

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 11, 2018 at 3:00 p.m.

Notice

**The court has reorganized the cases, placing all of the Final Rulings
in the second part of these Posted Rulings,
with the Final Rulings beginning with Item 14.**

- | | | | |
|-----------|--|--|---|
| 1. | <u>18-25802-E-13</u>
<u>DPC-1</u> | MICHAEL WALKER
Michael Hays | OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-14-18 [18] |
|-----------|--|--|---|

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on November 14, 2018. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. Debtor is delinquent \$2,430.00 in plan payments and the next payment of \$2,430.00 is due on November 25, 2018. Debtor has paid \$0.00 into the proposed plan.
- B. Proof of Claim, No. 4, filed by the Franchise Tax Board indicates Debtor has not filed a 2017 tax return.
- C. Debtor has not provided Trustee a tax transcript or copy of Federal Income Tax Return with attachments for the most-recent prepetition tax year (2017), or a written statement that no such documentation exists.
- D. Debtor has not filed Class 1 Checklist and Authorization to Release Information forms to the Trustee.

DISCUSSION

Trustee’s objections are well-taken.

Debtor is \$2,430.00 delinquent in plan payments, which represents one month of the \$2,430.00 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).

The federal income tax return for the 2017 tax year has not been filed still. Proof of Claim, No. 4. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

Local Bankruptcy Rule 3015-1(b)(6) requires a Chapter 13 Debtor file Forms EDC 3–086 (Class 1 Checklist) and EDC 3–087 (Authorization to Release Information to Trustee Regarding Secured Claims to be Paid by the Trustee). Debtor has not provided these documents.

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.

2. [18-26402-E-13](#) **DENNIS/ROBIN COBB**
[DPC-1](#) Mary Ellen Terranella

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-14-18 [22]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on November 14, 2018. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the proposed plan relies on the valuation of the collateral of two creditors: Santander Consumer U.S.A., and Rent-A-Center. Trustee notes Dennis Samuel Cobb and Robin Karen Cobb (“Debtor”) have filed a Motion to Value the Collateral of Santander Consumer U.S.A. set to be heard December 4, 2018, but have not filed any other motion to value.

DISCUSSION

Trustee’s objections are well-taken. A review of the docketed shows the court has issued an Order granting Debtor’s Motion to Value the Collateral of Santander Consumer U.S.A. Order, Dckt. 30.

However, the proposed plan also relies on the valuation of collateral securing the claim of Rent-A-Center. Debtor has not filed a motion to value that claim. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

3. [18-22707-E-13](#) **MICHAEL/PHYLLIS ENOS** **MOTION TO CONFIRM PLAN**
[PLC-1](#) **Peter Cianchetta** **10-5-18 [32]**

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 5, 2018. By the court’s calculation, 67 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

Michael Anthony Enos and Phyllis Ann Enos (“Debtor”) seek confirmation of the Amended Plan, which would constitute the first confirmed plan in this case. The Amended Plan provides for monthly payments of \$910.05 for 5 months and \$ 1,335.00 for 55 months, and provides a 0 percent dividend to creditors holding unsecured claims. Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on November 14, 2018. Dckt. 37. Trustee opposes the Motion on the following grounds:

1. Debtor's proposed Amended Plan relies on the valuation of collateral secured by the claim of the Internal Revenue Service. Debtor has not filed a motion to value.
2. The Rights and Responsibilities of Chapter 13 Debtors and Their Attorney's filed May 1, 2018, indicate the attorney was paid \$124. Dckt. 7. However, the proposed Amended Plan indicates the attorney of record was paid \$0.00 prior to filing of the case. Amended Plan, Dckt. 35. Trustee cannot determine whether Debtor's counsel has been paid fees prior to filing.
3. Debtor has failed to provide necessary business documents, including the business questionnaire, 6 months' profit and loss statements, and 6 months' bank statements (missing months are November 2017 through February 2018, and April 2018 through May 2018).
4. Debtor has not provided Trustee a copy of Debtor's 2016 tax returns.
5. Debtor misstates the filing date and Meeting of creditors date in the proposed Amended Plan.

DISCUSSION

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

Debtor has presented conflicting information as to whether any attorney's fees were paid prior to filing this case. *Compare* Dckt. 7 *with* Dckt. 35. The court cannot determine if the Amended Plan is feasible without clarification. 11 U.S.C. § 1325(a)(6).

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

- A. Questionnaire,
- B. Six months of profit and loss statements, and
- C. Six months of bank account statements,

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

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED.

R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Finally, the proposed Amended Plan misstates the date of filing the petition and the date of the Meeting of Creditors.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Michael Anthony Enos and Phyllis Ann Enos (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

4. [18-26407-E-13](#) **NICHOLE MORGAN**
[DPC-1](#) **Ronald Holland**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-14-18 [29]

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 14, 2108. 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 overruled.

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

- A. Debtor’s proposed Plan relies on the valuation of the collateral secured by the claim of Travis Credit Union, set to be heard November 20, 2018.
- B. Debtor’s first payment becomes due November 25, 2018.

DISCUSSION

A review of the docket shows that the court issued an Order granting Debtor's Motion To Value the Collateral of Travis Credit Union on November 26, 2018. Order, Dckt. 34.

Trustee has not filed any supplemental pleadings or status reporting indicating Debtor's first payment due November 25, 2018 was not made.

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

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

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

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

IT IS ORDERED that the Objection is overruled, and Nichole Cleveland Morgan's ("Debtor") Chapter 13 Plan filed on October 10, 2018, 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.

