over 60 payments, continued accumulating arrears, and filing a series of bankruptcies. Thus, the Plan may not be confirmed.

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 Elizon Master Participation Trust 1, U.S. Bank Trust National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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, creditors, 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 the Internal Revenue Service is **granted, and Creditor’s secured claim is determined to have a value of **\$xxxx.xx**.**

The Motion filed by Orlando Cisneros (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 56. Debtor is the owner of real estate property known as 44448 G Street, Sacramento, California (“Property”). Debtor seeks to value the Property at a replacement value of \$650,000.00 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).

Creditor filed Proof of Claim No. 3-1 on November 18, 2019 for a claim in the amount of (\$190,433.61). The IRS stated in Proof of Claim No. 3-1 that:

\$165,371.30 is secured by all of Debtor's Assets

\$ 21,162.98 is a priority unsecured claim, and

\$3,899.33 is a general unsecured claim.

The Attachment to Proof of Claim No. 3-1 states that: the secured portion of the tax obligation is for the 2007, 2008, 2009, and 2010 tax years; and the priority unsecured portion is for the 2015, 2016, and 2018 tax years.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Grounds Stated In Motion

The present Motion, which is constructed and presented by Debtor's attorney is a "different document," comprised of some basic information by the attorney and the substance merely a cut and paste of what the Debtor is willing to say in his declaration.

The amount of the "potential claim" is stated to be (\$163,081.41). Motion, p. 1:27-28, 2:1-2. When the Motion was filed the IRS had not yet filed a proof of claim in this case. Proof of Claim No. 3-1 filed by the IRS is higher, coming in at (\$190,433.61).

By Debtor's calculations, there is only \$11,596 in value for the IRS secured claim. In the Motion this is computed as follows:

G Street Property FMV.....	\$650,000.00
1 ST DOT Elizon Master Participation Trust.....	(\$481,490.49)
2 nd DOT Chase Bank.....	(\$96,868.79)
Senior FTB Tax Lien.....	(\$66,375.77) POC 4-1
Value for IRS Lien.....	\$5,264.95

Debtor and Debtor's counsel asserts that the FTB liens are senior to the IRS liens. Both FTB and the IRS having filed proofs of claim in this case, the court has reviewed the lien perfection information filed for each of the taxing agencies. The IRS states in Proof of Claim 3-1 that its tax liens were all recorded on May 16, 2019. The FTB states in Proof of Claim 4-1 that its tax liens were record on April 4, 2010, June 12, 2012, January 14, 2013, July 24, 2013, and September 29, 2014.

Issue of Property to be Valued and Good Faith in the Filing of the Case

As this court has addressed in a Motion for Relief in this case, it appears that the property which Debtor seeks to have valued for purposes of this case is not property of the Debtor in this case, but property in his open Chapter 7 case. Further, there exists an issue of the filing and prosecution of this case in good faith. As addressed by the court, Debtor and Debtor's counsel generated a deed purporting to transfer a 1% interest in the 44448 G Street Property to Debtor's sister. Debtor, who has no automatic stay in this case by application of 11 U.S.C. § 362(c)(4), then argued that his sister was a "co-debtor"

and she could assert the 11 U.S.C. § 1301 co-debtor stay to prevent creditors from foreclosing on the property.

The deed purports to have been executed the same day as this case was filed. However, it was not notarized and filed until the day after this case was filed. It is not clear when the deed was executed and delivered. Additionally, on the face of the deed it states that the Debtor's sister, the recipient of the 1% interest transfer, is an owner-occupier of the property so as to avoid paying a transfer tax. However, Debtor's counsel argues that the court should not grant relief from the co-debtor stay because the creditor did not serve the motion on the sister at her Fresno, California address -not the 4448 G Street Property where she is stated to be an "owner-occupier."

Even more significant is that Debtor and Debtor's counsel assert that the Debtor could transfer a 1% interest in the real property that is property of the Debtor's prior, open Chapter 7 case, rather than the trustee in that case having all rights and interests of the property and ability to transfer such property.

Before the court goes to the time and expense of determining values of claims secured by property that is not property of this bankruptcy estate, it is going to see whether this case was filed in good faith and whether it can and will be prosecuted in good faith.

At the hearing, ~~XXXXXXXXXX~~

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 Orlando Cisneros ("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/denied~~, and the claim of the Internal Revenue Service ("IRS" or "Creditor") secured by an asset described as real estate property known as 44448 G Street, Sacramento, California ("Property") is determined to be a secured claim in the amount of \$~~xxxx.xx~~, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy 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 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 is delinquent in plan payments with the next scheduled payment due the before the hearing on this Objection.
- B. Plan includes additional provisions that seem to alter the rights of a claim secured by Debtor’s principal residence.
- C. Plan relies on two Motions to Value Secured Claims for the Internal Revenue Service that Debtor has failed to file.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$50.00 delinquent in plan payments, which represents less than one month of the \$3,850.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of the Internal Revenue Service. Debtor filed a Motion to Value the Secured Claim of the Internal Revenue Service on November 12, 2019, to be heard at the same hearing as the present Objection. Dckt. 54. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor's Motion to Value the Internal Revenue Service claim was xxxxxxxx.

Ensminger Provision

The Plan includes additional provisions that improperly attempt to alter the rights of a claim secured by an interest in Debtor's principal residence that seem contrary to 11 U.S.C. § 1322(b)(2). Additionally, Trustee points out that the provisions included are not in the same order as they are authorized to be listed and there is additional language that is not normally part of the authorized language.

Indeed, the court sustained Creditor Elizon Master Participation Trust 1, U.S. Bank N.A.'s objection to Debtor's proposed plan on the grounds that Debtor's proposed loan modification was improper.

The court has also confirmed that there is no automatic stay in this case, granted relief from the co-debtor stay, and addressed what may be a serious good faith issue for Debtor and Debtor's counsel. The court has also granted relief pursuant to 11 U.S.C. § 362(d)(4), finding that Debtor has engaged in both multiple filings and purported transfers of interest in the G Street Property to hinder, delay, or defraud this creditor to prevent it from proceeding with a nonjudicial foreclosure sale on the grossly over encumbered G Street Property.