5. [18-22819-E-13](#) **RANDY TURNER**
[RK-1](#) **Richard Kwun**

**CONTINUED MOTION TO CONFIRM
PLAN
9-23-18 [57]**

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, the U.S. Attorney for the IRS, the U.S. Department of Justice, and Office of the United States Trustee on September 23, 2018. By the court’s calculation, 23 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Randy Lee Turner (“Debtor”) seeks confirmation of the Amended Plan to provide for ongoing HOA fees, attorney’s fees, previously unsecured priority claims, and unsecured claims. Dckt. 62. The Amended Plan provides for payments of \$2,945.00 from months 4 to 14, \$2,280 for the remaining 46 months, and a 100 percent dividend to unsecured claims totaling \$2,969.00. Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on October 18, 2018. Dckt. 64. The Trustee opposes confirmation on the following grounds:

1. The Plan does not provide for future tax refunds, despite Debtor indicating in response to Trustee’s last Objection (Dckt. 32) that any new plan would provide for future tax refunds. Debtor also failed to provide proof of reduced tax deductions.

2. Debtor cannot make the payments under or comply with the proposed Amended Plan. Debtor has not provided for the secured claim of the United Trustee Services (Proof of Claim, No. 6), listed the claim on Schedule D, or included the claim as an expense on Schedule J. Debtor's proposed Amended Plan does not authorize payments totaling \$2,450.00 Trustee has already paid to Bay Area Property Management. Furthermore, Debtor's proposed Amended Plan changes the designation of Travis Credit Union claim from a purchase money security interest to a non purchase money security interest.
3. The Plan is silent as to any fees Debtor's attorney has received from U.S. Legal.

NOVEMBER 6, 2018 HEARING

At the November 6, 2018 hearing, the court continued the hearing on the Motion to December 11, 2018, to allow for review of recently filed documents. Dckt. 73.

DEBTOR'S RESPONSE TO TRUSTEE'S OBJECTION

Debtor filed a Response to Trustee's "Objection"^{FN.1} on October 31, 2018. Dckt. 67. Debtor states that committing the tax returns towards the plan is "unnecessary" because the plan provides for 100 percent payment to unsecured claims. Debtor states further that it has provided for amounts towards United Trustee Service's claim by paying those amounts through Bay Area Property Management, the property management company for the creditor.

Debtor argues further that it has been clearly established Debtor's attorney Richard Kwun has received \$2,000.00 from US Legal.

FN.1. Where a Debtor has filed a motion to confirm a plan, the Trustee opposes the motion rather than "objects." Trustee filed an Opposition to Debtor's Motion. Dckt. 64.

DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a Supplemental Reply on November 19, 2018. Dckt. 74. The Reply notes as "positives" that the main goal of Debtor's plan was to correct the prior plan's classification of the Debtor's ongoing homeowner association's dues as Class 1, and that while the Form B22C is negative the proposed plan proposed no less than 100 percent to unsecured claims.

Debtor's Reply then addresses several of the court's concerns as to the accuracy of information provided through Schedules and other documents filed in this case, including the following:

1. Debtor's wife is not a dependent and earns no income. Debtor has filed Amended Schedules I and J to correct the prior Debtor's counsel's work. Debtor did not previously fix the wife's misclassification because the Trustee has not objected.

In making this point, Debtor testifies "2. My wife is not a dependent according to the IRS definition of dependent." Declaration ¶ 2, Dckt. 75. While not a "dependent" for tax purposes, Debtor appears to also testify that his spouse is not "dependent" upon his income for her living costs and expenses. Thus, taking Debtor's testimony under penalty of perjury at face value, it appears that his family unit is one person – himself. His wife is not "dependent" on Debtor for any living expenses and now "due to my 22-year-old daughter either moving out or contributing more to common expenses." Declaration ¶ 9.a., Dckt. 62.

Thus, it appears that Debtor's expenses for purposes of computing projected disposable income should be determined for a household of one person.

2. Debtor provided the name of the homeowner's association that bills him because he did not know the legal name of the creditor. Debtor should not have been expected to know the creditor was "Bear Sterns Asset Backed Securities I Trust 2004-BO1."

On this point, Debtor's counsel (who has a four year undergraduate college degree, a three year post-graduate college degree, has passed one of the most difficult bar examinations in the country, and charges clients hundreds of dollars an hour for his services) argues: "Debtor respectfully reminds that the debtor is blue collar guard at a prison who can't be expected to know the legal exact name(s) of his HOA and affiliates." Supplemental Reply ¶ 10, Dckt. 74. No explanation is provided for why counsel and his staff did not, and does not, ensure that creditors are correctly identified and a debtor's resources are not wasted by litigating against the wrong party.

3. Kay Jewelers does not have a non-possessory non-purchase money security interest in the jewelry. The identification therein was an obvious mistake. Debtor financed obtained and financed the jewelry from Kay Jewelers consistent with California Commercial Code § 9103(a)(2).

TRUSTEE'S RESPONSE TO SUPPLEMENTAL REPLY

Trustee filed a Response to Debtor's Supplemental Reply on November 28, 2018. Dckt. 78. Trustee responds as follows:

1. Debtor argues that committing tax refunds is not necessary because the plan proposes to pay 100 percent to unsecured claims. Trustee disagrees as no interest is provided to unsecured claims; Debtor should not be permitted to set aside \$8,511.00 in tax refunds where the plan could be finished earlier; and if Debtor no longer receives a tax refund because of an adjusted withholding, Debtor's Schedule J (Dckt. 73) is inaccurate.

2. Debtor's counsel does not address the \$2,450.00 previously paid to Bay Area Property Management, which presumably Debtor wants to treat as payments to United Trustee Services for arrears. Trustee does not oppose the order confirming stating that the \$2,450.00 previously paid to Bay Area Property Management shall be treated as a payment on Claim No. 6 by United Trustee Services. No correction to the Travis Credit Union claim is required.
3. Trustee agrees there is no basis for objecting to attorney's fees.
4. Debtor is delinquent \$3,610.00 in plan payments to the Trustee. Another payment is due December 25, 2018. Debtor has a pending transaction through TFS bill pay; after that transaction clears Debtor will be delinquent \$665.00.

DISCUSSION

Debtor filed a response to Trustee's first Objection to Confirmation (Dckt. 23) wherein Debtor stated "Debtor is working on drafting an amended [plan] that will . . . provide for the future tax refunds." Dckt. 32. Despite Debtor's prior statements, the proposed Amended Plan does not account for future tax refunds.

While Debtor has reduced payroll tax deductions, no explanation has been provided. Therefore, it appears Debtor is not providing all disposable income into the plan.

Debtor's Response filed November 6, 2018 (Dckt. 67) states "with the plan paying no less than 100% to unsecureds from future income there is no need to commit future tax returns." As the Trustee notes, Debtor does not provide an explanation why creditors should be forced to wait in limbo for plan payments where the Debtor has several thousand dollars in tax refunds to put towards the plan.

Trustee does not oppose the order confirming stating that the \$2,450.00 previously paid to Bay Area Property Management shall be treated as a payment on Claim No. 6 by United Trustee Services.

Trustee further has stated no correction to the Travis Credit Union claim is required.

AMENDED/SUPPLEMENTAL SCHEDULES I AND J ^{FN. 2}

FN.2. This is actually the third amended (see Dckts. 34, 59) and first Amended/Supplemental (Dckt. 70) Schedules I and J.

On October 31, 2018, Debtor filed Amended and Supplemental ("Amd/Supp") Schedules I and J. Dckt. 70. These documents state (under penalty of perjury) that they "amend" the original schedules to

correct errors and state the Debtor's income and expenses since the May 7, 2018 commencement of this case, and simultaneously only state changes in income and expenses from July 28, 2018 and forward.

On Amd/Supp Schedule I Debtor lists having \$9,680.00 in monthly gross income (\$8,488.00 wages and \$1,192.00 in Workers' Compensation). *Id.* at 2. Debtor further states that he has a non-debtor spouse who is employed, but lists \$0.00 for income. *Id.* at 2-3. This was the same as stated on Original Schedule I. Dckt. 11 at 22-23.

On Amd/Supp Schedule J, Debtor lists having \$4,067.20 in monthly expenses. Dckt. 70 at 5-6. This is a 40% increase over the \$2,914 stated on Original Schedule I. Dckt. 11 at 24-25. On both, Debtor lists two dependents - his wife and an adult daughter.

Comparing the changes in expenses:

Expense Item	Original Schedule J	Amd/Supp Schedule J	Increase/(Decrease)
Home Maintenance	\$0.00	\$20.00	\$20.00
HOA Dues	\$0.00	\$490.00	\$490.00
Electricity, Heat, Natural Gas	\$90.00	\$141.00	\$51.00
Food, Housekeeping Supplies	\$400.00	\$640.00	\$240.00
Clothing	\$0.00	\$75.00	\$75.00
Personal Care Products	\$0.00	\$75.00	\$75.00
Medical, Dental	\$50.00	\$75.00	\$25.00
Transportation	\$243.00	\$350.00	\$107.00
Entertainment	\$0.00	\$70.00	\$70.00
			\$1,153.00

On both Original and Amd/Supp Schedule J, Debtor states having a monthly alimony, maintenance, or support payment in the amount of \$550.00. On the Statement of Financial Affairs Debtor states:

1. He is married. Statement of Financial Affairs Question 1, Dckt. 11 at 27.
2. No income is listed for his employed wife. Statement of Financial Affairs Question 5, 6; *Id.* at 27-28.

3. Debtor has been making a monthly alimony payment of \$550.00. Statement of Financial Affairs Question 7, *Id.* at 29.
4. No pending legal actions, such as dissolution proceedings, are listed. Statement of Financial Affairs Question 9, *Id.* at 30.

On Schedule H, Debtor lists three co-debtors: two with the last name Turner (living at the same address as Debtor) and a third with the last name Ray (living at a different address, and being the person named as the alimony obligee). Dckt. 11 at 20.

In his Declaration, Dckt. 68, Debtor testifies that the increase in food, clothing, and personal care are made to “more accurate figure for my household of 4.” Declaration ¶ 4, Dckt. 68. But on the Original and Amd/Supp Schedules J, Debtor shows having a household of only three (3) persons, not four.

In looking at the increases in expenses, to make them “more accurate,” they generally seem to be made in non-specific block amounts, as if stated to generate a predetermined net monthly income figure for funding a plan.

SECOND SUPPLEMENTAL SCHEDULES I AND J

Debtor filed a Second Supplemental Schedule I and J on November 19, 2018. Dckt. 76. Debtor corrects Schedule I to state Debtor’s wife is not employed, and is a homemaker. Schedule I, Dckt. 76.

Schedule J is amended to remove Debtor’s wife as a dependent. Schedule J, Dckt. 76. However, still remaining is a \$550 expense for monthly alimony, maintenance, or support payment. Furthermore, Debtor has not offered any explanation why Debtor’s expenses increased 40% over the \$2,914 stated on Original Schedule I. Dckt. 11 at 24-25.