Relief was not based only on Debtor's repeated, non-productive bankruptcy filings and dismissals, resulting in there being no stay in this case, but Debtor and Debtor's counsel generating/pushing in front of this court a deed purporting to transfer a 1% interest in the 4448 G Street Property to Debtor's sister. Debtor, who has no automatic stay in this case by application of 11 U.S.C. § 362(c)(4), then argued that his sister was a "co-debtor" and she could assert the 11 U.S.C. § 1301 co-debtor stay to prevent creditors from foreclosing on the property.

The deed purports to have been executed the same day as this case was filed. However, it

was not notarized and filed until the day after this case was filed. It is not clear when the deed was executed and delivered. Additionally, on the face of the deed it states that the Debtor's sister, the recipient of the 1% interest transfer, is an owner-occupier of the property so as to avoid paying a transfer tax. However, Debtor's counsel argues that the court should not grant relief from the co-debtor stay because the creditor did not serve the motion on the sister at her Fresno, California address -not the 4448 G Street Property where she is stated to be an "owner-occupier."

Even more significant is that Debtor and Debtor's counsel assert that the Debtor could transfer a 1% interest in the real property that is property of the Debtor's prior, open Chapter 7 case, rather than the trustee in that case having all rights and interests of the property and ability to transfer such property.

There is a serious issue of whether this case was filed in good faith. Further, Debtor being unemployed is a serious issue of whether the plan has been filed and prosecuted in good faith.

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.

15. [16-21543-E-13](#) **JESSE/KIMBERLY MACDONALD** **MOTION FOR COMPENSATION BY**
[CYB-2](#) **Candace Brooks** **THE LAW OFFICE OF BROOKS**
AND CARPENTER FOR
CANDACE Y. BROOKS, DEBTORS
ATTORNEY(S)
10-21-19 [43]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2019. By the court’s calculation, 36 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Candace Y. Brooks, the Attorney (“Applicant”) for Jesse Allan MacDonald and Kimberly M MacDonald, 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 starting on June 26, 2019 through October 11, 2019 in order to file Motion for Order Allowing Debtors to Sell Real Property. Dckt. 27. Applicant requests fees in the amount of \$2,880.84.

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 preparation and filing of motions related to Debtors’ sale of real property. The Estate has \$2,880.84 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Sell Real Property: Applicant spent 30.15 hours in this category. Applicant prepared and filed a Motion to Shorten Time; responded to numerous emails and telephone calls associated with the sale of Debtors’ real property; prepared and filed Debtors’ Motion to Employ Realtor; and prepared and filed Debtors’ Motion to Sell Real Property. Of these hours spent, 10.45 were unanticipated.

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
Candace Y. Brooks	10 hrs and 45 minutes	\$300.00	\$3,225.00
Total Fees for Period of Application			\$3,225.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including preparation and filing of motions related to Debtors' sale of real property, raise unanticipated work for the benefit of the Estate, Debtor, and parties in interest. Indeed, Applicant performed \$3,225.00 in additional unanticipated attorney fees. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. However, the Trustee is holding \$2,880.84 and as such Applicant is willing to accept the lesser amount of \$2,880.84 in additional fees. The request for additional fees in the amount of \$2,880.84 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	\$2,880.84
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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 Candace Y. Brooks ("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 Candace Y. Brooks is allowed the following fees and expenses as a professional of the Estate:

Candace Y. Brooks, Professional Employed by Jesse Allan MacDonald and

Kimberly M MacDonald (“Debtor”)

Fees in the amount of \$2,880.84,

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

IT IS FURTHER ORDERED that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

16.	19-25843-E-13 DPC-1 24 Thru 26	JERLINE WALLACE Peter Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 11-5-19 [23]
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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.

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 -----
-----.

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 fails to provide adequate protection for Class 1 Claim of Wells Fargo.
- B. Debtor’s Plan relies on a lump sum payment from the sale of real property but Debtor has failed to file a Motion to Market or Sell real property.
- C. Debtor’s plan relies on two Motions to Value Secured Claims but has failed to file such motions.
- D. Debtor fails the liquidation analysis under 11 U.S.C. § 1325(a)(4).

DISCUSSION

Trustee’s objections are well-taken.

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, the first mortgage proposed payments of \$1,020.00 are insufficient to pay even the \$1,416.74 monthly interest and escrow on the Class 1 claim.

Additionally, Debtor relies on a lump sum payment related to the sale of real property. A look at the docket shows that no motion for permission to market or sell the property has been filed.

Thus, the Plan may not be confirmed.

Debtor’s Reliance on two Motions to Value Secured Claim

A review of Debtor’s Plan shows that it relies on the court valuing the secured claims of Lincoln Automotive Financial and Wells Fargo Dealer Services. The docket reflects that Debtor filed two motions to value secured claims on November 7, 2019. Dckt. 27, 32. Both Motions are set for hearing on December 10, 2019 at 3:00pm. However, at this point, without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor Fails Liquidation Analysis

Debtor’s plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the Plan proposes to pay a zero (0) percent dividend to unsecured claims, which total \$56,969.02, yet Debtor’s non-exempt equity totals \$175,185.78 based on property described as 3195 Dover Avenue, Fairfield, California. Thus, the court may not approve the Plan.

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

17.	<u>19-25843-E-13</u>	JERLINE WALLACE	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
	<u>JCW-1</u>	Peter Macaluso	10-4-19 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Chapter 13 Trustee on October 4, 2019. By the court’s calculation, 53 days’ notice was provided. 14 days’ notice is required.

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

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor’s Plan fails to provide for full payoff of the arrearage owed to Creditor.
- B. Debtor’s plan contains an improper modification.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Cure Arrearage of Creditor in its Entirety

The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor has filed a timely proof of claim in which it asserts \$18,869.67 in pre-petition arrearage. The Plan does not propose to cure the entire arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Like the Trustee, Creditor turns this court’s attention to Debtor’s reliance on a lump sum payment related to the sale of real property. However, Creditor objects on the basis that curing the default in arrearage should not be delayed until the sale of the Property.

Modification of an Obligation Secured Only by Principal Residence

Debtor’s Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor’s principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$392,956.47, secured by a first deed of trust against the property commonly known as 3195 Dover Avenue, Fairfield, California. Debtor’s Schedules indicate that this is Debtor’s primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor’s residence.

Creditor argues that Debtor’s Plan modifies the contract and fails to provide adequate protection. The proposed mortgage payments of \$1,020.00 modifies the current contractual agreement for a payment of \$2,955.69, which includes \$2,171.99 for principal and interest and \$783.70 for escrow.