REVIEW OF PLAN, FINANCES AND STATED DEPENDENTS

Debtor’s arguments (unsupported by any citation to legal authority) that Chapter 13 provides for an interest free deferment of payment of unsecured claims for five years, notwithstanding there being sufficient assets and income to pay it sooner, such as in the first six months of the case, crash on the shoals of 11 U.S.C. § 1325(b)(1), which provides (emphasis added):

(b)

(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, **as of the effective date of the plan--**

(A) the **value of the property to be distributed** under the plan on account of such claim is not less **than the amount of such claim**; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan

The court reads this provision to say that:

- (1) If the plan does not provide for all Debtor's projected disposable income to fund the plan (here excluding the \$8,000+ tax refund);
- (2) if the Trustee objects to the Plan;
- (3) the Plan cannot be confirmed unless:
 - (A) the value of the property distributed (the payments) over time,
 - (B) are not less than the amount of the claim, as of the effective date.

Review of Chapter 13 Plan Terms

The Plan first starts with curing a \$15,894.30 arrearage on the obligation secured by Debtor's residence. Plan ¶ 3.07(c), Dckt. 60. It continues, restructuring claims secured by jewelry (though Debtor now appears to say there is no such secured claim), 2016 Chevy Impala, and HOA fees. *Id.*, ¶ 3.08. In addition, Debtor will continue to make car payments of \$560 a month on a second car (though he has no dependents), as well as have his daughter (who is no longer a dependent) make the payments on a Disney timeshare in Orlando. *Id.* ¶ 3.10.

For the \$2,969.00 in Class 7 General Unsecured Claims, they will be paid an 100%, with it spread over monthly, no interest payments, of \$49.50 a month.

In the most recent Supplemental Schedules I and J, Debtor provides the following information under penalty of perjury:

- A. His spouse who is not dependent on Debtor for any expenses, is not employed and is a homemaker.
- B. Debtor's monthly take-home income is \$7,012.39, having gross income of \$9,680 a month (annualizing to \$116,160). Sup. Schedule I, Dckt. 76.
- C. Debtor's household of apparently one person household (having one dependent on him for expenses), is stated to be (\$4,067.02), which does not include any mortgage payment, property taxes, or insurance on his home. Debtor's necessary expenses include paying for a car through the Plan and then a second car (for someone who is not dependent on him for living expenses) of \$560 a month. Debtor states that he is also paying alimony or support to someone in the amount of \$550 a month. Supp. Schedule J, *Id.*

D. Using the Supplemental Income and Expense Information (Dckt. 76), Debtor states that he has monthly net income of \$2,945.19. *Id.* at 5. This does not include the existing tax refund or future tax refunds.

Even without taking the \$8,000+ current tax refund into account, Debtor is not putting all of this monthly net income, which in this case is his projected disposable income, into the plan, but diverts \$700 a month to other unstated purposes/expenses/non-dependents. The proposed plan payment is only \$2,280 a month. Amended Plan, Section 7 Additional Provisions; Dckt. 60 at 8.

With only four monthly payments of the diverted \$700 the creditors with general unsecured claims would be paid, done and gone – not having to provide the Debtor five years (sixty months rather than four) of interest free financing.

Proposing this plan in general smells of bad faith. Debtor offers no authorities for his right to a sixty month free loan. While Debtor states, “if I filed Chapter 7 creditors would get nothing,” his monthly income of \$9,680 is above median income for:

- a debtor household of one person
- a debtor household of two persons
- a debtor household of three persons
- a debtor household of four persons
- a debtor household of five persons
- a debtor household of six persons
- a debtor household of seven persons
- a debtor household of eight persons
- ...
- a debtor household of fourteen persons

Census Bureau Median Family Income, 150% of the HHS Poverty Guidelines, Office of the U.S. Trustee

Thus, a Chapter 7 liquidation in which creditors with unsecured claims are paid nothing is not in the cards. 11 U.S.C. § 707(b).

Debtor’s efforts to propose this plan, to not provide his projected disposable income into the plan, to divert an \$8,000+ tax refund, and spread \$2,900 of general unsecured claims interest free over sixty months runs afoul 11 U.S.C. § 1325(a)(3) - that the case must have been filed and the plan proposed in good

faith. Debtor's actions, arguments, and feigned ignorance demonstrate that he is not prosecuting this case in good faith.

The proposed plan does not comply with 11 U.S.C. § 1325 and § 1322, the motion is denied, and the Plan is not confirmed.

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

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

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

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

6. [17-27640-E-13](#) **ROBERT RODNI**
[WW-3](#) **Mark Wolff**

**OBJECTION TO CLAIM OF WELLS
FARGO BANK, N.A., CLAIM NUMBER
6-2
10-25-18 [39]**

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor and the Chapter 13 Trustee on October 26, 2018. By the court’s calculation, 46 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 6-2 of Wells Fargo Bank, N.A. is
XXXXXXXXXXXX.**

Robert James Rodni Chapter 13 Debtor (“Objector”), requests that the court disallow the claim of Wells Fargo Bank, N.A. (“Creditor”), Proof of Claim No. 6-2 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$298,174.11.

Objector asserts that Creditor amended its Proof of Claim on August 6, 2018, to increase arrears from \$1,838.20 to \$11,188.30. Debtor disputes whether this was the amount due at filing. Debtor provides as Exhibit 1 a December 18, 2017, billing statement reflecting the arrearages owed are approximately \$3,500.00. Exhibit 1, Dckt. 1.

CREDITOR'S OPPOSITION

Creditor filed an Opposition to Debtor's Objection on November 27, 2018. Dckt. 48. Creditor states it filed an amended proof of claim to include post-petition arrearages based upon its interpretation of the Modified Plan, which specifies Creditor can file a claim for post-petition arrears. *Id.* at ¶ 11. Creditor states further the only change in the figures was the inclusion of post-petition payments that came due between January 1, 2018 and May 1, 2018 in the pre-petition arrears, which increased the arrearage amount asserted by \$9,350.10 to a total claim arrearage claim amount of \$11,188.30. *Id.*

Creditor concedes there is some confusion in what the post-petition arrearage is. After the Modified Plan was confirmed, the Chapter 13 Trustee, David Cusick ("Trustee"), made a disbursement of \$5,559.00 on May 31, 2018. However, the Modified Plan provided "[t]he Chapter 13 Trustee shall resume monthly payments to Wells Fargo with the next monthly payment being applied to the payment due June 1, 2018."

Because of the Modified Plan language, Creditor did not apply payments towards post-petition arrears for the January through May 2018 period. In the event Trustee's payment was to be treated as a payment of post-petition arrearages, Creditor concedes the post-petition arrears would be \$5,661.12 and not \$11,188.30.

MODIFIED PLAN

Creditor relies on language stated within Section 7 – NonStandard Provisions for Section 2.01 in the Modified Plan. *See* Modified Plan, Dckt. 26. The relevant portion states:

Post petition payments to Class 1 Creditor Wells Fargo shall be paid as a Class 2 Creditor. **The Chapter 13 Trustee shall resume monthly payments to Wells Fargo with the next monthly payment being applied to the payment due June 1, 2018.** Post petition arrears shall be paid as a Class 2 claim. Upon completion of this Chapter 13 Plan Debtor shall be fully current, pre-petition and post petition, on the class 1 claim of Wells Fargo. The Chapter 13 Trustee shall pay the post petition arrears to Wells Fargo without the need for Wells Fargo to file a claim. **Should Wells Fargo disagree with the amount to be paid for the post petition arrears, it shall file a claim to notify Debtor, the Court, and The Chapter 13 Trustee of the amount Wells Fargo believes is necessary to cure all post petition arrears.**

Modified Plan, Dckt. 26(emphasis added).

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof

of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Here, Debtor's Modified Plan provides for Creditor's claim as a Class 1, with the exception that post-petition arrearages are to be treated as a Class 2. As the plan relies on Debtor paying all pre- and post-petition arrears, the Modified Plan specifically provides that Creditor is permitted to file a claim for the amount of post-petition arrearages to give notice to the Debtor and Trustee of disagreements as to the amount necessary to cure. This is exactly what Creditor has done in filing its Amended Proof of Claim.

Creditor is uncertain whether the post-petition arrears are \$11,188.30 or \$5,661.12. This is because the Trustee made a payment after confirmation of the Modified Plan on May 31, 2018. While this payment may have been intended to cure some of the post-petition arrears, the Modified Plan language provided for the Trustee's next payment to be applied to the payment June 1, 2018. Modified Plan, Dckt. 26.

At the hearing, ~~XXXXXXXXXXXXXXXXXXXXX~~.

The Objection to the Proof of Claim is ~~XXXXXXXXXXXXXXXXXXXXX~~.

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 Wells Fargo Bank, N.A. ("Creditor"), filed in this case by Robert James Rodni, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 6-2 of Wells Fargo Bank, N.A. is ~~XXXXXXXXXXXXXXXXXXXXX~~.

7. [18-25861-E-13](#) **MICHAEL SCHILLACI**
[DPC-1](#) **Michael Hays**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-14-18 [21]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on November 14, 2018. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the plan does not compute mathematically. Debtor admitted at the Meeting of Creditors he may owe \$8,000.00 in taxes. Therefore, the current proposed plan would not complete in the 60 month term and is not feasible.

Trustee’s objections are well-taken. Where Debtor has admitted there may be an unaccounted for claim of taxes in the amount of several thousand dollars, the current proposed plan would not complete in the 60 month term is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

8. [17-27692-E-13](#) **ELIZABETH MANZO** **MOTION TO SELL**
[PLC-6](#) **Peter Cianchetta** **11-20-18 [117]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 20, 2018. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Elizabeth Lopez Manzo, Chapter 13 Debtor (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1319 Lord St, Walnut Grove, California (“Property”).

The terms of the sale are:

- A. The Sale price is \$28,000.00 to be paid in cash at closing.
- B. Close of escrow, November 21, 2018, will be extended to December 12, 2018.
- C. The Buyers are Jose Gonzalez and Imelda Gonzalez.

Debtor's Schedule A/B and Amended Schedule A/B list the Property with a value of \$25,000.00 at the time of filing. Dckts. 9, 74. Debtor's Declaration explains she arrived at the current sale price after conferring with a realtor. Dckt. 120 at ¶ 6.

DISCUSSION

Debtor has in this Motion remedied the numerous issues that prevented granting its other motion to sell property. Debtor has stated with particularity in its Motion the necessary terms of the sale, including the sale price, proposed buyers, and closing period. Dckt. 117. Debtor has provided evidence that the sale price here is the fair market value (and the sale price here does not dramatically differ from the price lists on Debtor's Schedules). Dckt. 120.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides the fair market value for the Property, satisfies the secured claim of Esteban Cardiel, and retains excess proceeds of \$1,000.00.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of Esteban Cardiel ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that the sale price is greater than the aggregate of liens on the Property, which is \$27,000.00. Proof of Claim, No. 2.