Sale Provision

The Additional Provisions of the Plan states with respect to the sale of the property:

“Debtor is to Sell Real Property Within 9 Months”

Plan, p. 7: Dckt. 3.

First, this provision does not require the sale within nine months, but appears to only be aspirational - Debtor is to sell, but not required to.

Second, it does not state within nine months of what date the sale “is” to occur. Nine months of the filing of the case? Nine months of the filing of the plan? Nine months of confirmation of the plan? Nine months of the 60th month of the plan? It is left open for the Debtor and Debtor’s counsel to argue whatever is in the Debtor’s advantage. This ambiguity does not appear to be inadvertent.

Third, the property to be sold is not identified. One might “assume” it is “the real property” that the Class 1 creditor has a lien against, but there is no reference to “the” property. Just some “real property.”

Fourth, there are no terms for the Debtor diligently prosecuting the sale as a fiduciary as the plan administrator responsible for the marketing and sale of the property. No deadline for the broker being hired. No communications with the Chapter 13 Trustee to document the diligent prosecution of the sale.

As written, the Debtor and Debtor’s counsel could argue that Debtor is not required to anything other than sometime during the 51st to 60th month of the Plan to show up with a sale of the Property.

Fifth, this bankruptcy case was filed on September 18, 2019. As of the court’s November 25, 2019, review of the Docket, Debtor has not sought authorization to employ a real estate broker to market the Property so that it can be sold in a commercially reasonable manner. Debtor has sat for sixty-nine (69) days motionless with respect to marketing this Property. This is inconsistent with a person facing foreclosure, the loss of the Property, and working to get the fair market value of the property for the bankruptcy estate.

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 Wells Fargo Bank, N.A. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause 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 Chapter 13 Trustee, 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.

Charles Evans ("Creditor") holding a secured claim, which stems from a Solano County Superior Court Dissolution Judgment ("Judgment") entered on August 19, 2019, opposes confirmation of the Plan on the basis that:

- A. Debtor fails to list the Chanslor Property in her bankruptcy petition and has failed to transfer the Chanslor Property to Creditor.
- B. Debtor's Plan states that the Dover Property will be sold in nine (9) months when the Judgment calls for its immediate sale.
- C. Debtor has failed to remove Creditor's name from any Dover Property accounts.
- D. Debtor's plan fails to mention that Dover Property sale proceeds are to be equally split between Debtor and Creditor.

- E. The Plan fails to provide for implementation of the terms that the Lincoln Navigator is Debtor's separate property and Creditor's name is to be removed. Additionally, that four other vehicles are Creditor's sole property and that he will pay the expenses related to those vehicles.
- F. Plan lists the CJ Parker Road Store as Debtor's property, although it is no longer in operation and Creditor is entitled to have it as his sole and separate property.
- G. Debtor failed to list and address the division of Debtor's At&T 401(k) plan.
- H. Debtor listed her AT&T Pension Plan but failed to address the division of this pension as provided by the Judgment.
- I. The filing of the bankruptcy petition does not operate as a stay to Debtor's obligation to dismiss the restraining order as required by the Judgment.
- J. Plan should incorporate that Debtor is responsible for the Bank of the West loan per paragraph 19 of the marital settlement agreement.
- K. Plan should honor that a workers compensation fine will be split between the parties and paid of the sale of the Dover Property.

DISCUSSION

Creditor's objections are well-taken. Creditor raises a serious of issues and rights that are the subject of the State Court dissolution action. While Creditor raises how the community property is to be divided between the two of them, his arguments do not take into account federal law and the provisions of 11 U.S.C. § 541(a) that brings all community property into the bankruptcy estate. Additionally, to the extent that Creditor purports that community property has been transferred to him so Debtor's creditors "don't get his property," those transfers are subject to the federal and state fraudulent conveyance laws – something the Debtor, or a Chapter 7 trustee if this case were converted, has a fiduciary obligation to assert and recover. Though the Creditor is a debtor in his own case and the court authorized him to enter into the Marital Settlement Agreement, that does not terminate the rights, duties, and obligations of the Debtor and fiduciaries of this estate.

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 Name of Creditor ("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.

19. [17-24456-E-13](#) **MICHAEL BRISSETTE** **MOTION TO REFINANCE**
[PGM-2](#) **Peter Macaluso** **10-22-19 [52]**

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 the Chapter 13 Trustee, Creditors Holding General Unsecured Claims, and Office of the United States Trustee on October 22, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Incur Debt is granted.

Michael Brissette, Debtor, requests authorization to obtain post-petition secured financing from Pacific Coast Wholesale Lending to refinancing the existing debt owed to Creditor US Bank, N.A., which is secured by a first deed of trust against Debtor's residence, 31 Braxton Ct, Roseville, California.

The new loan will be for \$288,000.00, which proceeds will be used to refinance the US Bank, N.A. debt and fund the existing Chapter 13 Plan for a 100% dividend. The U.S. Bank, N.A. claim was filed for \$254,139.48 in this 2017 case. Proof of Claim No. 3-1.

Only three proofs of claim are filed in this case. In addition to the U.S. Bank, N.A. claim, Proof of Claim No. 1-1 has been filed by the Internal Revenue Service for a \$3,882.91 priority claim and Proof of Claim No. 2-1 by the California Franchise Tax Board for a \$1,474.18 priority unsecured claim.

The terms of the new loan are:

Loan Amount.....\$288,000.00
Term.....30 Years
Interest Rate..... 4.5% Fix
Monthly Principal and Interest Payment.....\$1,429.42

Exhibits A and B, Dckt. 54.

The Trustee has filed a Response, not opposing the loan. Dckt. 57. The Trustee states that there remains approximately \$2,000.00 in creditor claims to be paid. The Trustee requests whether the net loan proceeds, after refinancing the U.S. Trust Bank, N.A. secured claim, will be disbursed to the Trustee to pay the claims and expenses, or whether the Trustee will direct the final plan payments (including trustee fees) to be disbursed through the loan escrow and the remaining loan payments then disbursed to the Debtor.

The Debtor filed a Reply, confirming that he will work with the Trustee to address any plan amendments necessary to go with the refinance. Dckt. 59.

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

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

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

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

The Motion to Incur Debt filed by 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 Michael Brissette, Debtor, is authorized to incur debt pursuant to the terms of the agreement set out in Exhibit 1 and 2, Dckt. 54.

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 -----

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The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent under the pending plan.
- B. Debtor has failed to provide business documents.
- C. Debtor has failed to provide business income and expenses.
- D. Additional provisions in the plan may improperly alter the rights of a secured claim and improperly classify a creditor as both Class 1 and Class 4.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$95.00 delinquent in plan payments, which represents one month of the \$95.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Documents Related to Business

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

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

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

Failure to File Business Documents Required by Schedule I

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.” Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 139 months due to the priority claim of the Internal Revenue Service in the amount of \$6,385.43, which is \$5,931.43 higher than scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Additional Provisions - Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan contains an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$235,411.49, secured by a first deed of trust against the property commonly known as 2576 and 2582 Palmira Avenue, South Lake Tahoe, California. Debtor's Schedules indicate that this is Debtor's primary residence. Debtor asserted at the Meeting of Creditors

that he applied for a loan modification on the first deed of trust. Trustee requested Debtor provide a copy of the soon to be filed loan modification. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

As Trustee points out, Debtor seems to unsuccessfully or improperly be applying the court authorized "Ensminger Provisions." However, as explained above, Debtor has several other issues and there are enough grounds to sustain the objection. Thus, Debtor has the chance to go back to the drawing board and properly utilize the "Ensminger Provisions." ^{FN. 1}

FN. 1. The additional provisions do not provide for making adequate protection payments, diligent prosecution of the loan modification application, remedy provisions in the event that debtor does not diligently prosecute or the modification is denied, or preservation of creditor's right to seek relief from the stay.

Debtor also seeks to split the payments to creditor, not making both the cure payments and currently monthly payments through the Plan. Debtor offers no evidence to show why post-petition Debtor is likely to make the current monthly mortgage payments. As the Plan shows, Debtor has no other real (significant) debts other than the secured claim for which he is (\$55,126.88) in default for pre-petition amounts due. See Proof of Claim 2-1 filed by Creditor. Give me the plan stay and "trust me" that I will not default is not persuasive.

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, Chapter 13 Trustee, and Office of the United States Trustee on October 30, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

HSBC Bank USA, National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan proposes to pay the ongoing mortgage installments Creditor but make no payment on the substantial pre-petitions arrears until Debtor's loan modification is approved.
- B. Debtor's plan dependent on the loan modification is speculative.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$55,126.88 in pre-petition arrearage. The Plan does not propose to cure those arrearage at the time but to withhold payment until Debtor obtains a loan modification from Creditor. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan contains an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$235,411.49, secured by a first deed of trust against the property commonly known as 2576 and 2582 Palmira Avenue, South Lake Tahoe, California. Debtor's Schedules indicate that this is Debtor's primary residence. Debtor has applied for a loan modification adding a condition of withholding payments on the pre-petition arrearage until approval of the loan modification. Debtor fails to address what will happen if Debtor's loan modification is not approved. At this time, the modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

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 HSBC Bank USA, National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 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 Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is granted.

The debtors, Gerald William Miller and Barbara Miller (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan provides for \$54,600 paid through the 60 month plan term. Amended Plan, Dckt. 51. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 11, 2019. Dckt. 64. The Trustee does not oppose Debtor’s plan for the mortgage that includes a trial loan modification granted on October 1, 2019. Trustee does oppose the plan because Debtor cannot afford the plan. The plan is contingent on two Motions to Value. Trustee argues, if the both Motions to Value are not granted, the Debtors cannot pay for the plan payments.

OCTOBER 29, 2019 HEARING

On October 29, 2019, the court granted Debtors’ Motion to Value the Secured Claim of TD

Auto Finance and Creditor's claim was valued at \$15,000.00. Therefore, Creditor's claim secured by a lien on the vehicle's title was found to be under-collateralized.

NOVEMBER 12, 2019 STIPULATION

On November 12, 2019, the parties filed a stipulation regarding the Motion to Value the Secured Claim of Travis Credit Union. Dckt. 85. Parties stipulate the value of the vehicle is \$22,000 as of the filing of the Bankruptcy Petition and funds sufficient to pay that amount in full shall be disbursed through Debtor's Chapter 13 Plan as a Class 2 claim. The remaining balance shall be treated as a general unsecured non-priority claim.

DISCUSSION

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of TD Auto Finance as well as one for Travis Credit Union. Debtor has filed the Motion to Value the Secured Claim of TD Auto Finance as well as one for Travis Credit Union.

The court has granted both Motions, resolving the Trustee's Opposition.

At the hearing, the Debtor amended the Plan to increase the monthly plan payment to \$xxx a month, commencing with the xxx month of the Plan.

The proposed Plan complies with the provisions of 11 U.S.C. §§ 1322 and 1325, and the Motion is granted. The Plan is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Gerald William Miller and Barbara Miller ("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 granted and the Amended Plan filed on September 19, 2019, as amended at the hearing to increase the monthly plan payment to \$xxxx commencing with the xxx month of the Plan, is confirmed. Counsel for the Debtor shall prepare an appropriate order, stating the above amendments, confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

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

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The Objection to Confirmation of Plan is sustained.

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

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

DISCUSSION

Trustee's objections are well-taken.

Delinquency

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

Debtor's Reliance on Motion to Avoid Lien

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

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

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). At the First Meeting of Creditor Debtor admitted that she is not required to file tax returns. Debtor has failed to provide a written statement that this documentation does not exist. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2019. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is overruled.

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

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

DISCUSSION

Failure to Cure Arrearage of Creditor

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

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

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

Incorrect Claim Classification

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

Incorrect Post-Petition Amount

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

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

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

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

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

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

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

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

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

The Objection to the Chapter 13 Plan filed by Sierra Pacific Mortgage Co. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

No Tentative Ruling: The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2019. By the court’s calculation, 27 days’ notice was provided. 28 days’ notice is required.

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

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

This Motion requests an order avoiding the judicial lien of GPS Commercial Construction, Inc. (“Creditor”) against property of the debtor, Norman Willie Velasquez and Luana Marie Velasquez (“Debtor”) commonly known as 8403 McGray Way in Elk Grove, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$38,875.57. Exhibit 4, Dckt. 20. An abstract of judgment was recorded with Sacramento County on May 29, 2019,

that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$415,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$384,682.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$30,318.00 on Amended Schedule C. Dckt. 16.