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

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

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

IT IS ORDERED that Elizabeth Lopez Manzo, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(3) to Jose Gonzalez and Imelda Gonzalez or nominee (“Buyer”), the Property commonly known as 1319 Lord St, Walnut Grove, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$28,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 119, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the lien of Esteban Cardiel, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(3), with the lien of such creditor attaching to the proceeds. The Chapter 13 Debtor shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

~~E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 25, 2018. By the court’s calculation, 56 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Elizabeth Lopez Manzo (“Debtor”) seeks confirmation of the Amended Plan. Debtor’s Declaration states Debtor “filed a Chapter 13 case and proposed my Amended Chapter 13 Plan to deal with unexpected changes in my finances, and overwhelming unsecured debts.” Dckt. 99 at ¶ 3. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on November 6, 2018. Dckt. 114. Trustee Opposes confirmation on the grounds that the Motion fails to state with particularity the grounds upon which relief may be granted. Trustee further argues that the proposed Amended Plan calls for a lump sum payment, which is not described with enough specificity for Trustee to assess its feasibility.

NOVEMBER 20, 2018, HEARING

At the November 20, 2018, hearing, the Trustee reported Debtor's counsel was setting a motion to sell to be heard December 11, 2018. Dckt. 122. The court continued the hearing on this Motion to be heard alongside that motion.

DISCUSSION

The Trustee's Opposition concerning the requirements of Federal Rule of Bankruptcy Procedure 9013 presents the court with the intersection of the Rule and the practicalities of pleading for a consumer attorney. For motions to confirm, the court has been more lenient (at least in the court's view) in this pleading requirement, looking for the attorneys to just state the various grounds for confirmation.

Here, the Motion appears to allege most of the grounds provided in 11 U.S.C. § 1325 for confirmation of a plan. Missing is any provision relating to the treatment of secured claims. The Motion does allege that all creditors will be paid 100% "as agreed upon." This last phrase may mean the creditors will be paid in accordance with their pre-petition contracts (agreements) or that there are post-petition "agreements" with each of the creditors.

From reviewing the Plan, it appears that neither of the two is accurate. The proposed Amended Plan does not provide for paying creditors pursuant to their pre-petition contracts, but to modify the terms for the Class 2 and Class 7 claims.

The Trustee is correct that the Motion does not comply with the "normal" application of Rule 9013. But the court does give debtor's counsel more leeway on motions to confirm. Even then, the motion is coming up short, ignoring the "grounds" for the secured claims.

This case further becomes an exception to the Rule given the very small amount of unsecured claims and there being only one Class 2 claim to be paid through the Plan.

Plan Feasibility

Debtor's proposed plan provides no details about the proposed sale of property which is being used to support the plan's proposed lump sum. Amended Plan, Dckt. 100. The Additional Provision for the sale states:

Section 6 - Additional Provisions

Lump sum payment upon the sale of real property listed for sale by owner.
Any Class 1 or Class 4 creditor is authorized and directed to provide customary monthly billing statements, annual accountings, escrow analysis statements under RESPA and tax reporting forms, as is applicable, directly to the debtor at the debtor's normal mailing address.

Additional Provisions Section 2.06 Debtor's Attorney Fees. All Debtor's Attorney fees shall be paid prior to payments to unsecured creditors.

Plan, p. 8; Dckt. 100. The court and interested parties are left to guess what value is sought to be put towards the plan from any potential sale, along with all other details of a possible transaction.

A review of the docket shows that Debtor’s Motion to Sell (Dckt. 83) was denied on August 1, 2018. Order, Dckt. 92. In denying the Motion, the court found that Debtor failed to provide any evidence establishing that the sale price was the property’s fair market value. Dckt. 90. The Court’s findings closed with the following:

“While the court does not have an amended plan before it, Debtor’s "creativity" in what has been stated on the Schedules, the inability to perform a plan by making monthly payments (as shown on Schedules I and J), and Debtor owning real properties with substantial non-exempt equity, her credibility in pursuing the current motion is in question.

It appears that Debtor and Debtor’s counsel need to circle back, determine how Debtor can prosecute a Chapter 13 case in good faith, how to document that proposed sales of properties are in good faith and for fair value, and what Debtor needs to amend to provide accurate statements under penalty of perjury.

Id., p. 4.

A review of the file discloses that Debtor (who is exercising the power of a trustee to sell the property) has not obtained authorization to employ (and pay) a real estate broker for the sale of property of the bankruptcy estate.

Here, Debtor proposes a plan that provides for sometime in the sixty months for Debtor to sell some unidentified property and from that pay creditors. Further, that the Debtor (fulfilling her fiduciary duties first as the Chapter 13 Debtor and then as the plan administrator) does not intend to hire a real estate professional to market the property to obtain its fair market value, but instead intends to have the property(ies) “listed by owner.”

Taken at face value as stated by the Debtor, the bankruptcy estate in this case includes the following real properties:

Property	Value on Schedule A/B (Dckt. 74)	Liens on Schedule D (Dckt. 9) or Proof of Claim Filed
Willow Vale Way	\$275,000	(\$27,000) (Abstract of Jdgt on all properties)
Grant Line Road	\$140,000	
Lord Street	\$25,000	
Center Street	\$100,000	(\$85,000) (Tantum)
E. Heintz Ave	\$5,000	

Elefa Ave	\$45,000	
F Street	\$85,000	

Though the Debtor has significant real property assets, there is no schedule for the sale of such assets to pay creditors.

Motion To Sell Lord Street Property

The court has granted a Motion to Sell (Dckt. 117) set to be heard the same day as the hearing on this Motion for Debtor’s property commonly known as 1319 Lord St, Walnut Grove, California. The sale price is \$28,000.00, which will be primarily used to satisfy the secured claim of Esteban Cardiel in the amount of \$27,000.00.

While this sale will likely generate approximately \$1,000.00 in proceeds to be put towards the proposed plan, the picture is not clear where the remainder of the lump sum is coming from. Debtor has not filed any other motions to sell property. Debtor’s proposed plan relies on lump sums that have not been demonstrated to be feasible. 11 U.S.C. § 1325(a)(6). This is independent cause to deny the Motion.