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of \$30,318.00 subject to 11 U.S.C. § 349(b)(1)(B).~~

~~**ISSUANCE OF A COURT-DRAFTED ORDER**~~

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

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Norman Willie Velasquez and Luana Marie Velasquez ("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 GPS Commercial Construction, Inc., California Superior Court for Sacramento County Case No. 34-2018-00241620, recorded on May 29, 2019, Document No. 201905291220, with the Sacramento County Recorder, against the real property commonly known as 8403 McGray Way in Elk Grove, California, is avoided in its entirety for all amounts in excess of \$30,318.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

26.	19-24883-E-13 RHS-1	DAVID EVANS Stanley Berman	STATUS CONFERENCE RE: VOLUNTARY PETITION 8-1-19 [1]
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Debtor's Atty: Stanley P. Berman

Notes:
Set by order of the court filed 10/29/19. Debtor and Debtor's attorney, Stanley Berman, to appear personally - no telephonic appearances permitted. On or before 11/12/19, Debtor's counsel shall file and serve a Status Report.

Status Report filed 11/11/19 [Dckt 53]

The Status Conference is XXXXXXXXXXXXXX

The last pleading filed by Debtor in this case was the September 11, 2019 Status Report. No action has been taken by Debtor to prosecute this case during the past two months.

At the Status Conference, counsel for Debtor reported XXXXXXXXXXXXXX

September 11, 2019 Status Report

A Status Report was filed by Debtor's Counsel. Dckt. 53. It is stated that Amendments to the Schedules and First Amended Plan were not ready to file as of September 11, 2019. Further, that confirmation of a first amended plan will not be effected by the granting or denial of the motion to avoid the lien of U.S. Bank. This is asserted because the proof of claim "does not demand payment."

Order for Status Conference

This Chapter 13 Bankruptcy Case was commenced on August 1, 2019. Debtor David Evans is represented by Stanley P. Berman, Esq., his counsel of record in this Bankruptcy Case. On October 22, 2019, the court conducted the hearing on the Chapter 13 Trustee's Objection to Confirmation of the Chapter 13 Plan proposed by Debtor and Counsel. Dckt. 39. As addressed in the Civil Minutes from the hearing on the Trustee's Objection, there were some significant issues concerning the prosecution of this case. The Opposition stated by the Trustee was:

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

- A. Debtor failed to properly classify a Safe Credit Union claim.
- B. Debtor failed to list expenses on Schedule J that he admitted to during the Meeting of Creditors held on September 12, 2019.
- C. Debtor failed to list two unsecured loans with Sierra Central Credit Union of over \$30,000 that he admitted to during the Meeting of Creditors.
- D. Debtor failed to identify in the appropriate schedule tax liability owed to the Internal Revenue Service for 2017.
- E. Plan relies on two Motions to Avoid Liens of US Bank and Bank of America that were not yet decided at the time Debtor submitted the Plan.

DISCUSSION

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to make important disclosures regarding debts, namely over \$30,000 in unsecured loans, expenses admitted to at the Meeting of Creditors, and unpaid taxes. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Furthermore, a review of Debtor's Plan shows that it relies on the court valuing the secured claims of Bank of America and US Bank. On October 6, 2019 this court granted Debtor's motion to avoid Bank of America's lien but denied Debtor's Motion to Avoid US Bank's lien. Because the US Bank lien remains, Debtor is likely to not have sufficient to pay the claim in full. This too goes to the crux of feasibility of Debtor's Plan. Civil Minutes, Dckt. 48.

No response to the Trustee's Objection to Confirmation was filed and no appearance was made by Debtor's Counsel at the hearing. However, Debtor appeared and attempted to address the Trustee's and court's concerns. When the court stated to Debtor that he was represented by Counsel and his counsel of record was the one to appear in court and represent the Debtor, the Debtor expressed concern and frustration in communicating with Counsel. Debtor indicated to the court that Counsel and Counsel's office was not communicating with the Debtor.

The court's files reflect that Debtor's counsel is an attorney in 626 bankruptcy cases in the Eastern District of California. To the extent that there is a perceived difficulty in communication, it does not arise because Counsel is inexperienced in practicing in the District.

A review of the file in this case discloses that the attorney's fees agreed to for Counsel are \$3,750.00, all of which have been paid to Counsel prior to the commencement of this case. Such fees have not yet been approved and must be held in Counsel's trust account until such fees are approved. Thus, Counsel has every economic interest in the diligent prosecution of this case.

In reviewing the file in this case, the court denied the Motion to Value the secured claim of U.S. Bank due to insufficient service (not having served a federally insured financial institution by certified mail). Civil Minutes, Dckt. 43. In preparing this Order for Status Conference twenty-four days after the denial of that prior Motion, it has not been re-filed and properly served.

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

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

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

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

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

The Objection to Confirmation of Plan is xxxxxxx.

The hearing on this Objection has been continued to November 26, 2019, and counsel for Debtor ordered to appear to address the prosecution of this case.

At he hearing, counsel for the Debtor xxxxxxxxxx

REVIEW OF OBJECTION

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

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

DEBTOR'S RESPONSE

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

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). Trustee states that the meeting has been continued to November 7, 2019 at 12:00pm. As it stands, Debtor's failure to appear is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

Delinquency

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

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

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan be continued to November 26, 2019 at 3:00pm.

Tentative Ruling: No appearance at the October 1, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 22, 2019. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

The Motion for Entry of Discharge 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 for Entry of Discharge is denied.

The present Motion filed by the debtors, David Brian Cota (“Debtor David”) and Karen Louise Slavich-Cota (“Debtor Karen”) (collectively “Debtor”) seeks two forms of relief.

The primary relief sought is a Motion for Entry of Discharge. With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. The Chapter 13 Trustee, David Cusick’s (“Trustee”) final report was filed on May 14, 2019, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the Chapter 13 Trustee was entered on June 19, 2019. Dckt. 100. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Debtor Karen’s filed a 11 U.S.C. § 1328 Certificate which states she:

- A. has completed the plan payments;
- B. does not have any delinquent domestic support obligations;

- C. has completed a financial management course and filed the certificate with the court;
- D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;
- E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and
- F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

Debtor David is reported to have passed away in 2017. The second request for relief is to waive the requirement that he complete 11 U.S.C. § 1328 certifications, so that the discharge may be entered.

TRUSTEE'S NOVEMBER 8, 2019 RESPONSE

On November 8, 2019, Trustee filed a Response to the Motion to Waive Requirement of Filing Certification Pursuant to 11 U.S.C. § 1328 and Motion to Enter Discharge. Trustee asserts that the Motion does not provide information regarding any life insurance that may have been received due to the death of Debtor David Brian Cota. A policy with a face amount of \$100,000.00 but no cash value was listed on Schedule B and C. If the policy was maintained, the surviving Debtor may have received the \$100,000.00. If it was received, the proceeds should have been disclosed so that actions could be taken to address it.

Trustee would also like the court to consider that the surviving debtor failed to explain how she was able to continue the plan payments for at least 18 months without the deceased debtor's income after his passing. Lastly, an amount of \$200.00 is listed as a contribution by the son-in-law. The amount of \$2,772.08 is listed as pension or retirement income for the surviving spouse.

DISCUSSION

On August 22, 2019, it was first reported to the court that Debtor David passed away on September 24, 2017. A copy of the Certificate of Death is filed as Exhibit A. Dckt. 110. This is reported to the court seven hundred and thirty-eight (738) days after the death.

Ostensibly, Debtor Karen and her counsel withheld the news of Debtor David's death from this court - electing to secretly proceed in the prosecution of this case without one of the Debtors properly a party before this court.

Having held this information, the surviving Debtor and counsel precluded the court from making the necessary decisions and determinations as to whether the case could be prosecuted. The Federal Rules of Bankruptcy Procedure are not ambiguous and clearly provide that the court prospectively must make a determination that the case may proceed in the event of the death of a debtor:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case

concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed** and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

FED. R. BANKR. P. 1016(emphasis added).

Debtor's confirmed Chapter 13 Plan requires very substantial monthly payments of \$4,375.00 per month to be made to fund the Plan. Second Amended Chapter 13 Plan, § 6.01; Dckt. 60. On Amended Schedule I Debtor listed having a combined monthly income (after very modest tax withholding of only \$1,088 a month) of \$8,658. Dckt. 68 at 3-4.

From this Debtor had month expenses for the two debtors and four dependants - two grandchildren, an adult daughter, and an adult son. Amended Schedule J, *Id.* at 5-6. Though a family of six persons, Debtor stated that monthly expenses (exclusive of mortgage, property taxes, and property insurance payments) of (\$4,450.24). This left the Debtor with the monthly net income of \$4,208.43, which was slightly less than the required Plan payments.

Of this, \$2,780.67 was the deceased debtor's income. Additionally, there was a "contribution" of a son-in-law of \$2,772.08. Amended Schedule I, *Id.* at 4. It is not clear if the son-in-law "contributing" is the husband and parent of the daughter and two grandchildren which Debtor stated under penalty of perjury were dependants.

Debtor Karen and her counsel have usurped the court's role here, deciding two years ago not to report Debtor David's passing, and to just continue administration of the case like nothing happened.

If Debtor Karen and counsel had proceeded correctly in the past, the present request for waiver of the 11 U.S.C. § 1328 certifications would not be necessary. When a debtor passes away, but where further administration is possible and in the parties' best interest, then a personal representative may be appointed to resume the case. No representative, whom could easily make the 11 U.S.C. § 1328 certifications, was appointed here.

At the hearing, **xxxxxxxxxxxxxxxx**.

Here, the case has been completely administered, and all payments have been made. On their petition, no claims for domestic support or claims related to the provisions of 11 U.S.C. § 522(q)(1) were listed, and no claim was filed by any creditor asserting the same. Debtor David Brian Cota has not received a prior discharge, and was able to complete the financial management course before his passing.

But, no basis for retroactive appointment of a personal representative and for determination that two years ago the Chapter 13 case for the deceased debtor should proceed has been presented. Though the Debtor and her counsel determined two years ago that the case should continue to be administered, the death of the deceased debtor was withheld from the court and no determination was made that the case could and should continue as to the deceased debtor.

The Motion is denied.

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

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

The Motion for Entry of Discharge filed by David Brian Cota and Karen Louise Slavich-Cota (“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**.

29.	<u>19-24493-E-13</u> <u>DPC-1</u>	TEMA ROBINSON Peter Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-5-19 [17]
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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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 5, 2019. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the plan may fail the liquidation test. Trustee argues that while Debtor claims a ½ interest in her real property, it is unclear if this is correct, and if Debtor owns the entire property then there is \$27,002.00 in non-exempt equity.

Court Review in Related Matter

At a hearing on a motion for relief in Debtor’s mother, Janette Payne’s, bankruptcy case, no. 19-24741, the court made the following observations (addressing Janette Payne as “Debtor” and Tema Payne as “Debtor’s Daughter”):

Debtor’s counsel also mentions a bankruptcy was filed by Debtor’s Daughter to cure the prepetition arrearage. In Debtor’s Daughter’s case, Debtor’s daughter has proposed a plan with a monthly payment of \$2,660.00, of which \$1,837.28 monthly is going to Movant’s post-petition payments and \$350.00 to cure Movant’s arrearage totaling \$21,000.00. 19-24493, Plan, Dckt. 10.

In reviewing Schedule I, Debtor’s Daughter has only \$725 and \$472 in gross monthly income from a primary and secondary job. 19-24493, Schedule I, Dckt. 11. Debtor’s Daughter also receives \$1,590.00 a month (identified as Mother’s Social Security) from the Debtor herein, \$856 a month from Debtor’s Daughter’s granddaughter, and \$192 from food stamps. All told, Debtor’s Daughter’s income is \$3,835.00. *Id.*

\$1,590.00 is all of Debtor’s income. which she is purportedly giving her daughter. Schedule I. Dckt. 1. On Debtor’s Official Form 107, Question No. 13, Debtor responds under penalty of perjury “, no” when asked if she has made any gifts of more than \$600 within 2 years of filing Debtor’s case.

On Debtor’s Daughter’s Schedule J, Debtor’s Daughter lists overall monthly expenses of \$1,175.00. This includes only \$300 a month for food for Debtor’s Daughter and her two listed dependants (one being Debtor), which is only \$3.33 per day per individual.

It is unclear whether Debtor is actually included in those sparse expenses because Debtor in this case lists monthly expenses of \$610.00, including \$300 for food and \$200 for transportation. Dckt. 1. But, if the Debtor is paying those expenses (which she states under penalty of perjury she does), then Debtor has only \$980 to put towards her daughter’s plan, leaving the Debtor’s Daughter’s plan at least \$610 underfunded every month.