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

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

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

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

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

10. [18-25899-E-13](#)
[DPC-2](#)

MICHAEL SARGENTI
Nicholas Wajda

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-14-18 [19]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 14, 2018. Dckt. 22. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent \$2,113.40 in plan payments and another payment will become due November 25, 2018. Debtor has paid \$0.00 into the plan.
- B. Debtor's expenses on Schedule J are only \$720 monthly; Trustee is uncertain these expenses are realistic.

DISCUSSION

Trustee's objections are well-taken.

Debtor is \$2,113.40 delinquent in plan payments, which represents one month of the \$2,113.40 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 may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee is concerned Debtor's Schedule J provides only \$720 in monthly expenses, which may not be realistic. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, Debtor stated **XXXXXXXXXXXX**.

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.

11. [18-26334-E-13](#) **AMY EVERSON**
[DPC-2](#) **Marc Carpenter**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-14-18 [18]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on November 14, 2018. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor may not be reporting all income. Debtor’s August 31, 2018 pay advice provided to the Trustee shows a gross income of \$7,931.80 and net of \$4,696.02. Trustee believes the information provided on Schedule I and Form 122C-1 is inaccurate.

- B. Debtor has not provided Trustee with 60 days of pay advices. Debtor provided advices dated August 31, 2018 and October 1, 2017.
- C. Debtor's first plan payment will become due November 25, 2018.

DISCUSSION

Trustee's objections are well-taken.

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). While Debtor has provided some pay stubs, Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

From what pay advices Debtor has provided, Trustee has determined that Debtor's Schedules and Form 122C-1 is likely inaccurate. Without a clear picture of Debtor's financial reality, the court cannot determine whether the proposed Plan is feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

12. [18-26203-E-13](#)
[DPC-1](#)

CATHERINE PORTER
Peter Macaluso

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-14-18 [28]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 14, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

- A. At the Meeting of Creditors held November 8, 2018, the Debtor reported that on October 25, 2018, she received approval for a loan modification and reduction of her mortgage payment to \$979.16. The proposed plan therefore incorrectly indicates a proposed payment to Bayview Loan Servicing in Class 1 adequate protection payments of \$1,273.10 and \$53,000 in arrearages.

- B. The Debtor provides interest on arrears to Class 1 claim creditor Crestgate Taylor Homeowners Association. That creditor may not be entitled to interest under applicable law.
- C. Debtor's first payment is due November 25, 2018. Trustee is unsure whether Debtor will have made the payment by the hearing date.

DISCUSSION

Trustee's objections are well-taken. Debtor indicated a loan modification was obtained, rendering the payment for arrearages to Class 1 creditor Bayview Loan Servicing unnecessary. Debtor further indicated an intent to file an Amended Plan.

From the evidence presented, it is unclear whether Debtor will be delinquent at the time of the hearing on the Objection, or whether Class 1 claim creditor Crestgate Taylor Homeowners Association is entitled to interest payments. At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

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.

13. [17-24005-E-13](#)
[MRL-1](#)

STEPHAN SMITH AND
MICHELLE AFFINITO
Mikalah Liviakis

MOTION TO MODIFY PLAN
11-2-18 [20]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2018. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

Stephan Keith Smith and Michelle Victoria Affinito ("Debtor") seek confirmation of the Modified Plan to remove Debtor's second mortgage (Citibank, NA) from the chapter 13 plan because the mortgage company recently cancelled the debt on approximately September 4th, 2018. Dckt. 23.

The Modified Plan provides for monthly payments of \$6,950.00 per month for 9 months, \$7,057.44 per month for 6 months, \$7,342.73 for 1 month and \$7,100 per month for the remaining 44 months of the plan. Dckt. 22. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 20, 2018. Dckt. 26. The Trustee opposes confirmation on the following grounds:

1. The proposed Modified Plan would be completed in 67 months. The proposed payment of \$7,100 is \$6,595.90 net of Trustee's fees at the current rate. The post-petition monthly payment is \$4,169.77, leaving \$2,426.13 per month for all other creditors. The remaining amounts to be paid are \$122,575.32. Therefore, 51 months would remain at the current proposed payment, making the total term 67 months.
2. Debtor has not provided adequate evidence demonstrating that Citibank, N.A., has cancelled Debtor's debt. However, Trustee does not oppose the omission of this creditor from the proposed Modified Plan.

DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 67 months due to the reduction in plan payments. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Withdrawal of Claim by Citibank, N.A.

In the Motion to Confirm Modified Plan, it is expressly stated by Debtor that the reasons that modification of the Plan is requested include::

“The reason for this modified plan is to remove Debtor's second mortgage (Citibank, NA) from the chapter 13 plan because the mortgage company recently cancelled the debt on approximately September 4th, 2018.”

Motion, p. 1:18-20; Dckt. 20.

In reviewing the Claims Register in this Case, a Notice of Withdrawal of Proof of Claim No. 9-1 was filed – however it was not filed by Citimortgage (the name of the creditor on Proof of Claim No. 9-1), but by debtor Michelle Victoria Affinito. Notice of Withdrawal of Claim No. 9, Filed October 4, 2018.

Proof of Claim No. 9-1 was originally filed by Debtor Michelle Affinito, naming Citimortgage, Inc. as the creditor. Having been filed, there is no evidence that Citimortgage, Inc. has withdrawn or cancelled the claim.

At the hearing, **XXXXXXXXXXXXXX**.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Stephan Keith Smith and Michelle Victoria Affinito (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

14. [18-27114-E-13](#) **TOM/RAYNELL JOHNSON** **MOTION TO VALUE COLLATERAL OF**
[MS-1](#) **Mark Shmorgan** **SCHOOLS FINANCIAL CREDIT UNION**
 11-12-18 [8]

Final Ruling: No appearance at the December 11, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 12, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Schools Financial Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$4,000.00.