Based on the information provided between the two cases, it is not surprising that Debtor and Debtor’s Daughter have defaulted in post-petition payments. It appears that Debtor’s Daughter may not have sufficient income to propose a viable Chapter 13 plan.

Significantly, Debtor’s Daughter states under penalty of perjury in her

case that Daughter is the only owner of the Property. 19-24493; Schedule A/B, Dckt. 11 at 3. However, in this case Debtor states that she has an interest in the Property along with someone else as a joint tenant.. Schedule A/B, Dckt. 23 at 4. Clearly, one of these two debtors is making a false statement under penalty of perjury.

Interestingly, the same attorney is representing the two debtors who provide conflicting statements under penalty of perjury.

DISCUSSION

From the statements provided by Debtor and her mother, it is unclear what interest Debtor has in the Property. Additionally, it is unclear whether the income and expenses are accurate, with the mother and daughter sharing some expenses but not others, and Debtor's mother paying some of her own expenses but also purportedly contributing all her income into this case.

At the hearing, xxxxxxxxxxxxxxxx.

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 RULINGS

30. [19-25100-E-13](#) JESSICA BUN **OBJECTION TO DISCHARGE BY**
[DPC-1](#) Mikalah Liviakis **DAVID P. CUSICK**
10-4-19 [16]

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 4, 2019. By the court’s calculation, 53 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Discharge is sustained.

David P. Cusick, the Chapter 13 Trustee, (“Objector”) objects to Jessica Vichheka Bun’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 13 bankruptcy case that was later converted to a Chapter 7 on April 11, 2019. Case No. 17-25308. Debtor received a discharge on July 30, 2019. Case No. 17-25308, Dckt. 117.

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

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on July 30, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 17-25308, Dekt. 117. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-25100), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-25100, the case shall be closed without the entry of a discharge.

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, and Office of the United States Trustee on October 12, 2019. By the court's calculation, 45 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. Iesha Shaney Nickerson ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 13, 2019. Dckt. 44. 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, Iesha Shaney Nickerson ("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 12, 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.

32. **19-25716-E-13** **JOSEPHINE WRIGHT**
DPC-1 **Timothy Walsh**
4 thru 5

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
10-24-19 [23]**

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

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

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on November 21, 2019. Dckts. 35, 38-41. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on September 13, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 17-27623, Dckt. 50. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-25716), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-25716, the case shall be closed without the entry of a discharge.

34. [19-25618](#)-E-13 COLLEEN KUJALA **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Mohammad Mokarram** **PLAN BY DAVID P CUSICK**
10-24-19 [\[13\]](#)

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

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

35. [19-25523](#)-E-13 THELMA ARTATES **OBJECTION TO CONFIRMATION OF**
[MWP-1](#) **Mary Ellen Terranella** **PLAN BY RAMA NPL 1, LLC**
10-21-19 [\[13\]](#)

CASE DISMISSED: 11/04/19

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

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

36. [19-25732-E-13](#) **RUDY/KAREN MENDEZ** **OBJECTION TO DISCHARGE BY**
[DPC-1](#) **Susan Turner** **DAVID P. CUSICK**
10-29-19 [18]

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

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

The Objection to Discharge is sustained.

David P. Cusick, the Chapter 13 Trustee, (“Objector”) objects to Rudy Delgado Mendez and Karen Pancho Mendez’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7

case.

Debtor filed a Chapter 7 bankruptcy case on October 8, 2018 Case No. 18-26342 Debtor received a discharge on May 1, 2019. Case No. 18-26342 Dckt. 73.

The instant case was filed under Chapter 13 on September 11, 2019.

Additionally, Debtor filed a Non-Opposition to the Objection to Discharge on November 6, 2019. Dckt. 22. Debtor does not oppose the objection and asserts that they are aware that they are not entitled to a discharge in the instant case.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on May 1, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 18-26342, Dckt. 73. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-25732), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-25732, the case shall be closed without the entry of a discharge.

37.	<u>19-25835-E-13</u> <u>DPC-1</u>	GLADYS GORDILLO Mikalah Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 10-29-19 [15]
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Final Ruling: No appearance at the November 26, 2019 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

David P. Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Objection on November 13, 2019, Dckt. 22; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 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 Gladys Alejandra Gordillo (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection to Confirmation of Plan filed by David P. Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 22, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38.	<u>19-25745-E-13</u> <u>DPC-1</u>	GERALD/STATHIA SEARLES Mikalah Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-29-19 [14]
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Final Ruling: No appearance at the November 26, 2019 hearing is required.

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

39.	<u>19-25549-E-13</u> <u>DPC-2</u>	KENDRA HOPKINS Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 10-23-19 [16]
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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 of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

40.	19-24860-E-13 SLE-4 32 thru 33	GERALD/BARBARA MILLER Steele Lanphier	CONTINUED MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION 9-19-19 [44]
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Final Ruling: No appearance at the November 26, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 19, 2019. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

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

The Motion filed by Gerald William Miller and Barbara Miller (“Debtor”) to value the secured claim of Travis Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 46. Debtor is the owner of a 2016 Dodge Ram 1500 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$17,500 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE’S NON-OPPOSITION

Trustee David Cusick, (“the Chapter 13 Trustee”) filed a Response to Debtor’s Motion on October 15, 2019. Dckt. 69. The Chapter 13 Trustee does not oppose Debtor’s valuation, he indicates that the court should take into consideration Creditor’s request to inspect the vehicle before the court rules on the motion. Dckt. 69.

CREDITOR’S OPPOSITION

Creditor filed an Opposition to Debtor’s Motion to Value on October 3, 2019. Dckt. 59. Creditor indicates that the replacement value of the collateral, on the date the petition was filed was \$26,490.00, and requests an opportunity to inspect the vehicle before the court rules on the present Motion.

DEBTOR’S REPLY

Debtor file a Reply to Creditor’s Opposition on October 23, 2019. Dckt. 71. Debtor argues Creditor’s evidence is hearsay and therefore inadmissible but Debtor’s valuation is based on personal knowledge of the Vehicle and thus is admissible. Debtor argues Creditor should not be allowed to inspect the vehicle because unreasonable delay on the Creditor’s behalf will prejudice Debtor.

NOVEMBER12, 2019 STIPULATION

On November 12, 2019, the parties filed a stipulation regarding the Motion to Value the Secured Claim of Travis Credit Union. Dckt. 85. Parties stipulate the value of the vehicle is \$22,000.00 as of the filing of the Bankruptcy Petition and funds sufficient to pay that amount in full shall be disbursed through Debtor’s Chapter 13 Plan as a Class 2 claim. The remaining balance shall be treated as a general unsecured non-priority claim.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on July 23, 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 \$28,880.58. Declaration, Dckt. 46.

As addressed in the court’s ruling from the prior hearing, the Debtor has provided significant information concerning the condition of the vehicle. The Creditor has had to opportunity to conduct discovery on this issue.

Not surprisingly, the Parties working in good faith have reached a stipulation as to value – \$22,000.00. Stipulation, Dckt. 85. That is consistent with the court’s prior tentative ruling.

The lien on the Vehicle's title secures a purchase-money loan incurred on July 23, 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 \$28,880.58. Proof of Claim, No. 4-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$22,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Jorge Oseguera and Gabriela Oseguera ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, Stipulation by the Parties (Dckt. 85), and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Travis Credit Union ("Creditor") secured by a vehicle identified as a 2016 Dodge Ram 1600 ("Vehicle") is determined to be a secured claim in the amount of \$22,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$22,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor’s plan may not have been proposed in good faith as Debtor purchased a new vehicle nine days before the filing of the present case.
- B. Debtor’s plan is not her best effort as it does not provide for all of Debtor’s projected disposable income.
- C. Debtor’s Plan is not clear as the source for attorney fees and who is Debtor’s counsel for the bankruptcy case.
- D. Two Plan payments will come due prior to the hearing on this Objection.

DEBTOR’S RESPONSE

On November 15, 2019, Debtor filed a Response. Dckt. 24. Debtor addresses Trustee’s objections and states that she will be filing an amended plan after the claims bar date of November 18, 2019 passes.

DISCUSSION

Trustee's objections are well-taken. There are several issues with Debtor's proposed Plan.

As it stands, Debtor's Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Good Faith

Debtor purchased a new car nine days prior to the filing of the current bankruptcy. They traded in a 2007 vehicle worth at least \$4,800.00 which the debtor owed \$4,900.00.

In her response, Debtor addresses this objection and simply states that the purchase was done in the ordinary course of business. The court does not know what that means. Debtor must further clarify.

Best Effort

Trustee argues that the Plan does not provide for all of Debtor's projected disposable income for the applicable commitment period under 11 U.S.C. § 1325(b). Debtor has an above median income. The Debtor's Plan proposes no less than 24% to unsecured claims estimated at \$44,409.00, which totals \$10,658.16 or an average of \$4177.64 per month.

Debtor purposely over-withholds for taxes. Debtor contends in her Response that this is under the condition that she will give the entire tax refund to the plan.

Trustee believes that Debtor's income is higher than what was indicated in her petition. Debtor states that based upon Debtor's September 6, 2019 pay stub, her six (6) month income average is \$11,072.60.

Debtor's petition claims five people in the household, which seems to include three other adults without income, and states expenses based on that number. Trustee is not certain the number claimed in the household is correct. Debtor claims that her family moved recently but that one of the dependent is now staying with another family so that he can finish high school in their previous location. Debtor claims that she pays the host parents \$200.00 a month to cover for her son expenses.

Debtor claims a \$50.00 expense for an optional telephone; an additional food and clothing expense for \$100.00; and a continuing charity expense if \$15. Debtor states that she will eliminate both the telephone and the additional food and clothing expense in her amended plan. However, Debtor alleges that she does not have proof of her charitable contribution because she makes these donations to St. Jude at the grocery store.

Attorney Fees

The Disclosure of Compensation of Attorney for Debtor indicates the attorney has agreed to accept \$4,000.00; \$190.00 was paid prior to the case; with a \$3,810.00 as the balance due. Further, the disclosure does not specify the source of compensation to be paid. Debtor's counsel states that he will amend the Disclosure of Compensation to reflect "Debtor" as the source of compensation. Additionally, a notice of appearance counsel was filed by Scott Schumaker on November 8, 2019.

Plan Payment Coming Due

The Debtor's first and second plan payments will be due October 25 and November 25 respectively, both of which is before the hearing on this Objection.

Amended Plan and Motion to Confirm Filed

On November 25, 2019, Debtor filed an Amended Plan and Motion to Confirm that Amended Plan. Dckts. 33, 29. This is de facto withdrawal of the proposed 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 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, the Debtor having filed an Amended Plan and Motion to Confirm that Amended Plan, 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 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 8, 2019. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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 debtors, Anthony George Tokuno and Renee A. Tokuno (“Debtor”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on October 10, 2019. Dckt. 39. 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 Anthony George Tokuno and Renee A. Tokuno (“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 2, 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.

43. [19-25577-E-13](#)
[AP-1](#)
37 thru 38

WALLACE LUNDRY
Pro Se

**OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION**
10-24-19 [31]

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

Local Rule 9014-1(f)(2) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee 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.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan on November 18, 2019. Dckt. 40. 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) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee 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.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan on November 18, 2019. Dckt. 40. 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)(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 28, 2019. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee (“Objector”) objects to Willie Jean Norman’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on August 31, 2016. Case No. 2016-25800. Debtor received a discharge on December 6, 2016. Case No. 2016-25800, Dckt. 21.

The instant case was filed under Chapter 13 on September 4, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on December 6, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 2016-25800, Dckt. 21. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 2019-25587), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-25587, the case shall be closed without the entry of a discharge.

46.	19-25692-E-13 DPC-1	MARIA FATIMA IBASAN Gabriel Liberman	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 10-29-19 [19]
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Final Ruling: No appearance at the November 26, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on October 30, 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.

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

The Objection to Confirmation of Plan is overruled.

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

- A. Debtor relies on a pending Motion to Value a Secured Claim.

DISCUSSION

Debtor’s Reliance on Motion to Value Secured Claim

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Nissan Motor Acceptance Corporation. Debtor filed a Motion to Value the Secured Claim of Nissan Motor Acceptance Corporation, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Motion was granted on November 14, 2019. The value of the vehicle was determined to be \$21,542.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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 Maria Fatima Delgado Ibasan’s (“Debtor”) Chapter 13 Plan filed on September 10, 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.