The Motion filed by Tom Johnson and Raynell Johnson (“Debtor”) to value the secured claim of Schools Financial Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2010 Hyundai Elantra GLS Sedan 4D (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$4,000.00 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).

Though not stated in Debtor’s Motion or supporting pleadings, the lien on the Vehicle’s title secures a purchase-money loan incurred on March 25, 2016 (Proof of Claim, No. 1), which is more than 910 days prior to filing of the petition (approx.. 962 days). The Vehicle secures a debt owed to Creditor with a balance of approximately \$6,176.76. Proof of Claim, No. 1. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of

\$4,000.00, 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 Tom Johnson and Raynell Johnson (“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 Schools Financial Credit Union (“Creditor”) secured by an asset described as 2010 Hyundai Elantra GLS Sedan 4D (“Vehicle”) is determined to be a secured claim in the amount of \$4,000.00, 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 \$4,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

15. [18-20734-E-13](#)
[MRL-3](#)

SHAUNA ROBERTS
Mikalah Liviakis

MOTION TO CONFIRM PLAN
10-3-18 [51]

Final Ruling: No appearance at the December 11, 2018, 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 3, 2018. By the court's calculation, 69 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. Shauna Lynn Roberts ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on November 14, 2018. Dckt. 61. 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 Shauna Lynn Roberts ("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 3, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. [18-24173-E-13](#) **FERRIC/STACY COLLONS** **CONTINUED MOTION TO VALUE**
[PGM-2](#) **Peter Macaluso** **COLLATERAL OF WELLS FARGO**
 DEALER SERVICES
 10-6-18 [68]

Final Ruling: No appearance at the December 10, 2018 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, creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2018. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

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

The hearing on the Motion to Value Collateral and Secured Claim of Wells Fargo Bank (“Creditor”) has been continued to January 15, 2018, at 3:00p.m. (Order, Dckt. 130) to allow additional time for creditor's inspection of the Vehicle

The Motion filed by Ferric J. and Stacy C. Collons (“Debtor”) to value the secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2015 Ford F150, VIN ending in 19494 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$20,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE’S RESPONSE

David P. Cusick, (“the Chapter 13 Trustee”) filed a Response to Debtor’s Motion to Value Collateral on October 18, 2018. Dckt. 89. The Chapter 13 Trustee reports that Creditor filed a secured claim on September 8, 2018 (Claim #14-1), which indicates the value of the property to be \$29,500.00. *Id.*

CREDITOR'S OPPOSITION

Creditor filed an Opposition to Debtor's Motion on October 23, 2018. Dckt. 93. Creditor disputes the valuation of the Vehicle, asserting the Vehicle should be valued at \$29,500.00. Creditor requests the court find its claim is therefore fully secured for the \$25,222.13 owing.

In support of its Opposition, Creditor filed the Declaration of Jessica Rapp (Dckt. 101) and a properly authenticated copy of the NADA Guide. Exhibit C, Dckt. 95.

DEBTOR'S REPLY

Debtor filed a Reply to Creditor's Opposition on October 30, 2018. Dckt. 103. Debtor argues (1) Creditor's evidence is hearsay because the Jessica Rapp lacks personal knowledge as to the Vehicle and therefore is inadmissible, (2) Debtor's valuation is based on personal knowledge of the Vehicle and its condition, (3) because Creditor's evidence is inadmissible there is no dispute of fact, and (4) Debtor requests Creditor perform a personal inspection appraisal to assess the value of the Vehicle.

NOVEMBER 6, 2018, HEARING

At the November 6, 2018 hearing, the court continued the hearing on the Motion to allow Creditor to inspect the Vehicle. Dckt. 107.

STIPULATION FOR CONTINUANCE

The parties filed a Stipulation on December 4, 2018. Dckt. 121. The Stipulation states due to Debtor's refusal to make the Vehicle available for Creditor's inspection, that the parties agree to continue the hearing on the Motion to January 15, 2018.

DISCUSSION

Value of the Vehicle

The lien on the Vehicle's title secures a purchase-money loan incurred on August 31, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$25,222.13.

Debtor's assertion that Creditor has not provided any evidence is not well-taken. Creditor's NADA Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

However, Debtor has stated in its Declaration several defects which are not reflected in the NADA Report, that are:

- A. Broken Windshield
- B. Damaged Rear Bumper

- C. Damaged left Rear Quarter Panel
- D. Damages throughout body needing paint job
- E. Windshield wipers inoperable
- F. Tires in poor condition
- G. Motor runs rough
- H. Interior carpets worn
- I. Rear seats in poor condition

In its statement of disputed facts, Creditor does not dispute the existence of any of the above damage. Statement, Dckt. 94. In the Opposition, Creditor does not state that it seeks to conduct any discovery or to have its expert inspect the vehicle.

Creditor requests (politely demands) that the court ignore the above damage and summarily conclude that its NADA valuation for the retail (showroom ready) car dealer sales price controls for this significantly damaged vehicle.

Based on the evidence presented, the court determines that the value of the vehicle is \$21,368.00. The court allows for the repair and replacement costs for the above, necessary repairs to get the vehicle to the retail (showroom ready) car dealer sales price value advanced by Creditor.

Stipulation for Further Continuance

The parties have filed a Stipulation agreeing to continue the matter to allow for Creditor's inspection of the Vehicle. The court issued an Order granting the Stipulation and continuing the hearing on December 6, 2018. Dckt. 130.